



malpractice establishments

insurance policy



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Section 1

How to read this Insurance Policy

- 1.1 Some of the words in this insurance **Policy** have special meanings. These meanings can be found in Section 11 of the **Policy** (“Words with special meanings”). If a word has a special meaning, it appears in the **Policy** in bold type and with a Capital Letter.

Section 2

The Insurance Contract

- 2.1 **We** agree to provide the cover described in this **Policy** upon full payment of the Gross Premium as stated in the **Policy** Schedule.
- 2.2 Before this **Policy** came into effect, **We** were provided with information by or on behalf of **the Insured** (and those referred to in Section 4.2 of this **Policy**) in the **Proposal**, and perhaps in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms. This information is part of the insurance contract with **Us**.
- 2.3 If any of that information is wrong or false, it may affect entitlement to cover under this **Policy**.
- 2.4 This **Policy** is in force for the Period of Insurance stated in the Schedule.
- 2.5 If full payment of the Gross Premium is not made, there is no cover.

Section 3

The cover We provide

3.1 The basis of cover

We provide cover up to the **Policy Limit** (see Section 5) for **Claims** for **Civil Liability** arising from the provision of the Professional Services, stated in the Schedule, on behalf of the **Insured Establishment** which **Claims**:

- (a) are made against **the Insured** (or, those referred to in Section 4.2 of this **Policy**) while this **Policy** is in force; and
- (b) **We** are told about in writing as soon as reasonably possible while this **Policy** is in force; and
- (c) arise from an act, error or omission on or after the Retroactive Date specified in the Schedule; and
- (d) are one or more of the types of **Civil Liability Claims** described in Section 3.2.

3.2 The types of Claim We cover

We provide this cover in respect of any of the following types of **Civil Liability Claim** arising from the provision of the Professional Services, stated in the Schedule, on behalf of the **Insured Establishment**:

- (a) **Malpractice** (including **Good Samaritan Acts**).
- (b) Breach of confidentiality.
- (c) Unintentional defamation.
- (d) Loss of or damage to **Documents** which were in **the Insured’s** physical custody or control at the time of loss or damage.
- (e) Dishonest, fraudulent, criminal or malicious acts or omissions by an **Employee** or **Principal of the Insured** (but there is no cover to that **Employee** or **Principal** for these **Claims**).
- (f) Breaches of Part V of the Trade Practices Act 1974 or similar Fair Trading legislation enacted throughout Australia (but not for criminal liability).

3.3 Claim Investigation Costs

We also pay (up to an amount equal to the **Policy Limit**) **Claim Investigation Costs**.

We only pay these, however, if either:

- (a) **We** incur them; or
- (b) **the Insured** incurs them after first obtaining **Our** agreement in writing and the costs and expenses are in **Our** view reasonable and necessary.

We are not obliged to defend, or to continue to defend, any **Claim** (or **Covered Claim**) or pay, or continue to pay, any costs or expenses associated with such defence, once the **Policy Limit** has been exhausted.

3.4 Disciplinary Proceedings/Enquiries

For those disciplinary proceedings or enquiries of which **the Insured** first becomes aware and of which **We** are told about in writing as soon as reasonably possible while this **Policy** is in force, **We** also cover **the Insured** (subject to the **Specific Cover Limits** set out in the Schedule for Disciplinary Proceedings and Enquiries) for the following:

Cover is provided for legal costs and expenses (incurred with **Our** prior written approval and which in **Our** view are reasonable and necessary) for the representation of **the Insured** at any disciplinary enquiry, or at a coronial enquiry. This cover is subject to the **Specific Cover Limit** indicated in the Schedule and does not extend to paying **the Insured's** regular or overtime wages, salaries or fees, or those of **the Insured's Employees**.

If no **Specific Cover Limits** are indicated in the Schedule for Disciplinary Proceedings/Enquiries, then no cover is provided by this **Policy** for Disciplinary Proceedings/Enquiries.

3.5 Fund raising & social activities

Subject to Section 3.1(a), (b), (c), and (d) **We** cover **the Insured** for any **Civil Liability Claim** arising from fund raising and social activities of any social club or committee where such activities have been sanctioned by, and are conducted for the benefit of, **the Insured**. This **Policy** however does not cover any **Claim** arising from bodily injury or property damage.

3.6 Continuous cover

We cover **the Insured**, for any **Claim** otherwise covered by this **Policy**, arising from a **Known Circumstance** (notwithstanding Section 6.1 of this **Policy**) if:

- (a) **We** were the professional liability insurer of **the Insured** when **the Insured** first knew of such **Known Circumstance**; and
- (b) **We** continued without interruption to be **the Insured's** professional liability insurer up until this **Policy** came into effect; and
- (c) Had **We** been notified by **the Insured** of the **Known Circumstance** when **the Insured** first knew of it, **the Insured** would have been covered under the **Policy** in force at that time but is not now entitled to be covered by that policy, and **the Insured** would (but for Section 6.1 of this **Policy**) otherwise be covered under this **Policy**; and

- (d) Neither the **Claim** nor **Known Circumstance** has previously been notified to **Us** or any other insurer.

If **the Insured** was entitled to have given notice under any other policy of insurance and thereby have an entitlement to indemnity in whole or in part, then this Continuous Cover extension does not apply to provide indemnity under this **Policy**.

The **Policy Limit** of the cover **We** provide under this provision is the lesser available under the terms of the **Policy** in force at the earlier time referred to in paragraph (c) above, or under this **Policy**. The terms of this **Policy** otherwise apply.

Section 4

Who is covered

4.1 Insured

We cover **the Insured** named in the Schedule (and as defined in Section 11 of the **Policy**) for **Claims** or losses and costs of the type and on the basis specified in Section 3, arising from the provision of the Professional Services, stated in the Schedule, on behalf of the **Insured Establishment**.

The conduct of the **Insured Establishment** by or on behalf of **the Insured** includes, for the purpose of this **Policy**, acts, errors or omissions of agents or consultants of **the Insured** while undertaking work which is reasonably incidental to the conduct by **the Insured** of the **Insured Establishment** and for which **the Insured** is liable. Such agents and consultants, however, are not covered by this **Policy**.

4.2 Others

In addition, **We** cover the following for **Claims** or losses and costs of the type and on the basis specified in Section 3 of this **Policy**:

(a) Employees (and former Employees)

Employees (and former **Employees**) of the **Insured** in respect of **Civil Liability** arising from the provision of Professional Services on behalf of **the Insured Establishment** but not in respect of **Claims** or losses under Section 3.2(e) of this **Policy** (dishonest, fraudulent, criminal or malicious acts or omissions by an **Employee** or **Principle**). This **Policy**, however, does not provide cover to **Medical Practitioners**.

(b) Students

Students who are or have been appointed to **the Insured** by any University, College of Advanced Education or TAFE College, in respect of **Malpractice** arising from the conduct of professional practice of the **Insured Establishment**.

(c) Incoming Principals liability

Principals of **the Insured** in respect of **Civil Liability** arising in their capacity as a **Principal** of a prior Establishment disclosed in the proposal form, (practising in the same professional discipline as the **Insured Establishment**) in respect of **Malpractice** arising from the provision of similar professional services on behalf of the prior establishment as those covered under this **Policy**.

(d) Prior corporate entities

Corporate entities through which **the Insured** previously traded, arising from the provision of similar Professional Services on behalf of the prior entity as those covered under this **Policy**.

(e) Mergers & acquisitions

Entities (practising in the same professional discipline as the **Insured Establishment**) which are merged or acquired by **the Insured** while this **Policy** is in force.

This cover is only for a maximum of thirty days from the date of the merger or acquisition (or until the **Policy** expires if that is sooner). **We** may agree to extend this period (subject to additional premium) after receipt of a satisfactory underwriting submission in respect of the merged or acquired entity. The Retroactive Date for such cover is deemed to be the date of the merger or acquisition by **the Insured** unless **We** otherwise agree in writing.

We only provide cover to the persons, firms or incorporated bodies described in 4.2 above if the persons, firms or incorporated bodies claiming the coverage each agree in writing, within a reasonable time of notification of the **Claim** or circumstance to **Us**:

- (a) to be bound by this **Policy**; and
- (b) to be liable individually, and together with **the Insured**, for paying the **Excess** (or any other payment due to **Us** under this **Policy**) in respect of any cover provided to them under this **Policy**.

4.3 Cover to estates and legal representatives

If an **Insured**, or anyone entitled to cover under this **Policy**, dies or becomes legally incompetent or insolvent, **We** cover the estate, legal representative or assigns of **the Insured**, or the party entitled to cover, to the same extent as cover would otherwise be available to **the Insured**.

Section 5

Limits to the amount of cover

5.1 The Policy Limit

The **Policy Limit** applies to any one **Claim** and, subject to this Section 5 and to Section 3.3, it applies to the total of all **Claims** covered by this **Policy**.

5.2 Reinstatement of the Policy Limit

The **Policy Limit** is the maximum amount **We** will indemnify the **Insured** for in respect of any one **Claim**. Subject to the following limitations, **We** will provide indemnity to a maximum of twice the **Policy Limit** for all **Claims** covered by this **Policy**.

(a) Limits on reinstatement

However:

- (i) **We** do not provide indemnity for an amount in the aggregate more than the **Policy Limit** (or the **Specific Cover Limits**) for losses under Section 3.4, Disciplinary Proceedings or Enquiries.
- (ii) The aggregate indemnity under this **Policy** shall not exceed the **Policy Limit** for any one **Claim** or series of **Claims** (including **Covered Claims**) arising from the same acts, errors or omissions.
- (iii) If there is extra insurance in excess of the limit of this **Policy**, then indemnity in excess of one **Policy Limit** (up to a maximum of twice the **Policy Limit**) is only available for so much of the liability (otherwise covered by this **Policy**) which is not covered by the extra insurance.

(b) Limit of cover for Claim Investigation Costs

Where indemnity is provided under this **Policy** for any **Claim**, then **Claim Investigation Costs** are paid in respect of that **Claim** up to an amount equal to the **Policy Limit** in accordance with Section 3.3 of this **Policy**. The aggregate amount **We** pay for **Claim Investigation Costs** for or in respect of all **Claims** covered by this **Policy** does not exceed an amount equal to twice the **Policy Limit**.

5.3 Cover for Claim Investigation Costs if the Policy Limit is exceeded

If the amount that has to be paid to dispose of a **Claim** exceeds the **Policy Limit**, then **We** only pay for the same proportion of the **Claim Investigation Costs** as the **Policy Limit** bears to the amount to be paid to settle the **Claim**. But **We** never pay more than the **Policy Limit**.

5.4 Limit if multiple persons insured

The **Policy Limit** does not increase if there is more than one person, firm or incorporated body insured under this **Policy**, or if more than one insured person causes or contributes to the **Claim**.

5.5 Specific Cover Limits

If the Schedule indicates any **Specific Cover Limits** for specific types of cover under this **Policy**, then these **Specific Cover Limits** apply only to **Claims** under that **Specific Cover**. The **Policy Limit** itself still applies to all other **Claims** individually and to the total of all **Claims** added together (including **Claims** for which **Specific Cover Limits** apply, which are included within and not in addition to the **Policy Limit**).

Section 6

What is not covered

We do not cover any of the following **Claims** (or losses):

6.1 Known Circumstances

- (a) **Known Claims** (or losses) as at the inception date of this **Policy**; or
- (b) **Claims** (or losses) arising from a **Known Circumstance**; or
- (c) **Claims** (or losses) directly or indirectly based upon, attributed to or in consequence of any **Known Circumstance** or **Known Claims** (or losses).

6.2 Foreign courts

Claims:

- (a) first brought in a court outside Australia or New Zealand (or outside any country specified in the "Jurisdictional Limits" in the Schedule); or
- (b) brought in a court within Australia or New Zealand to enforce a judgement handed down in a court outside Australia or New Zealand; or
- (c) where the proper law of a country other than Australia or New Zealand (or any country specified in the "Jurisdictional Limits" of the Schedule) is applied to any of the issues in any **Claim** covered by this **Policy**.

6.3 Assumed duty or obligation

Claims:

- (a) alleging a liability under a contractual warranty, guarantee or undertaking (unless liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
- (b) about circumstances where a right of contribution or indemnity has been given up by an **Insured**; or
- (c) about circumstances where someone has done work or provided services under an arrangement or an agreement with **the Insured** which limits any potential right for **the Insured** to receive contribution or indemnity from that person; or
- (d) arising from any **Civil Liability** which **the Insured** agrees to accept outside that which is normal in the course of the conduct of the **Insured Establishment**; or
- (e) arising from any business not conducted for or on behalf of **the Insured** firm or incorporated body.

6.4 Related parties

Claims:

- (a) against **the Insured** by or on behalf of:
 - (i) any person, firm or incorporated body covered by this **Policy**; or
 - (ii) any company or trust which is operated or controlled by an **Insured** or an **Insured's Employees**, nominees or trustees and in which an **Insured** has a direct or indirect financial interest.
- (b) by or on behalf of **the Insured** and/or an **Employee** against any person, firm and/or incorporated body covered by this **Policy**.

6.5 Refund of professional fees and trading debts

Claims:

- (a) for refund of professional fees or charges (by way of damages or otherwise); or
- (b) arising from a liability to pay trading debts.

6.6 Goods & workmanship

Claims:

- (a) directly or indirectly arising from the manufacture, installation, assembly, processing, sale or supply of goods by or on behalf of **the Insured**; or
- (b) directly or indirectly arising from workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by or on behalf of **the Insured**; or from supervision of such workmanship by an **Insured**.

6.7 Employers' liability, Directors' & Officers' liability, Occupier's liability, Motor, Marine, etc.

Claims:

- (a) Directly or indirectly based upon, attributable to or in consequence of **the Insured's** liability as an employer; or
- (b) arising out of or in respect of actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any **Insured** against any employee or employment applicant.
- (c) (if an **Insured** is either an incorporated body or a director or officer of an incorporated body) arising from any act, error or omission of a director or officer of that incorporated body while acting in that capacity; or
- (d) arising from occupation (or alleged occupation) of land or buildings by an **Insured**; or

- (e) arising from or in respect of an **Insured's** liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

6.8 Punitive & exemplary damages

Claims for punitive, aggravated or exemplary damages or for fines or penalties. In addition, this **Policy** does not provide cover for any investigation or defence costs associated with such **Claims**.

6.9 Intentional damage

Claims arising from acts, errors or omissions by **the Insured** with the intention of causing a third party loss, damage or injury, or with reckless disregard for the consequences.

6.10 Medical Practitioners

Claims against **Medical Practitioners**, or against **the Insured** arising from the acts, errors or omissions of **Medical Practitioners** regardless of whether such **Medical Practitioners** are employed by **the Insured** or acting as a contractor of **the Insured** entity.

6.11 Pregnancy termination

Claims arising, whether directly or indirectly, out of any operation to terminate pregnancy unless medically indicated.

6.12 Voluntary euthanasia

Claims arising directly out of any procedure or advice rendered concerning voluntary euthanasia.

6.13 Services rendered under the influence of intoxicants or narcotics

Claims arising from any services rendered by any person, while under the influence of intoxicants or narcotics or any failure to render services competently or at all because of such influence. For the purpose of this exclusion, the term intoxicants shall not include a headache tablet, aspirin, or other medication prescribed for the person, in the normal course, by a **Medical Practitioner** for a medical condition, provided that such medication does not, to the knowledge of **the Insured** or such person, induce fatigue or reduce competency or otherwise affect **the Insured** or such person in the provision of the Professional Services covered by this **Policy** as stated in the Schedule.

6.14 Radioactivity & nuclear hazards

Claims arising from:

- (a) ionising radiations or contamination by radioactivity from any nuclear material; or
- (b) the hazardous properties of any nuclear explosive, assembly or component.

This exclusion however does not apply to **Claims** arising from the use of radio-isotopes, radium or radium compounds when used in or incidental to medical procedures and away from the place where such substances are made.

6.15 War and uprising

Claims arising directly from:

- (a) war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or
- (b) property being taken, damaged or destroyed by a government or public or local authority.

6.16 Terrorism

Claims directly or indirectly caused by or contributed to by, or arising from or happening through or in connection with any act of **Terrorism**.

Further, there is no indemnity for any **Claim** arising from or related to any death, injury, illness, loss, damage, cost or expense of whatever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing or in any way relating to an act of **Terrorism**.

6.17 Date Recognition

Claim or liability arising in any way out of or in respect to any computer program, software products, computer data processing equipment or media, microchip, programmed logic controllers, integrated circuit or any electronic equipment that has been designed, specified, recommended, sold, supplied, installed, modified, maintained or used by or on behalf of **the Insured** which fails to:

- (i) correctly recognise any date as its true calendar date; or
- (ii) capture, save or retain and/or correctly manipulate, interpret or process any data, information, command or instruction as a result of treating any date otherwise than as its true calendar date; or
- (iii) capture, save, retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software being a command which causes a loss of data or the inability to capture, save, retain or correctly process such data on or after any date; or
- (iv) otherwise fails to correctly or effectively provide for the change of date between the Year 1999 and the Year 2000.

Further, there is no indemnity for or in respect of any **Claim** or liability arising from or in respect to any duty of **the Insured**, at any time, to have provided or acted upon a report or advice in respect of any issue related to Year 2000 conformity as defined in the Standards Australia/Standards New Zealand SAA/SNZ MP 77 document.

6.18 Asbestos

Claims which would not have arisen but for the existence of asbestos.

Section 7 Investigation, defence and settlement of Claims

7.1 We must be told about Claims

The Insured must tell **Us** in writing about a **Claim** or loss as soon as possible and while this **Policy** is in force. If this is not done **the Insured's** right to cover under this **Policy** may be affected.

7.2 Claims cooperation

Each **Insured** must:

- (a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen **the Insured's** liability in relation to a **Claim** (or **Covered Claim**) or loss otherwise covered by this **Policy**;
- (b) immediately give **Us** all the help and information that **We** reasonably require to:
 - (i) Investigate and defend a **Claim** or loss; and
 - (ii) Determine **Our** liability under this **Policy**.

7.3 We can protect Our position

When **We** receive a notification of a **Claim**, or of a fact or circumstance which may give rise to a **Claim** which would be covered under this **Policy**, then **We** can take whatever action **We** consider appropriate to protect **Our** position.

This does not, however:

- (a) indicate that any **Insured** is entitled to be covered under this **Policy**; or
- (b) jeopardise **Our** rights under the **Policy** or at law.

7.4 Disclosure of information to Us in respect of the cover and the Claim (or Covered Claim)

The solicitors instructed by **Us** for any **Claim** (or **Covered Claim**) can disclose to **Us** any information they receive in that capacity, wherever they obtain it from. By claiming under this **Policy** **the Insured** authorises such solicitors to disclose this information to **Us**.

7.5 We can manage the Claim (or Covered Claim) on the Insured's behalf

We can:

- (a) take over and defend or settle any **Claim** (or **Covered Claim**) in **the Insured's** name; and
- (b) Claim in **the Insured's** name, any right **the Insured** may have for contribution or indemnity.

7.6 An Insured must not admit liability for or settle any Claim (or Covered Claim)

An Insured must not:

- (a) admit liability for, or settle any **Claim** (or **Covered Claim**); or
- (b) incur any costs or expenses for a **Claim** (or **Covered Claim**) without first obtaining **Our** consent in writing. If **Our** prior consent is not obtained, **the Insured's** right to cover under this **Policy** may be affected.

7.7 Insured's right to contest

If an **Insured** elects not to consent to a settlement that **We** recommend and wants to contest or continue the legal proceedings, then **We** only cover **the Insured** (subject to the **Policy Limit**) for:

- (a) the amount **We** could have settled the matter for; less
- (b) the relevant **Excess** listed in the Schedule; plus
- (c) the **Claim Investigation Costs** calculated to the date **the Insured** elected not to consent to the settlement.

7.8 Senior Counsel

- (a) Unless a Senior Counsel, that **We** and **the Insured** both agree to instruct, advises that the **Claim** proceedings should be contested, then neither **We** nor **the Insured** can require the other to contest any legal proceedings about a **Claim** if the other does not agree to do so.
- (b) In formulating his or her advice, Senior Counsel must be instructed to consider:
 - (i) The economics of the matter; and
 - (ii) The damages and costs likely to be recovered; and
 - (iii) The likely costs of defence; and
 - (iv) **The Insured's** prospects of successfully defending the **Claim**.
- (c) The cost of Senior Counsel's opinion is to be taken as part of the **Claim Investigation Costs**.
- (d) If Senior Counsel advises that the matter should be settled and if the terms of settlement are within limits which are reasonable (in Senior Counsel's opinion and in the light of the matters he/she is required to consider), then:
 - (i) **the Insured** cannot (subject to Section 7.7, Insured's right to contest) object to the settlement; and

- (ii) **the Insured** must immediately pay the relevant **Excess** or **Excesses** listed in the Schedule.

7.9 Payments to settle potential Claims

Any money **We** pay to settle anything which might give rise to a **Claim**, is taken to be:

- (a) a payment to settle a **Claim**, and in addition,
- (b) a payment for the purpose of calculating the total of all **Claims** under this **Policy**.

7.10 Recovering money from Employees

We must not recover any amount paid out as a **Claim** or loss under this **Policy** from any **Employee** or former **Employee** of **the Insured** unless the **Claim** or loss arose from serious or wilful misconduct by the **Employee** or former **Employee**.

7.11 Offsetting of costs & expenses the Insured owes Us against what We owe Insured

If **We** incur costs or expenses above **Our** liability under the **Policy** for **Claim Investigation Costs**, then **the Insured** must pay whatever amount is above that liability immediately **We** ask for it. **We** can offset that payment due from **the Insured** against (and deduct that amount from) any amount **We** must pay to or for **the Insured** under this **Policy**.

7.12 The Excess

- (a) **We** only cover **the Insured** (up to the **Policy Limit**) for that part of the **Covered Claim** above the **Excess**.
- (b) There are different **Excesses** that may be applicable, depending on the type of **Covered Claim** involved:
 - (i) **The Insured** must pay the amount of **Excess** for Australia and New Zealand Jurisdictions specified in the Schedule if the **Covered Claim** arises under the jurisdiction of an Australian or New Zealand court. **The Insured** must also pay this **Excess** when **We** provide cover for the **Claim Investigation Costs** of this **Covered Claim** if the Schedule states "Costs inclusive". There is no **Excess** for **Claim Investigation Costs** when **We** cover an **Insured** for this **Covered Claim** if the Schedule states "Costs exclusive".
 - (ii) **The Insured** must pay the amount of **Excess** for other Jurisdictions specified in the Schedule if the **Covered Claim** arises under the jurisdiction of a court other than of Australia or New Zealand. **The Insured** must also pay this **Excess** when **We** provide cover

for **Claim Investigation Costs** for this **Covered Claim**.

- (iii) **The Insured** must pay the amount of **Excess** for costs of Disciplinary Enquiries specified in the Schedule when **We** provide cover for legal costs and expenses associated with a disciplinary proceeding or enquiry which **We** cover under Section 3.4 of this **Policy**.
- (iv) **The Insured** must pay only one **Excess** for all **Covered Claims** or losses covered by this **Policy** arising from the same act, error or omission.
- (c) In the event of a **Claim, Covered Claim** or loss arising from separate acts, errors or omissions, then an **Excess** shall apply in respect of each such act, error or omission.

7.13 GST basis of settlement

Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any input tax credit that **the Insured** is or might be, entitled to under A New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.

Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any input tax credit that **the Insured** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

7.14 Loss Prevention

The Insured shall, as a condition to cover under this **Policy**, take all reasonable steps to prevent any act, error, omission or circumstance, which may cause or contribute to any **Claim** or loss which may be covered under this **Policy**.

Section 8 Special provisions relating to cover for liability or loss due to dishonest and fraudulent employees or principal

- 8.1 When the **Claim** under Section 3.2(e), Dishonest & Fraudulent **Employees** or **Principals** involves theft or misappropriation of money, then **We** only provide cover if:
 - (a) **the Insured** kept a separate trust account for that money, and the account was audited at least annually by a qualified independent accountant; and
 - (b) all cheques prepared on that trust account are required to be signed by a **Principal** or two authorised people.
- 8.2 **The Insured** must take all reasonable precautions to prevent any loss and continue to prevent any loss and continue to perform all the supervision, controls, checks and audits declared in the **Proposal**, unless **We** consent to a change.
- 8.3 **We** deduct from any money **We** pay for a **Claim** or loss under Section 3.2 (e):
 - (a) the amount of any money which **the Insured** would have paid to the fraudulent, dishonest, criminal or malicious **Employee**, or **Principal** if they had not been fraudulent, dishonest, criminal or malicious; and
 - (b) the amount of any of that **Employee's**, or **Principal's** money which **the Insured** holds (if **We** can do so by law).
- 8.4 Notwithstanding Sections 3.2(e), there is no cover under this **Policy** for any **Claim** or loss directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions of which an **Insured** had knowledge or had reason to suspect at or prior to the time of such acts or omissions and failed to take any reasonable action to prevent such dishonest, fraudulent, criminal or malicious acts or omissions or any loss arising therefrom.

Section 9 Other matters

9.1 The Proposal

The **Proposal We** were given by or on behalf of **the Insured** before this **Policy** commenced, is taken to be a separate **Proposal** for each natural person covered under this **Policy**.

If there is any fact or misstatement in the **Proposal** that relates to one natural person who is an **Insured**, **We** do not attribute it to any other natural person who is an **Insured**, for the purposes of this **Policy**.

9.2 Authority to accept notices & to give instructions

The persons listed as **the Insured** in the Schedule are appointed individually and jointly as agent of:

- (a) each **Insured**; and
- (b) any person who is entitled to a benefit under this **Policy** (when they request cover or suffer a loss under this **Policy**),

in all matters relating to this **Policy**, and to **Claims** or losses covered by it.

In particular (but without limitation) the persons listed in the Schedule as **the Insured** are agents for the following purposes:

- (a) to give and receive notice of **Policy**, cancellation, to pay premiums and to receive any return premiums that may become due under this **Policy**; and
- (b) to accept endorsements or other notices provided for in this **Policy**; and
- (c) to give instructions to solicitors or counsel that **We** appoint or agree to, and to receive advice from them and to act on that advice; and
- (d) to consent to any settlement **We** recommend; and
- (e) to do anything **We** or **Our** legal advisers think might help with the procedures set out in this **Policy** for settling and defending **Claims** or **Covered Claim**; and
- (f) to give **Us** information relevant to this **Policy**, which **We** can rely on when **We** decide whether to accept the risk, and set the **Policy** terms or the premium.

9.3 De-registration

The Insured must tell **Us** immediately in writing if an **Insured's** statutory registration, which is relevant to the conduct by **the Insured** of the **Insured Establishment**, is cancelled, suspended or terminated or has had conditions imposed during the Period of Insurance stated in the Schedule.

9.4 Singular & plural

The singular includes the plural and the plural includes the singular, except if the context requires otherwise.

9.5 Payment in Australian dollars in Australia

All premiums and **Claims** must be paid in Australian dollars in Australia.

9.6 Law of the Policy

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued, which is stated in the Schedule. The courts of that place have jurisdiction in any dispute about or under this **Policy**.

9.7 Territory covered by this Policy

Cover under this **Policy** is not restricted by where anything giving rise to the **Claim** occurred. However, **Our** cover is restricted to **Claims** brought under the legal jurisdiction of the courts of Australia and New Zealand (or any country specified in the Schedule, under the heading "Jurisdictional Limits").

9.8 Schedule must be included

This **Policy** is only legally enforceable if it includes a Schedule signed by one of **Our** officers.

Section 10 Cancelling the Policy

10.1 We can cancel the Policy

- (a) Under Section 60 of the Insurance Contracts Act 1984 **We** may cancel this **Policy** at any time, by giving notice in writing to **the Insured** of the date from which cancellation is to take effect where **the Insured** has:
- (i) failed to comply with **the Insured's** duty of utmost good faith; or
 - (ii) failed to comply with **the Insured's** duty of disclosure at the time when this **Policy** was entered into, varied, altered, or renewed; or
 - (iii) made a misrepresentation to **Us** during the negotiations for this **Policy**, but before **We** agreed to issue this **Policy**; or
 - (iv) failed to comply with a provision of the **Policy**; or
 - (v) failed to pay the premium for this **Policy**; or
 - (vi) made a fraudulent **Claim** under this **Policy**, or any other contract of insurance (whether with **Us** or another insurer) that provided cover during any part of the Period of Insurance of this **Policy**; or
 - (vii) failed to comply with a requirement in this **Policy** that **the Insured** notify **Us** of an act or omission which occurred after this **Policy** was entered into; or
 - (viii) failed to notify **Us** of any specific act or omission or such a notification as is required under the terms of this insurance **Policy**.

We may deliver this notice to **the Insured** personally, or post it by registered or certified mail (to **the Insured's** broker or to the address **the Insured** last gave **Us**). Proof that **We** mailed the notice is sufficient proof that **the Insured** received the notice.

- (b) Under Section 60 of the Insurance Contracts Act 1984, **We** may cancel this **Policy** at any time where:
- (i) it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or
 - (ii) it is an interim contract of general insurance.

10.2 After cancellation, **We** will refund the premium for the time remaining on the **Policy**, less any non-refundable duties, unless an **Insured** has made a fraudulent **Claim** under the **Policy**.

Section 11 Words with special meanings

11.0 Whenever the following words are used in this **Policy** in bold type and with a Capital Letter, they have the special meanings set out below. These words may appear without bold type in endorsements on the **Policy** schedule.

11.1 Civil Liability

Liability for the damages, costs and expenses which a civil court orders **the Insured** to pay on a **Claim** (as opposed to criminal liability or penalties). It includes the legal costs of the person making the **Claim**, for which **the Insured** becomes liable.

11.2 Claim

Any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against and served on an **Insured**.

11.3 Claim Investigation Costs

The legal costs and expenses of investigating, defending or settling any **Claim** (or anything which might result in a **Claim**), which would be covered by this **Policy** at the time the legal costs and expenses arise (refer Section 3.3, Claim Investigation Costs).

11.4 Cover

Reference to 'cover' under this **Policy** shall mean indemnity.

11.5 Covered Claim

The term **Covered Claim** means the **Claims**, liabilities, losses, costs or circumstances which may give rise to a **Claim**, which **We** may agree to cover under this **Policy**.

11.6 Disciplinary Enquiry

Any legal or quasi legal process enquiring whether **the Insured** has breached any relevant professional code of conduct administered by any overseeing professional association.

11.7 Documents

Physical documents of any nature but not including bearer bonds, coupons, bank notes, currency notes or negotiable instruments.

Documents do not, however, include the electronically stored data, software or computer programs for or in respect of any computer system. Loss or damage to **Documents** does not include loss or damage (including rearrangement) to such electronically stored data, software or computer programs arising from any computer virus or from any design or programming defect in any computer program or computer operating system.

11.8 Employee

A natural person who is not a **Principal**, but who:

- (a) has at any time entered into a contract of service with **the Insured** firm or incorporated body and is compensated for that service or has at any time entered into a contract for services with **the Insured** and gains at least 90% of his or her income from **the Insured** in the period of the contract; and
- (b) is, or was, at the time of the relevant act, error or omission giving rise to the **Claim** covered under this **Policy** under **the Insured's** direct control and supervision in the course of the conduct of the **Insured Establishment**.

11.9 Excess

The part **the Insured** must pay of each **Covered Claim**. It is described in more detail in Section 7.12, the **Excess**.

In the event of a **Claim** for **Civil Liability** being based on separate acts, errors or omissions, then an **Excess** shall apply in respect of each such act, error or omission.

11.10 Former Principal

A person who has been, but is no longer:

- (a) a **Principal** of an **Insured**; or
- (b) the **Principal** of any firm or incorporated body declared in the **Proposal**, which previously conducted the business which is now the **Insured Establishment**.

11.11 Good Samaritan Acts

Medical assistance voluntarily administered at the scene of any emergency, accident or disaster to persons, other than members of **the Insured's** family who reside with him/her.

11.12 The Insured

Each of the following, individually and jointly:

- (a) each person, firm or incorporated body identified in the Schedule as an **Insured** and each current or **Former Principal** of them; and
- (b) any entity which is engaged in the **Insured Establishment** and which is created and controlled, while this **Policy** is in force, by anyone identified in the Schedule as an **Insured**; and
- (c) anyone who becomes a **Principal** of the **Insured** while this **Policy** is in force.

11.13 Insured Establishment

The business of provision by **the Insured** of the Professional Services stated in the Schedule.

11.14 Known Circumstance

Any fact, situation or circumstance which:

- (a) an **Insured** knew before this **Policy** began; or
- (b) a reasonable person in **the Insured's** professional position would have thought, before this **Policy** began,

might result in someone making a **Claim** against an **Insured** in respect of a liability, the subject of this **Policy**.

11.15 Malpractice

Breach of professional duty of care in the provision of medical services.

11.16 Medical Practitioners

'**Medical Practitioners**' refers to doctors who are medically qualified, including, but not limited to, anaesthesiologists, radiologists, pathologists, surgeons, cardiologists, and general practitioners.

11.17 Policy

The insurance **Policy** made up of:

- (a) this **Policy** document
- (b) the Schedule to this **Policy**
- (c) the endorsements, if any, contained in the Schedule
- (d) the information given to **Us** by or on behalf of **the Insured** in the **Proposal** and in any other way.

11.18 Policy Limit

The limit stated in the Schedule as the "Total Sum Insured". See also Section 5 of this **Policy**.

11.19 Principal

A sole practitioner, a partner of a firm, or a director of a company, which firm or company is covered by this **Policy**.

11.20 Proposal

The written **Proposal** form (the date of which is stated in the Schedule) together with any supplementary material completed by or on behalf of **the Insured**, that was given to **Us**, and relied on by **Us** to effect this **Policy**.

11.21 Specific Cover

The cover outlined in Section 3.4 of this **Policy**.

11.22 Specific Cover Limit

The limit of **Our** insurance cover for the matter listed in the Schedule under "**Specific Cover Limit**". See Section 3.4 of this **Policy**.

11.23 Terrorism

Terrorism, for the purposes of this **Policy** is defined as being an act, which may include but is not limited to an act, involving the use of force or violence and/or threat thereof, of any

person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

11.24 We or Us or Our

CGU Professional Risks Insurance, CGU Insurance Limited ABN 27 004 478 371.

Section 12

The way We handle your personal information

We collect personal information from you for the purpose of providing you with insurance products, services, processing and assessing claims.

You can choose not to provide this information, however, we may not be able to process your requests.

We may disclose information we hold about you to other insurers, an insurance reference service or as required by law. In the event of a claim, we may disclose information to and/or collect additional information about you from investigators or legal advisors.

If you wish to update or access the information we hold about you, contact us.

Notes

contact details

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