

# Online Medical Malpractice Civil Liability Insurance Policy

For healthcare establishments and health professionals



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# Introduction

Please read the policy carefully to ensure that it meets your requirements. It is written on a claims made and notified basis, which means that, subject to the 'Continuous Cover' clause, it will only respond to claims first made against the insured and notified to the insurer during the policy period.

Any word or expression to which a specific meaning has been attached shall bear that specific meaning wherever it may appear.

You received important notices about your duty of disclosure, unusual terms in medical malpractice insurance policies and our privacy statement prior to purchasing this policy. The notices are replicated at the back of this document for your reference.

## Policy wording

The **Policyholder** and the **Insurer** agree that the **Insurer** will provide insurance in accordance with the terms of this **Policy**.

### 1. Insuring clause

The **Insurer** will indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** resulting from the conduct of the **Healthcare Services**.

### 2. Limit of indemnity and maximum aggregate limit of indemnity

The liability of the **Insurer** for compensation and claimant's costs and expenses in respect of any one **Claim** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** shall not exceed the **Limit of Indemnity**.

The aggregate liability of the **Insurer** under this **Policy** will not exceed the **Maximum Aggregate Limit of Indemnity** for all **Claims** first made against the **Insured** and notified to the **Insurer** during the **Policy Period**.

### 3. Defence costs

If the 'Basis of Limit' in the **Schedule** is specified as 'Costs in Addition', the **Insurer** will, in addition to the **Limit of Indemnity**, pay **Defence Costs** for **Claims** covered under this **Policy**, provided that if the total amount of compensation and claimant's costs and expenses required to dispose of any one **Claim** exceeds the **Limit of Indemnity**, the liability of the **Insurer** for **Defence Costs** shall be only that proportion of them that the **Limit of Indemnity** bears to the total amount of compensation and claimant's costs and expenses required to dispose of the **Claim**.

If the 'Basis of Limit' in the **Schedule** is specified as 'Costs Inclusive', the **Insurer** will pay **Defence Costs** for **Claims** covered under this **Policy**, provided that the liability of the **Insurer** for compensation, claimant's costs and expenses and **Defence Costs** in respect of any one **Claim** shall not exceed the **Limit of Indemnity** and the liability of the **Insurer** for compensation, claimant's costs and expenses and **Defence Costs** in respect of all **Claims** shall not exceed the **Maximum Aggregate Limit of Indemnity**.

### 4. Excess

If the **Excess** is specified as 'Costs Inclusive' in the **Schedule**, the **Principal Policyholder** must pay the amount of any compensation, claimant's costs and expenses or **Defence Costs** that are collectively less than the **Excess** for any one **Claim**. The **Insurer** has no liability for the amount of compensation, claimant's costs and expenses or **Defence Costs** that is less than the **Excess** for any one **Claim**.

If the **Excess** is specified as 'Costs Exclusive' in the **Schedule**, the **Excess** does not apply to **Defence Costs** but the **Principal Policyholder** must pay the amount of any compensation and claimant's costs and expenses that are collectively less than the **Excess** for any one **Claim**. The **Insurer** has no liability for the amount of compensation or claimant's costs and expenses that is less than the **Excess** for any one **Claim**.

The **Excess** is deducted from compensation, claimant's costs and expenses or **Defence Costs** payable before the application of the **Limit of Indemnity**.

The **Principal Policyholder** must pay the amount of any **Inquiry Costs** that is less than the **Excess** for any one notice. The **Excess** is deducted from **Inquiry Costs** payable before the application of the 'Inquiry Costs Limit' specified in the Schedule. The **Insurer** has no liability for the amount of **Inquiry Costs** that is less than the **Excess** for any one notice.

The **Principal Policyholder** agrees that the **Excess** must be borne by the **Principal Policyholder** and is to remain uninsured.

### 5. Aggregation of claims and notices

All **Claims** arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be one **Claim** and shall attract one **Limit of Indemnity** and one **Excess**.

For the purposes of extension 7.7 'Inquiry Costs', all notices arising out of, based upon, attributable to or in respect of any one inquiry or hearing shall be considered to be one notice and shall attract one **Excess**.

## 6. Insurance clarification

For the purposes of clarifying the scope of cover under 1. 'Insuring Clause' of this **Policy**, civil liability includes:

### 6.1 Consumer Protection Legislation

**Claims** for civil liability for compensation resulting from breach of a statutory duty under the Competition and Consumer Act 2010 (Cth), Corporations Act 2001 (Cth), National Consumer Credit Protection Act 2009 (Cth) or similar legislation enacted for the protection of consumers, within any Australian jurisdiction including any amendment, consolidation or re-enactment of such legislation, to the extent that such **Claims** are not otherwise excluded under this **Policy**.

### 6.2 Contractual liability

Contractual liability, provided that:

1. the **Insurer** will not be liable for any liability assumed by the **Insured** under any express warranty, guarantee, hold harmless agreement, indemnity clause or the like unless such liability would have attached to the **Insured** in the absence of such agreement; and
2. where a **Claim** is an alleged breach of contract the **Insurer** will not reduce their liability by the mere fact that contributory negligence is not available as a defence.

### 6.3 Intellectual property

Infringement of rights of intellectual property, provided that the act, error or omission by the **Insured** is unintentional and is committed in the conduct of the **Healthcare Services**.

### 6.4 Libel or slander

Libel or slander, provided that:

1. the libel or slander is committed by the **Insured** in the conduct of their **Healthcare Services**; and
2. the **Insured** did not intend to commit the libel or slander with express malice.

### 6.5 Liability for acts, errors or omissions of contractors and consultants

Acts, errors or omissions of contractors and consultants, provided that the **Insurer** will only indemnify the **Insured** for its civil liability for the **Healthcare Services** provided by the contractor and/or consultant. Indemnity will not extend to the contractor and/or consultant who committed the act, error or omission.

### 6.6 Privacy complaints

Unintentional breach of any duty of confidentiality owed to a patient arising at law or any unintentional breach of the Privacy Act 1988 (Cth), Health Records and Information Privacy Act 2002 (NSW), Health Records Act 2001 (Vic) or Health Records (Privacy and Access) Act 1997 or similar privacy legislation in Australia or New Zealand.

## 7. Extensions

These 'Extensions' are subject to all the terms of the **Policy**, unless otherwise stated. The total of all payments made under the 'Extensions' will be part of and not in addition to the **Limit of Indemnity** and the **Maximum Aggregate Limit of Indemnity**, unless otherwise stated.

### 7.1 Compensation for court attendance

The **Insurer** will pay the **Policyholder** compensation if legal advisers, acting on behalf of the **Insured** with the consent of the **Insurer**, require any **Principal** or **Employee** to attend court as a witness in connection with a **Claim** covered under this **Policy** first made and notified to the **Insurer** during the **Policy Period**, but only in circumstances where the **Policyholder** actually pays the **Principal** or **Employee** for their time. Such compensation by the **Insurer** will be at the rate equivalent to such **Principal's** or **Employee's** daily take home salary or wage up to a maximum of \$250 per person for each day on which attendance is required subject to a maximum of \$10,000 for all persons for any one **Claim**.

### 7.2 Continuous cover

Where the **Insured**:

1. first became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Policy Period**; and
2. had not notified the **Insurer** of such facts or circumstances prior to the **Policy Period**,

then exclusion 9.1.1 'Prior Claims or Known Circumstances' will not apply to any notification during the **Policy Period** of any **Claim** resulting from such facts or circumstances, provided that:

- (a) there is an absence of fraudulent non compliance with the **Insured's** duty of disclosure and an absence of fraudulent misrepresentation by the **Insured** in respect of such facts or circumstances; and
- (b) the **Policyholder** has been continuously insured, without interruption at the time of the notification of the **Claim** to the **Insurer**, under a professional indemnity policy issued by the **Insurer** and was insured by the **Insurer** at the time when the **Insured** first became aware of such facts or circumstances; and
- (c) the **Insurer** may reduce its liability under the **Policy** to the extent of any prejudice the **Insurer** may suffer in connection with the **Insured's** failure to notify the facts or circumstances giving rise to a **Claim** prior to the **Policy Period**.

### 7.3 Dishonesty of employees and principals/Medicare benefits fraud

The **Insurer** will, notwithstanding exclusion 9.2.5 'Dishonest, Fraudulent or Criminal Acts', indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** resulting from any dishonest, fraudulent, criminal or malicious act or omission, including but not limited to **Medicare Benefits Fraud** by any **Employee** or **Principal** occurring or committed in connection with the **Healthcare Services**.

The **Insurer** will pay **Defence Costs** on the basis already set out in this **Policy**.

Nothing in this extension shall require the **Insurer** to indemnify any **Employee** or **Principal** who has perpetrated any such dishonest, fraudulent, criminal or malicious act or omission or any **Insured** who by act or omission has condoned any such dishonest, fraudulent, criminal or malicious act or omission.

### 7.4 Extended reporting period

In the event that this **Policy** is neither renewed nor replaced at the end of the **Policy Period** with insurance that covers substantially the same risk exposure as this **Policy**, the **Principal Policyholder** will be entitled to purchase an extended reporting period of 365 days.

The **Principal Policyholder** will not be entitled to purchase an extended reporting period if the **Policyholder** is **Insolvent** during the **Policy Period**.

The extended reporting period begins immediately following the expiry of the **Policy Period** and ends on the earlier of 4.p.m. **L.S.T.** on the three hundred and sixty fifth day thereafter, or at the time on the effective date on which the **Policyholder** obtains insurance that covers substantially the same risk exposure as this **Policy**.

The additional premium for the extended reporting period will be 100% of the **Full Annual Premium**. If the extended reporting period ends because the **Policyholder** obtains insurance that covers substantially the same risk exposure as this **Policy** then the **Insurer** will retain a short term premium calculated at the pro rata proportion of the additional premium plus ten percent and the **Principal Policyholder** will receive a refund of any balance of the premium, unless there have been any notifications during the **Policy Period** or the extended reporting period, in which case no refund shall be given.

The entitlement to purchase the extended reporting period lapses upon expiry of the **Policy Period**.

The application to purchase the extended reporting period must be received by the **Insurer** prior to the expiry of the **Policy Period**, and payment of the additional premium must be made to the **Insurer** within thirty days of the same date.

During the extended reporting period the **Insured** may continue to notify the **Insurer** of **Claims**, but only **Claims** based on any act, error or omission committed or alleged to have been committed prior to expiry of the **Policy Period**.

Any notification to the **Insurer** during this extended reporting period will be deemed to have been first notified to the **Insurer** during the **Policy Period**.

### 7.5 Former subsidiary

The indemnity provided by 1. 'Insuring Clause' is extended to cover the conduct of the **Healthcare Services** by any former **Subsidiary** of the **Policyholder** that is specified in the **Proposal**, provided that such indemnity shall only apply in respect of civil liability arising out of any act, error or omission occurring prior to the date such **Subsidiary** ceased to be a **Subsidiary** of the **Policyholder**.

The **Insurer** will pay **Defence Costs** on the basis already set out in this **Policy**.

### 7.6 Good samaritan acts

The **Insurer** will indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of **Claims** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** resulting from the rendering of or failure to render first aid and assistance in an emergency situation or accident, except when such **Insured** is engaged in a professional capacity by another person or entity. In the event of a conflict between this extension and exclusion 9.2.3 'Childbirth,' this extension shall apply.

### 7.7 Inquiry costs

The **Insurer** will indemnify the **Insured** for **Inquiry Costs**, provided that:

- (a) the notice requiring the **Insured's** response or attendance is first received by the **Insured** and notified to the **Insurer** during the **Policy Period**;
- (b) such response or attendance arises directly from conduct allegedly committed by the **Insured** in conducting the **Healthcare Services**;
- (c) such indemnity is subject to the written consent of the **Insurer** prior to the incurring of the **Inquiry Costs**;
- (d) the **Insurer** is entitled, at its discretion, to appoint legal representation to represent the **Insured** at the inquiry or hearing;
- (e) regular or overtime wages, salaries or fees of the **Insured** are excluded from this indemnity; and
- (f) the total liability of the **Insurer** for all **Inquiry Costs** under this extension will not exceed in the aggregate, during the **Policy Period**, the 'Inquiry Costs Limit' specified in the **Schedule**.

If there is an entitlement to indemnity for **Inquiry Costs** for an inquiry or hearing under extension 7.11 'Molestation Defence Costs and Inquiry Costs' then there is no entitlement to indemnity for **Inquiry Costs** in respect of that inquiry or hearing under this extension.

### 7.8 Joint venture liability

The **Insurer** will indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** resulting from the **Policyholder's** participation in any joint venture in connection with the **Healthcare Services** provided that:

- (a) the indemnity given shall only relate to the **Policyholder's** proportion of any liability incurred by such joint venture; and
- (b) the **Policyholder's** income derived from participation in such joint venture shall have been included in the calculation of income furnished by the **Policyholder** for the purposes of calculating the **Full Annual Premium** for this **Policy**.

The **Insurer** will pay **Defence Costs** on the basis already set out in this **Policy**.

### 7.9 Legal consultation

The **Policyholder** is entitled to up to two hours legal advice from the 'Legal Adviser' specified in the **Schedule** (or their delegate) on any matter related to the risks insured under this **Policy**, except in relation to the scope of cover provided under this **Policy**, or claims, disputes or complaints against the **Insurer**, provided that:

- (a) the legal advice is sought during the **Policy Period**;
- (b) the **Policyholder** must provide the legal adviser with the policy number, **Policy Period** and name of the **Policyholder**; and
- (c) the legal advice is limited to one hour in relation to any particular matter.

The cost of the legal advice is to be paid by the **Insurer** and not the **Policyholder**.

### 7.10 Lost documents

The **Insurer** will, in the event of loss of or damage to **Documents** occurring in connection with the **Healthcare Services**, indemnify the **Policyholder** against all costs and expenses reasonably incurred by the **Policyholder** in replacing or restoring such **Documents** provided that:

- (a) such loss or damage is sustained during the **Policy Period** while the **Documents** are either in transit or in the custody of the **Policyholder** or of any person to whom the **Policyholder** has entrusted them in the course of the normal conduct of the **Healthcare Services**;
- (b) where the **Documents** are in electronic format, the **Policyholder** or any person to whom the **Policyholder** has entrusted them, have in place sufficient and proper procedures for the security and the daily back-up of the **Documents**;
- (c) the amount of any claim for such costs and expenses shall be supported by bills and accounts which shall be subject to approval by a solicitor to be nominated by the **Insurer** with the consent of the **Policyholder** or if such consent is withheld, by the President of the Law Society of the State where the **Policy** was issued;
- (d) the **Insurer** will not be liable in respect of loss or damage caused by riot or civil commotion;
- (e) the **Insurer** will not be liable in respect of loss or damage caused by fading, mould, vermin, pest infestation, wear, tear or any other gradually operating cause; and
- (f) the total liability of the **Insurer** for all costs and expenses under this extension will not exceed in the aggregate, during the **Policy Period**, the 'Lost Documents Limit' specified in the **Schedule**.

### 7.11 Molestation defence costs and inquiry costs

Notwithstanding exclusion 9.2.5 'Dishonest, Fraudulent or Criminal Acts', the **Insurer** will indemnify the **Insured** for:

- (a) **Defence Costs** for **Claims** arising from; and
- (b) **Inquiry Costs** in respect of:

any actual or alleged molestation of, interference with, mental abuse of or physical abuse of persons by an **Employee** or **Principal** of the **Insured**, but not by any person performing any volunteer service for or on behalf of the **Insured**, provided that in respect of **Inquiry Costs**:

- (i) the notice requiring the **Insured's** attendance at the inquiry or hearing is first received by the **Insured** and notified to the **Insurer** during the **Policy Period**; and
- (ii) such attendance arises directly from conduct allegedly committed by the **Insured** in carrying on the **Healthcare Services**; and
- (iii) such indemnity is subject to the written consent of the **Insurer** prior to the incurring of the **Inquiry Costs**; and
- (iv) regular or overtime wages, salaries or fees of the **Insured** are excluded from this indemnity.

Nothing in this extension shall require the **Insurer** to indemnify any **Employee** or **Principal** who has perpetrated any such act of molestation, interference, mental abuse or physical abuse or any **Insured** who by act or omission has condoned any such act. If it is found by way of an admission by the **Insured**, judgment or adjudication that such **Insured** did in fact commit or condone such molestation, interference, mental or physical abuse then any **Defence Costs** or **Inquiry Costs** indemnified under this extension must be repaid by such **Insured** within thirty days following a request by the **Insurer** for such repayment.

The total liability of the **Insurer** for all **Defence Costs** and **Inquiry Costs** under this extension will not exceed in the aggregate, during the **Policy Period**, the 'Molestation Defence Costs and Inquiry Costs Limit' specified in the **Schedule**.

#### 7.12 Newly created or acquired subsidiary

If during the **Policy Period** the **Policyholder** acquires or creates a new **Subsidiary**, the **Policyholder** will also include such new **Subsidiary** in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the period beginning on the date of acquisition or creation and ending sixty days thereafter or at expiry of the **Policy Period**, whichever is the lesser period, resulting from the conduct of the **Healthcare Services** by such new **Subsidiary**, but not in respect of any such **Claim** resulting from any act, error or omission occurring or committed prior to the date the **Subsidiary** was created or acquired.

The **Insurer** may, at its discretion, offer to extend cover for such new **Subsidiary** beyond that period. In order for cover for such new **Subsidiary** to be extended beyond that period, the **Policyholder** must, prior to the end of that period:

- (a) give the **Insurer** written notice of any such acquisition or creation together with such additional information as the **Insurer** may require so that the **Insurer** can exercise its discretion whether or not to extend the cover;
- (b) accept any notified alteration in the terms of this **Policy**; and
- (c) pay any additional premium required by the **Insurer**

This extension does not apply to:

- (i) any new **Subsidiary** acquired or created by the **Policyholder** that is domiciled or incorporated in the United States of America or its territories or protectorates; and
- (ii) the conduct of **Healthcare Services** that are not the same as those conducted by the **Policyholder** and covered under this **Policy** prior to the acquisition or creation of such **Subsidiary**.

#### 7.13 Public relations expenses

The **Insurer** will indemnify the **Policyholder** for **Public Relations Expenses** incurred by the **Policyholder** in respect of an **Adverse Publicity Event** that first occurs and is notified to the **Insurer** during the **Policy Period**.

The total liability of the **Insurer** under this extension will not exceed in the aggregate the 'Public Relations Expenses Limit' specified in the **Schedule** during the **Policy Period**.

The **Principal Policyholder** must pay an excess of the first \$1,000 of **Public Relations Expenses**, for any one **Adverse Publicity Event**. The excess is deducted from **Public Relations Expenses** before the application of the aggregate limit stated in this extension. The **Insurer** has no liability for the amount of **Public Relations Expenses** that is less than the excess for each **Adverse Publicity Event**. The **Principal Policyholder** agrees that the excess must be borne by the **Principal Policyholder** and is to remain uninsured.

#### 7.14 Run off cover

If, during the **Policy Period**, any of the following events occur:

- (a) a **Merger or Acquisition** of the **Policyholder**; or
- (b) the appointment of a receiver, controller, administrator or liquidator to the **Policyholder** or the commencement of a scheme of arrangement or compromise or a winding up process in respect of the **Policyholder**,

then this **Policy** will remain in force until the expiry of the **Policy Period**, but only in respect of a **Claim** resulting from any act, error or omission occurring or committed prior to the event described in parts (a) or (b) of this extension.

#### 7.15 Sixty day reporting period

The **Insured** may continue to notify the **Insurer** of **Claims** up to sixty days after the expiry of the **Policy Period**, but only **Claims** first made against the **Insured** during the **Policy Period** and based on any act, error or omission committed or alleged to have been committed prior to expiry of the **Policy Period**.

Any notification to the **Insurer** during this sixty day reporting period will be deemed to have been first notified to the **Insurer** during the **Policy Period**.

#### 7.16 Spousal liability

If a **Claim** against an **Insured** includes a **Claim** against such **Insured's Spouse** solely by reason of:

- (a) such **Spouse's** legal status as a **Spouse** of such **Insured**; or
- (b) such **Spouse's** ownership interest in property which the claimant seeks as recovery for **Claims** made against such **Insured**,

then the **Spouse's** legal liability for compensation resulting from such **Claim** will be treated for the purposes of this **Policy** as the liability of the **Insured**.

This extension does not apply to the extent the **Claim** alleges any act, error or omission by such **Insured's Spouse**.



## 7.17 Statutory liability

Notwithstanding exclusion 9.2.6 'Employer's Liability' and exclusion 9.2.7 'Fines, Penalties, Punitive or Aggravated Damages', the **Insurer** will indemnify the **Insured**:

- (a) for **Defence Costs** for proceedings under occupational health and safety law or environmental law first brought against the **Insured** and notified to the **Insurer** during the **Policy Period** resulting from the conduct of the **Healthcare Services**;
- (b) to the extent permitted by law, for any pecuniary penalties imposed upon the **Insured** based on any breach of occupational health and safety law or environmental law as a result of proceedings under occupational health and safety law or environmental law first brought against the **Insured** and notified to the **Insurer** during the **Policy Period** resulting from the conduct of the **Healthcare Services**, except for any pecuniary penalties:
  - (i) resulting from any act, error or omission occurring or committed prior to the **Retroactive Date**; or
  - (ii) imposed where the **Insured** knew, or where a reasonable person in the circumstances ought reasonably to have known, prior to the **Policy Period** that the **Insured** had contravened such law and committed an offence pursuant to that law; or
  - (iii) imposed as a result of further breaches committed after the **Insured** first knew, or where a reasonable person in the circumstances ought reasonably to have known, that the **Insured** had contravened such law and committed an offence pursuant to that law, and which led to the imposition of increased or additional pecuniary penalties; and
- (c) to the extent permitted by law, for any compensatory civil penalty first brought against the **Insured** and notified to the **Insurer** during the **Policy Period** resulting from the conduct of the **Healthcare Services**.

The cover provided under this extension will only apply to such pecuniary penalties imposed in the jurisdiction of Australia and pursuant to the laws of Australia.

The total liability of the **Insurer** under this extension will not exceed in the aggregate, the 'Statutory Liability Limit' specified in the **Schedule**, and all payments will be part of and not in addition to the **Limit of Liability**.

## 7.18 Students, volunteers, committee members and council members

Part (b) of the definition of **Insured** is extended to include any natural person who is a past and / or present **Student, Volunteer, Committee Member** or **Council Member**, but only in their capacity as such and only to the extent the civil liability results from the conduct of the **Healthcare Services**.

## 7.19 Vicarious liability for medical practitioners and locum tenens

Notwithstanding exclusion 9.2.11 'Medical Practitioners', the **Insurer** will indemnify the **Policyholder** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Policyholder** and notified to the **Insurer** during the **Policy Period** based on vicarious liability of:

- (a) the **Policyholder**; or
- (b) any **Principal** of the **Policyholder** whilst acting in a capacity other than as a **Medical Practitioner**, for any act, error or omission of a **Medical Practitioner** or any locum tenens in the conduct of the **Healthcare Services**.

## 8. Optional extension

### 8.1 Public and Products Liability (claims made basis)

This extension applies where the 'Public and Products Liability' extension is noted as 'Included' in the **Schedule**.

#### 8.1.1 Section A – Public liability

The **Insurer** will indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** for:

- (a) **Personal Injury**; and/or
- (b) **Damage to Property** other than:
  - (i) property belonging to any of the **Insured**
  - (ii) property in the possession or control of any of the **Insured**; and/or
- (c) **Advertising Injury**;

happening within the **Territorial Limits** as a result of an **Occurrence** and in connection with the **Business** less the amount of the 'Public Excess' shown in the **Schedule**.

However, the **Insurer** shall not be liable under 'Section A – Public Liability' for:

1. liability assumed solely under an agreement unless such liability would have attached in the absence of such agreement or is specifically allowed by the **Insurer's** written **Endorsement**, or relates to a liability assumed by any of the **Insured** (other than a **Principal**) under a lease for the premises referred to in Definition 2.1 of this extension.
2. the cost of performing, completing, correcting or improving any work done or undertaken by any of the **Insured**.

3. **Personal Injury or Damage to Property** caused by or in connection with the operation, ownership, possession or use by or on behalf of any of the **Insured** of any vessel or craft made or intended to be water borne or air borne, (other than a watercraft or water vessel not exceeding 8 metres in length or a hand propelled boat or pontoon).
4. **Personal Injury or Damage to Property** caused by or in connection with the operation, ownership, possession or use by any of the **Insured** of any **Vehicle** which is registered or required to be insured under any law which applies to its use (hereinafter referred to as 'Statutory Insurance').

However, this exclusion will not apply to **Personal Injury or Damage to Property** which arises out of:

- (a) the delivery or collection of goods to or from any **Vehicle** where such **Personal Injury or Damage to Property** occurs beyond the limits of any carriageway or thoroughfare; or
  - (b) the loading or unloading of or the delivery or collection of goods to or from any **Vehicle** used in work undertaken by or on behalf of any of the **Insured**, but which is not in the physical or legal control of such **Insured**; or
  - (c) the use of any **Vehicle** as a tool of trade, provided that such liability did not arise in circumstances for which indemnity should be provided under any form of Statutory Insurance whether such insurance was effected or not.
5. **Personal Injury or Damage to Property or Advertising Injury** caused by **Products** other than **Personal Injury or Damage to Property** caused by food or beverages sold or supplied by any of the **Insured** as a service to **Employees** or visitors for consumption on the premises of such **Insured**.
  6. **Claims** arising out of any breach of a duty owed in a professional capacity by any of the **Insured**.
  7. **Property Damage** to property in the **Insured's** physical or legal care, custody or control, but this exclusion shall not apply to:
    - (a) (i) personal possessions of directors, partners, **Employees** or visitors
    - (ii) premises (and their contents) not owned or rented by any of the **Insured** but which are temporarily occupied by any of the **Insured** for the purpose of carrying out work in connection with the **Business**.
    - (b) premises (including fixtures and fittings) leased or rented to any of the **Insured** provided that the **Policyholder** shall be responsible for the first \$100 in respect of loss or damage caused other than by fire or explosion in addition to any 'Public Excess' specified in the **Schedule**.
    - (c) **Vehicles**, not owned by the **Policyholder** nor used in connection with the **Business**, whilst within a free car park provided by the **Policyholder** for the use of customers, visitors or **Employees**.
    - (d) the first \$250,000 of each **Occurrence** which results in physical damage to or destruction of tangible property (not being property referred to in clauses (a), (b) or (c) of this exclusion) in the physical or legal care, custody or control of any of the **Insured** in connection with the **Business**.

### 8.1.2 Section B – Products liability

The **Insurer** will indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** for

- (a) **Personal Injury**; and/or
- (b) **Damage to Property** other than:
  - (i) property belonging to any of the **Insured**
  - (ii) property in the possession or control of any of the **Insured**; and/or
- (c) **Advertising Injury**;

happening within the **Territorial Limits** as a result of an **Occurrence** and in connection with the **Business** and caused by **Products** less the amount of the 'Products Excess' shown in the **Schedule**.

However, the **Insurer** shall not be liable under 'Section B – Products Liability' for:

1. **Personal Injury or Damage to Property** caused by or arising out of **Products** intended specifically for, and installed in or on, an aircraft or other aerial device, or caused by or arising out of **Products** which any of the **Insured** knew would be so installed, where such **Products** are essential to the operation or navigation of an aircraft or other aerial device.
2. liability assumed solely under an agreement unless such liability:
  - (a) would have attached in the absence of such agreement, or
  - (b) is specifically allowed by the **Insurer's** written **Endorsement**, or
  - (c) is assumed by any of the **Insured** under a warranty of fitness or quality, or is implied by law, in respect of **Products**
3. the cost of recalling, withdrawing, replacing or repairing **Products** or of making any refund on the price paid for **Products**, provided that this exclusion 3 does not apply to liability for physical damage to or destruction of **Products** caused by other **Products** if they were physically independent at the time of such physical damage or destruction.

4. **Personal Injury or Damage to Property or Advertising Injury:**

- (a) happening in any country on the continent of North America, or in states or territories incorporated in or administered from or by such country, and
- (b) caused by **Products** exported by any of the **Insured** to any such country.

5. any **Claim** indemnifiable under 'Section A – Public Liability' of this extension.

8.1.3 **Limit of indemnity and defence costs**

The total liability of the **Insurer** under this extension will not exceed the 'Public and Products Liability Limit' specified in the **Schedule** during the **Policy Period** which is independent of, and not inclusive to, the **Limit of Indemnity**.

The **Insurer** will pay **Defence Costs** on the basis already set out in this **Policy**.

8.1.4 **General exclusions (applicable to Sections A and B)**

The **Insurer** shall not be liable under this extension for:

1. (a) **Personal Injury or Damage to Property** caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater) unless such discharge, dispersal, release or escape:
  - (i) is neither reasonably expected nor intended by any of the **Insured**; and
  - (ii) is the consequence of a sudden and instantaneous cause which takes place at a clearly identifiable point in time;
- (b) any costs or expenses incurred in preventing, removing, nullifying or cleaning-up any discharge, dispersal, release or escape as described in (a) above, unless such costs or expenses are consequent upon an unexpected, unintended sudden and instantaneous cause which takes place at a clearly identifiable point in time and results in **Personal Injury or Damage to Property** neither of which is otherwise excluded by this extension.
2. **Claims** in respect of the loss of use of tangible property which has not been physically damaged or destroyed resulting from:
  - (a) a delay in or lack of performance by or on behalf of any of the **Insured** of any contract or agreement, or
  - (b) the failure of **Products** or work performed by or on behalf of any of the **Insured** to meet the level of performance quality fitness or durability warranted or represented by any of the **Insured**, but this exclusion 2 (b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of **Products** or work performed by or on behalf of any of the **Insured** after such **Products** or work have been put to their intended use by any person or organisation other than **Insured**.
3. any amount by way of aggravated damages or in respect of liquidated damages, or incurred under a penalty clause, or in respect of infringement of copyright or patent.
4. **Personal Injury** to any **Employee** arising out of or in the course of their employment save that this exclusion 4 shall not apply to liability for such **Personal Injury** assumed by an **Insured** under a written contract or agreement with another (not being an **Insured**).
5. liability imposed by the provisions of any Workers' or Workmen's Compensation legislation or any Accident Compensation legislation or any industrial award or agreement or determination.
6. **Personal Injury or Damage to Property** arising out of any defamation of character:
  - (a) made prior to the commencement of the **Policy Period**;
  - (b) made at the direction of any of the **Insured** with knowledge of the falsity thereof; or
  - (c) related to advertising, broadcasting or telecasting activities, or publication of newspapers, journals, books or periodicals conducted by or on behalf of any of the **Insured**.
7. **Advertising Injury** resulting from:
  - (a) failure to perform a contract, or a breach of contract;
  - (b) infringement of trademark, service mark or trade name, titles and slogans, by use thereof on or in connection with goods or services sold, offered for sale or advertised;
  - (c) incorrect description of any article or commodity;
  - (d) mistake in advertised price.
8. **Personal Injury or Damage to Property** arising directly or indirectly from or in respect of asbestos, asbestos fibres or derivatives of asbestos. In the event of any conflict between this exclusion and the exclusion 9.2.1 'Asbestos', this exclusion shall prevail.

### 8.1.5 General conditions (applicable to Section A and B)

1. Any liability of the **Insurer** under this extension shall depend upon the following matters:
  - (a) the observance of the terms and Conditions of this extension by any of the **Insured** insofar as they relate to anything to be done or complied with by such **Insured**; and
  - (b) the notification as soon as practicable by any of the **Insured** of any alteration in risk which materially affects this insurance.
2. The **Insured** at their own expense shall take or cause to be taken all reasonable care to:
  - (a) maintain premises plant and everything used in the **Business** in proper repair;
  - (b) employ only competent **Employees**;
  - (c) comply with all statutory obligations and regulations imposed by any authority; and
  - (d) remedy any defects or eliminate any dangers which may give rise to **Personal Injury** or **Damage to Property** or **Advertising Injury**.

### 8.1.6 Definitions

For the purposes of this extension only the following definitions apply:

1. '**Insured**' means:
  - 1.1. the **Policyholder**; and/or
  - 1.2. any **Principal** of the **Policyholder**, in respect of the liability of such **Principal** arising out of the performance by the **Policyholder** of any contract or agreement for the carrying out of work or services in connection with the **Business**, but only to the extent required by such contract or agreement; and/or
  - 1.3. any office-bearer, committee or member of the **Policyholder's** own canteen, sports and/or social clubs, child care facilities or welfare organisations and any member (not being a qualified **Medical Practitioner**) of the **Policyholder's** own fire, first aid, medical or ambulance services; and/or
  - 1.4. any director, partner, executive officer or shareholder of the **Policyholder** or any **Employee** but only for liability in respect of which the **Policyholder** would have been entitled to indemnity if the **Claim** had been made against the **Policyholder**; and/or
  - 1.5. any director, partner or senior executive of the **Policyholder** in respect of private work undertaken by any **Employee** for such director, partner or senior executive, and any such **Employee** whilst actually undertaking such private work.
2. '**Business**' means the 'Business' described in **Schedule** at the business address described in the **Schedule** and shall also include:
  - 2.1. the ownership or occupation of, the carrying out of repairs, maintenance, alterations or additions to, or the demolition of, the **Policyholder's** premises to which this **Policy** applies; and
  - 2.2. the deeming of the **Policyholder** to be a manufacturer of **Products** by operation of a law of Australia or its external territories.
3. '**Territorial Limits**' means anywhere within Australia including its external territories.
4. '**Occurrence**' means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** and/or **Damage to Property** and/or **Advertising Injury** neither expected nor intended by any of the **Insured**.

With respect to **Personal Injury** or **Property Damage**, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one **Occurrence**.

All **Advertising Injury** arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one **Occurrence**.

5. '**Personal Injury**' means
  - 5.1. bodily injury, death, sickness, disease, disability, shock, fright, mental injury, mental anguish or loss of consortium resulting from any of them; or
  - 5.2. the effects of:
    - (a) false arrest, false imprisonment, wrongful eviction, wrongful detention and humiliation;
    - (b) assault and battery not committed by or at the direction of any of the **Insured** unless committed for the purpose of preventing or eliminating danger to persons or property;
    - (c) libel, slander, defamation of character, unless arising out of **Advertising Injury**.
6. '**Damage to Property**' means
  - 6.1. physical damage to or loss or destruction of tangible property including resultant loss of use; and/or
  - 6.2. loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by an **Occurrence**.

7. **'Products'** means any thing, including any packaging or container thereof (after it has ceased to be in the possession or control of any of the **Insured**) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed in or from Australia or its external territories by any of the **Insured** in the course of the **Business**, and also includes:
- 7.1 the design formula or specification of such **Products**, and
  - 7.2 directions, markings, instructions, warnings or advice given or omitted to be given in connection with such **Products**, and
  - 7.3 any thing in respect of which the **Insured** is taken or deemed to be the manufacturer by operation of a law of Australia or its external territories.
8. **'Vehicle'** means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual power and any trailer made or intended to be drawn by any such machine whilst attached thereto.
9. **'Advertising Injury'** means injury arising out of:
- (a) libel, slander or defamation,
  - (b) piracy of or any act, error or omission in the use of, advertising or merchandising ideas,
  - (c) infringement of copyright, or
  - (d) invasion of the right of privacy,
- first published or broadcast or first committed or alleged to have been committed in connection with the **Insured's** advertising activities during the **Policy Period**.

## 9. Exclusions

### 9.1 Section 1

The **Insurer** shall not be liable in respect of:

#### 9.1.1 Prior claims or known circumstances

- (a) any **Claim** first made against the **Insured** prior to the inception of the **Policy Period** or disclosed in the **Proposal**; or
- (b) any **Claim**, liability, compensation, **Inquiry Costs**, claimant's costs and expenses or **Defence Costs** directly or indirectly arising from or in respect of any facts, events or circumstances:
  - (i) which the **Insured** knew, prior to the inception of the **Policy Period**, might give rise to a **Claim**, liability, compensation, **Inquiry Costs**, claimant's costs and expenses or **Defence Costs** which might be covered under this **Policy**;
  - (ii) which a reasonable person in the **Insured's** position would have thought, prior to the inception of the **Policy Period**, might give rise to a **Claim**, liability, compensation, **Inquiry Costs**, claimant's costs and expenses or **Defence Costs** which might be covered under this **Policy**;
  - (iii) which were disclosed in the **Proposal** or were or could be notified under any insurance that was in force prior to the inception of the **Policy Period**;
  - (iv) which were alleged in or discovered in any **Claim** made against the **Insured** prior to the inception of the **Policy Period**; or
  - (v) relating to or underlying any **Claim** made against the **Insured** prior to the inception of the **Policy Period**.

#### 9.1.2 Retroactive date

any **Claim** resulting from any act, error or omission occurring or committed prior to the **Retroactive Date**.

#### 9.1.3 Professional fees

- (a) any **Claim** for indemnity by the **Insured** for;
  - (b) any **Claim** solely for; or
  - (c) that part of any **Claim** that is in respect of,
- professional fees or charges or the refund of professional fees or charges (by way of damages or otherwise).

### 9.2 Section 2

The **Insurer** shall not be liable in respect of any **Healthcare Services**, **Claim**, liability, compensation, **Inquiry Costs**, claimant's costs and expenses, **Defence Costs** or compensation for court attendance:

#### 9.2.1 Asbestos

arising directly or indirectly from or in respect of asbestos, asbestos fibres or derivatives of asbestos, provided that this exclusion shall not apply to the provision of the **Healthcare Services** for any asbestos related disease.

#### 9.2.2 Assumption of liability

arising directly or indirectly from or in respect of any liability assumed by the **Insured** outside the normal course of the provision of **Healthcare Services**.

### 9.2.3 Childbirth

arising directly or indirectly from or in respect of labour, which for the purposes of this exclusion refers to the act of giving birth and involves the following stages:

- (a) the first stage lasts from the onset of labour until there is full dilation (10 cm.) of the cervical os (opening). The first stage of labour is also called the stage of dilatation;
- (b) the stage commencing from the full dilatation of the cervix until the baby is completely out of the birth canal and has been born;
- (c) the stage commencing from birth of the foetus through expulsion or extraction of the placenta and membranes (afterbirth); and
- (d) the fourth stage being 24 hours after the delivery of the baby.

### 9.2.4 Directors and officers liability

arising directly or indirectly from or in respect of the **Insured's** functions and duties as a director and/or officer of the **Insured** or any legal entity, corporation or other incorporated body.

### 9.2.5 Dishonest, fraudulent or criminal acts

arising directly or indirectly from or in respect of any:

- (a) dishonest, fraudulent or malicious act or omission by the **Insured**; or
- (b) criminal act or omission or breach of any statute committed by the **Insured** with reckless or wilful intent.

### 9.2.6 Employer's liability

arising directly or indirectly from or in respect of:

- (a) the death, bodily injury, disease or illness of any **Insured** arising out of or in the course of or in respect of their employment; or
- (b) a breach of any obligation owed by an **Insured** to an **Insured**.

### 9.2.7 Fines, penalties, punitive or aggravated damages

arising directly or indirectly from or in respect of fines or penalties including civil penalties, punitive or aggravated damages.

### 9.2.8 Goods sold, stored, supplied or distributed

arising directly or indirectly from or in respect of the sale, storage, supply or distribution of any good or product other than any **Claim** which arises directly from a breach of professional duty during the actual provision of the **Healthcare Services**.

### 9.2.9 Intoxicants and drugs

arising directly or indirectly from or in respect of any services rendered by any person while that person is under the influence of intoxicants or drugs or from any failure to render services competently or at all because of such influence, if such services were performed with the knowledge or connivance of a **Principal**.

### 9.2.10 Liquidated damages

arising directly or indirectly from or in respect of liquidated damages imposed upon the **Insured** by contract or agreement, except to the extent that the **Insured** would have been liable for that damage in the absence of any such contract or agreement.

### 9.2.11 Medical practitioners

arising directly or indirectly from or in respect of the liability at law of a **Medical Practitioner** to a patient, where such liability arises directly from the **Medical Practitioner's** activities as a **Medical Practitioner** including, but not limited to diagnosis, treatment, medical advice, prescribing or supplying medication or a breach of any State or Federal health or medical laws or regulations in force in Australia and its external territories, except as provided for in extension 7.19 'Vicarious Liability for Medical Practitioners'.

### 9.2.12 Radioactivity

arising directly or indirectly from or in respect of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear device or assembly, or a nuclear component thereof, provided that this exclusion shall not apply to ionising radiation sourced from radioisotopes or x-rays when used by qualified medical staff in any medical procedure or diagnosis.

### 9.2.13 Related parties

arising directly or indirectly from or in respect of any **Claim** brought by:

- (a) any **Insured**;
- (b) any **Subsidiary**;
- (c) any company or trust which is operated or controlled by the **Insured** or its nominees or trustees and in which an **Insured** has a direct or indirect financial interest;

- (d) any company in which an **Insured** has or has held at least a 20% financial interest and has had or has board representation on that company; or
- (e) any **Relative** or any company owned or controlled by a **Relative**, unless the **Healthcare Services** that gave rise to the **Claim** were signed off by a **Principal** of the **Policyholder** who is a person not related to the **Relative**.

#### 9.2.14 Subrogation waiver

arising directly or indirectly from or in respect of any liability which is incurred or affected by reason of the **Insured** at any time entering into a deed or agreement excluding, limiting or delaying the **Insured's** legal rights of recovery against another.

#### 9.2.15 Terrorism

arising directly or indirectly from or in respect of:

- (a) any **Act of Terrorism**; or
- (b) any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**, provided that this exclusion shall not apply to the provision of the **Healthcare Services** for any bodily injury, illness or disease caused by an **Act of Terrorism**.

#### 9.2.16 Trading debts

arising directly or indirectly from or in respect of any trading debt incurred, or any guarantee in respect of such debt given, by the **Insured**.

#### 9.2.17 War

arising directly or indirectly from or in respect of any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, provided that this exclusion shall not apply to the provision of the **Healthcare Services** for any bodily injury, illness or disease caused by any event described above.

### 10. Claims conditions

#### 10.1 Claims notifications

Every **Claim** made against the **Insured** shall be notified to the **Insurer** as soon as practicable and in any event prior to expiry of the **Policy Period**, and every letter, demand, writ, summons and legal process pertaining to such **Claim** shall be forwarded to the **Insurer** as soon as practicable after receipt.

All **Claim** notifications to the **Insurer** must be sent to the address next to 'Claims Notification' specified in the **Schedule**.

It is the **Insured's** responsibility to ensure that such notification has been forwarded to and has been received by the Liability & Profin Notification Centre.

#### 10.2 Claims co-operation

In the event of a **Claim** the **Insured** will at all times and at its own cost provide the **Insurer** with all information, evidence, documentation, assistance and co-operation and will execute such documents, including signed statements and affidavits, which the **Insurer** reasonably requests.

The **Insured** will at all times and at its own cost use reasonable endeavours to do and concur in doing everything reasonably practicable to avoid or diminish loss and to assist with the defence, investigation or settlement of any **Claim**.

The **Insurer** may make any investigation it deems necessary.

#### 10.3 Claims conduct

The **Insurer** shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** and shall have full discretion in the conduct of any proceedings and in the settlement of any **Claim**.

The **Insurer** reserves entirely its rights under this **Policy**, including its right to agree or deny cover while it assesses a **Claim** or conducts the defence. The **Insurer's** rights under this **Policy** are not affected if it does not conduct the defence.

Neither the **Insured** nor the **Insurer** will be required to contest or litigate any **Claim** if, in the opinion of Senior Counsel, reasonable attempts should be made to settle the **Claim**. The Senior Counsel shall be mutually agreed upon, or in the absence of such agreement, as nominated by the President of the NSW Bar Association (or the equivalent State or Territory association). The cost to obtain the opinion will be advanced by the **Insurer** and treated as **Defence Costs**.

Senior Counsel shall provide the opinion in writing. In formulating the opinion Senior Counsel shall consider commercial matters including the amount of the **Claim**, the actual and potential loss (including **Defence Costs**) that may reasonably be incurred in contesting the **Claim**, the liability prospects and the prospect of recovering costs against the claimant in the event that the defence is successful. Senior Counsel shall also provide a settlement range within which reasonable attempts should be made to settle the **Claim**.

If it is the opinion of Senior Counsel that reasonable attempts should be made to settle the **Claim**, the **Insured** shall not object to the **Insurer's** attempt to do so.

## 10.4 Claims settlement

The **Insured** must not settle or offer to settle any **Claim**, incur any **Defence Costs** or otherwise assume any contractual obligation or admit any liability in respect of any **Claim** without the **Insurer's** prior written consent.

If the **Insured** objects to a proposal by the **Insurer** to settle or compromise any **Claim** payable under this **Policy** and wishes to contest or litigate the matter, then the **Insured** may so elect, but the **Insurer's** liability in respect of any such **Claim** so contested or litigated will not exceed the amount for which, but for such election, it could have been settled or compromised by the **Insurer**, together with **Defence Costs** payable in accordance with the terms of this **Policy** and incurred up to the time of such election, subject to the **Excess** and to the **Limit of Indemnity**.

## 11. General conditions

### 11.1 Assignment

This **Policy** cannot be assigned by the **Policyholder**.

### 11.2 Authorisation

The **Principal Policyholder** is the agent for each **Insured** and each **Insured** is bound by any statement, act or omission of the **Principal Policyholder** for all purposes under this **Policy**, subject to 10.3 'Claims Conduct' and 11.11 'Severability and Non Imputation'.

### 11.3 Cancellation

The **Principal Policyholder** may cancel this **Policy** at any time in writing to the **Insurer**. Upon receipt of such request, the **Insurer** will retain a short period premium calculated at the pro rata proportion of the **Full Annual Premium** for the time it has been on risk plus ten percent and the **Principal Policyholder** will receive a refund of any balance of the premium actually paid, unless there have been any notifications during the **Policy Period**, in which case no refund shall be given.

The **Insurer** may cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

### 11.4 Endorsements

An **Endorsement** does not affect or increase the **Limit of Indemnity**, the **Maximum Aggregate Limit of Indemnity** or any other term, except to the extent specifically provided in the **Endorsement**. Each **Endorsement** is otherwise subject to all the terms of this **Policy**.

### 11.5 Goods and services tax

As part of premium, the **Insurer** will charge the **Policyholder** an amount on account of GST.

The **Insured** must inform the **Insurer** of the extent to which there is an entitlement to an input tax credit for that GST amount each time that it notifies a **Claim** under this **Policy**. No payment will be made to the **Insured** for any GST liability that it may incur on the settlement of a **Claim** if it does not inform the **Insurer** of its entitlement or correct entitlement to an input tax credit.

Despite the other terms of this **Policy**, the **Insurer's** liability to the **Insured** will be calculated taking into account any input tax credit to which the **Insured** is entitled for any acquisition which is relevant to the **Claim**, or to which it would have been entitled had it made a relevant acquisition.

'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

### 11.6 Governing law

The **Policy** will be governed in accordance with law of the State or Territory of Australia in which the **Policy** was issued. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

### 11.7 Interpretation

In this **Policy** the singular includes the plural and vice versa. The neutral gender includes the female and male genders.

A reference in this **Policy** to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision (whether of the Commonwealth of Australia or elsewhere).

The titles and headings to the various sections of the **Policy** are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.

### 11.8 Material change

The **Policyholder** must notify the **Insurer** as soon as reasonably practicable of any material change in the risk insured by this **Policy**. The **Insurer** is entitled to amend the terms of this **Policy** and/or charge an additional premium based on the **Insurer's** assessment of any change in the risk insured by this **Policy**. A material change in the risk includes, without limitation:

- (a) activities that are materially different from those declared in the **Proposal**;
- (b) activities outside the normal activities of the **Healthcare Services**;



- (c) the **Policyholder** being **Insolvent**; or
- (d) any loss of or conditions imposed upon any licence or other authority required by the **Insured** to conduct the **Healthcare Services**.

#### 11.9 Other insurance

If at the time any **Claim** arises under this **Policy** there is any other insurance in force covering the same liability the **Policyholder** shall promptly give to the **Insurer** full details of such other insurance, including the identity of the insurer and the policy number, and such further information as the **Insurer** may reasonably require.

#### 11.10 Payment of Premium

The **Policyholder** must pay the 'Premium' specified in the **Schedule** for the **Policy Period** to the **Insurer** by the due date. The due date is on or before ninety days after the inception date of the **Policy Period** or such other time that the **Insurer** agrees in writing. If the **Policyholder** fails to pay the 'Premium' by the due date, the **Insurer** is entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

#### 11.11 Severability and non imputation

Where this **Policy** insures more than one party, any failure on the part of any of the parties to:

- (a) comply with the duty of disclosure under the Insurance Contracts Act 1984;
- (b) comply with any obligation under this **Policy** (other than the obligation to pay premium); or
- (c) refrain from conduct which is dishonest, fraudulent, criminal or malicious,

shall not prejudice the right of the remaining party or parties to indemnity under this **Policy**, provided that such remaining party or parties shall:

- (i) be entirely innocent of and have had no prior knowledge of any such failure; and
- (ii) as soon as practicable after becoming aware of any such failure, advise the **Insurer** in writing of all its relevant circumstances.

#### 11.12 Territorial and jurisdictional limits of cover

This **Policy** provides cover for:

- (a) any civil liability resulting from the conduct of the **Healthcare Services** anywhere in the world, except for any civil liability resulting from:
  - (i) the conduct of the **Healthcare Services** within the United States of America;
  - (ii) the provision of healthcare services to persons in the United States of America as part of the conduct of the **Healthcare Services**; or
  - (iii) any act, error or omission occurring within the United States of America

and

- (b) subject to (a), **Claims** made anywhere in the world, except for those **Claims**:
  - (i) brought in a court of law, arbitration, tribunal, forum or other body entitled to impose enforceable orders against the **Insured** in the United States of America; or
  - (ii) arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law, arbitration, tribunal or other judicial body in the United States of America.

For the purpose of this General Condition the United States of America includes its territories and protectorates.

#### 11.13 Variation of the policy

No variation of this **Policy** will be effective, unless made by **Endorsement**.

### 12. Definitions

For the purpose of this **Policy**:

**Act of Terrorism** means an act, including but not limited to the use of force or violence and/or the 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, ethnic or similar purposes or reasons, including the intention to influence any government or to put the public, or any section of the public, in fear.

**Adverse Publicity Event** means an event which, in the reasonable opinion of a **Principal** of the **Policyholder**, might cause the reputation of the **Insured** to be seriously affected by adverse or negative publicity.

**Claim** means:

- (a) any demand made by a third party upon the **Insured** for compensation, however conveyed, including a writ, statement of claim, application or other legal or arbitral process;
- (b) for the purposes of cover under extension 7.11 'Molestation Defence Costs and Inquiry Costs' only, prosecution of the **Insured**; and
- (c) for the purpose of cover under extension 7.17 'Statutory Liability' only, a prosecution of the **Insured** brought under occupational health and safety, environmental or other relevant law arising from an actual or alleged breach of such law.

**Committee Member** means a natural person who is a member of a committee of the **Policyholder**.

**Council Member** means a natural person who is member of a council or board of the **Policyholder**.

**Control** has the meaning given by section 50AA of the Corporations Act 2001.

**Defence Costs** means all necessary and reasonable costs and expenses incurred by the **Insurer**, or by the **Insured** with the **Insurer's** prior written consent, in defending, investigating or settling any **Claim** (not being claimant's costs and expenses).

**Documents** means deeds, wills, agreements, maps, plans, records, computer records, electronic data, written or printed books, letters, certificates, written or printed documents or forms of any nature (excluding any bearer bonds, coupons, bank or currency notes or other negotiable instruments) which is the property of the **Policyholder** or for which the **Policyholder** is responsible.

**Employee** means a natural person (other than a **Principal**) employed under a contract of service or apprenticeship by the **Policyholder** and includes any trainee, casual, part-time, seasonal and temporary personnel.

**Endorsement** means any document which is described as an endorsement to this **Policy** and intends to vary it.

**Excess** means the amount shown in the **Schedule** except in respect of **Inquiry costs** in which case it means the amount shown in the **Schedule** as the 'Inquiry Costs Excess'.

**Full Annual Premium** means the annual premium payable by the **Principal Policyholder**, including any additional premium which becomes payable in respect of the **Policy Period**.

**Healthcare Services** means the 'Healthcare Services' described in the **Schedule**, and no other, of the **Policyholder**.

**Inquiring Body** means any official body or institution empowered by law to investigate the professional conduct of the **Insured** including but not limited to a coroner's court, Royal Commission, statutory regulatory body, tribunal or legally constituted industry or professional board but excluding any parliament or any committee of a parliament.

**Inquiry Costs** means necessary and reasonable legal costs and expenses incurred by the **Insured** arising out of any notice from an **Inquiring Body** requiring a response from the **Insured** or requiring the **Insured's** attendance at an investigation, inquiry or hearing held before the **Inquiring Body** (not being **Defence Costs**).

**Insolvency or Insolvent** means:

- (a) the **Policyholder** is an insolvent under administration or insolvent (each as defined in the Corporations Act 2001 (Cth));
- (b) the **Policyholder** has had a controller appointed or is in liquidation, in provisional liquidation, under administration, has been wound up or has had a receiver appointed to any part of its property;
- (c) the **Policyholder** is subject to any arrangement, assignment, moratorium, compromise or composition, it is protected from creditors under any statute or it is dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent);
- (d) an application or order has been made, resolution passed, proposal put forward or any other action taken which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) the **Policyholder** is taken (under Section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) the **Policyholder** is otherwise unable to pay its debts when they fall due; or
- (g) something having a substantially similar effect to (a) to (e) above happens in connection with the **Policyholder** under the law of any jurisdiction.

**Insured** means:

- (a) the **Policyholder**;
- (b) any past and/or present **Employee** of the **Policyholder**, but only in his or her capacity as such;
- (c) any past and/or present **Principal** of the **Policyholder**, but only in his or her capacity as such; and/or
- (d) the estate, heirs, legal representatives or legal assigns of any natural person insured under this **Policy** in the event of the death or legal incapacity of such person.

**Insurer** means AAI Limited ABN 48 005 297 807 trading as Vero Insurance.

**Limit of Indemnity** means the amount specified beside 'Limit of Indemnity' as shown in the **Schedule**.

**L.S.T. or Local Standard Time** means the time in the State or Territory of Australia in which the **Policy** was issued.

**Maximum Aggregate Limit of Indemnity** means the amount specified beside 'Maximum Aggregate Limit of Indemnity' as shown in the **Schedule**.

**Medical Practitioner** means a medical practitioner or dentist.

**Medicare Benefits Fraud** means fraud against Medicare, the Pharmaceutical Benefits Scheme and other government programs administered by Medicare Australia by the payment of any benefit or funds to any person who had no legal entitlement to such benefit or funds.

**Merger or Acquisition** means:

- (a) the **Policyholder** consolidating with, merging into or selling all or substantially all of its assets such that the **Policyholder** is not the surviving entity; or
- (b) any entity obtaining **Control** of the **Policyholder**.

**Policy Period** means the time between 'From' and 'To' noted beside 'Policy Period' in the **Schedule**.

**Policy** means the **Schedule**, the terms of this document and any **Endorsements**.

**Policyholder** means the firm or legal entity shown in the **Schedule**.

**Principal** means a sole practitioner, a partner of a firm or a director of a company.

**Principal Policyholder** means the **Policyholder** or if the **Policyholder** is more than one person or entity, the first person or entity listed as the 'Policyholder' in the **Schedule**.

**Proposal** means the written proposal or declaration made by the **Policyholder** to the **Insurer** containing particulars and statements together with other information provided by the **Policyholder**.

**Public Relations Expenses** means the reasonable costs, charges, fees and expenses of a public relations firm or consultant engaged to prevent or limit the adverse effects of or negative publicity from an **Adverse Publicity Event**, which the **Policyholder** may engage with the prior written consent of the **Insurer**, but only during the first thirty days immediately following the **Adverse Publicity Event**.

**Relative** means an **Insured's**:

- (a) **Spouse**;
- (b) parent;
- (c) children or siblings; or
- (d) the **Spouse**, parent, child or sibling of a **Relative** specified in a. b. and c. above.

**Retroactive Date** means the 'Retroactive Date' as shown in the **Schedule**.

**Schedule** means the current schedule issued by the **Insurer** to the **Policyholder**.

**Spouse** means a lawful spouse, domestic partner (including without limitation same sex partner) or any person deriving similar status by reason of the common law or statute.

**Student** means a natural person who is a student under the direction, control, or request of, or whilst undertaking any activity approved or recognised by the **Policyholder**.

**Subsidiary** means a subsidiary of the **Policyholder** as defined in the Corporations Act 2001.

**Volunteer** means a person providing the **Healthcare Services** on a voluntary, unpaid basis for or on behalf of the **Policyholder**.

End of Policy wording

# Notices

These notices do not form part of the policy.

## Broker acting as agent for insurer

In effecting this contract of insurance the broker will be acting under an authority given to it by the insurers and the broker will be effecting the contract as agent of the insurer and not the insured. Mega Capital Pty Ltd ABN 37 098 080 418 arranges the insurance and AAI Limited ABN 48 005 297 807 trading as Vero Insurance issues the insurance.

## Duty of disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of insurance, and if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty does not require the disclosure of matters: that diminish the risk to be undertaken by the insurer; that are of common knowledge; that your insurer knows or, in the ordinary course of his business, ought to know, or as to which compliance with your duty is waived by the insurer.

## Non-disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim, refuse to pay the claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

## Claims made and notified basis of coverage

The Medical Malpractice Civil Liability Insurance policy is issued on a 'claims made and notified' basis.

This means that the Insuring Clause responds to:

- (a) claims first made against you during the policy period and notified to the insurer during the policy period, provided that you were not aware at any time prior to the policy inception of circumstances which would have put a reasonable person in your position on notice that a claim may be made against you; and
- (b) written notification of facts pursuant to section 40(3) of the Insurance Contracts Act 1984. The facts that you may decide to notify, are those which might give rise to a claim against you. Such notification must be given as soon as reasonably practicable after you become aware of the facts and prior to the policy period expiring. If you give written notification of facts the policy will respond even though a claim arising from those facts is made against you after the policy has expired. For your information, s40(3) of the Insurance Contracts Act 1984 is set out below:

'S40(3) Where the insured gave notice in writing to the insurer of facts that might give rise to claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim when made by reason only that it was made after the expiration of the period of the insurance cover provided by the contract.'

When the policy period expires, no new notification of facts can be made on the expired policy even though the event giving rise to the claim against you may have occurred during the policy period.

## Retroactive date

You will not be entitled to indemnity under your new policy in respect of any claim resulting from an act, error or omission occurring or committed by you prior to the retroactive date, where one is specified in the policy terms offered to you.

## Subrogation waiver

Our policy contains a provision that has the effect of excluding or limiting our liability in respect of a liability incurred solely by reason of the insured entering into a deed or agreement excluding, limiting or delaying the legal rights of recovery against another.

## Privacy statement

Vero Insurance complies with the National Privacy Principles.

Please visit our website at [vero.com.au](http://vero.com.au) to view our Privacy Statement in full.

Insured by:  
AAI Limited ABN 48 005 297 807 trading as Vero Insurance

