

Nice Work You're covered!



Dear Arpana Andrew

Good news. Subject to the payment of the premium your Professional Indemnity & Public Liability with Vero is in place for the Insurance Period specified on the Policy Schedule.

Policy Number	LPS016832716-M30633
Policy	PI & PL - Vero
Cover	Public & Products Liability \$10,000,000 Medical Malpractice \$1,000,000
Insurance Period	For the period: 4.00pm Local Standard Time on 02 April 2024 to 4.00pm Local Standard Time on 02 April 2025

Also attached are all the official documents:

- Your Declarations
- Your Policy Schedule
- The Policy Wording
- The Terms and Conditions

All your business details that you supplied to us are included in the "Your Declarations" section. We recommend that you carefully check these details, and if anything is wrong, incomplete or out-of-date please let us know soon and we will make any changes that are needed.

Like all other insurances, your cover is subject to the terms and conditions of the policy wording and whilst we have worked hard to assist you ***it is very important that you read these Ts and Cs***, understand your cover and ensure that this cover suits the needs of you and your business.

If you need any changes or need a hand with something made please let us know as soon as possible. You can reach us on 1300 249 268 or drop us a line at support@bizcover.com.au and we will be happy to help you.

Thanks for choosing BizCover, we appreciate your business.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Michael Gottlieb', written in a cursive style.

Michael Gottlieb

It is very important that you read these terms and conditions as they set out the arrangements between us.

Duty of Disclosure Notice

Before you enter into an insurance contract you have a duty to tell the insurer anything that you know, or could reasonably be expected to know, may affect its decision to insure you and on what terms.

You have this duty until the insurer agrees to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell the insurer anything that:

- reduces the risk it insures you for;
- is of common knowledge;
- it knows or should know as an insurer; or
- it waives your duty to tell it about.

If you do not tell the insurer something

If you do not tell the insurer anything you are required to, it may cancel your insurance contract or reduce the amount it will pay you if you make a claim, or both.

If your failure to tell the insurer is fraudulent, it may refuse to pay a claim and treat the contract as if it never existed.

Personal Accident & Illness Insurance – Duty of Disclosure (Not to Misrepresent)

Before entering into a consumer insurance contract, you have a duty to take reasonable care not to make a misrepresentation to the insurer to enable it to determine whether to insure you and, if so, on what terms. You have this duty until the insurer agrees to insure you. You have the same duty before you renew, extend, vary or reinstate an insurance contract. Personal Accident insurance and Personal Accident and Illness insurance are the only types of consumer insurance contracts available for purchase through BizCover.

If you make a misrepresentation to the Insurer

If you make a misrepresentation to the insurer and it is determined you failed to take reasonable care not to do so, the insurer may cancel your insurance contract or reduce the amount it will pay you if you make a claim, or both. If it is determined that your misrepresentation to the insurer was fraudulent, it may refuse to pay a claim and treat the contract as if it never existed.

Claims Made & Notified Policy Notice –

Relevant if you purchase a Professional indemnity, Cyber liability, IT liability or Management Liability Insurance policy or where otherwise noted in the policy wording.

The proposed insurance is issued on a 'claims made and notified' basis as specified in the policy wording. This means that the policy responds to claims first made against the insured during the policy period and notified to the insurer during that policy period.

Refer to the policy wording for full details.

Under Section 40(3) of the Insurance Contracts Act 1984 (Cth) if the insured gives notice in writing to the insurer of facts that might give rise to a claim against the insured as soon as reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the policy expires, the insurer is not relieved of liability under the policy 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 policy.

If during the policy period you become aware of circumstances which a reasonable person in your position would consider may give rise to a claim, and which you fail to notify to the insurer during the policy period, the insurer may not cover you under the policy or a subsequent policy for any claim which arises from these circumstances.

When completing the application, and at subsequent renewals, you are obliged to report and provide full details of all circumstances of which you are aware and which a reasonable person in your position would consider may give rise to a claim.

It is important that you make proper disclosure (see Duty of Disclosure Notice, above) so that your cover under any policy is not compromised.

Retroactive Liability

The proposed insurance may be limited by a retroactive date either stated in the schedule or endorsed onto the policy. Where the cover provided by the proposed policy is subject to such a retroactive date, then the policy does not cover any claim arising from an actual or alleged act, error, omission or conduct occurring prior to such retroactive date.

Agency Notice

In effecting this insurance BizCover Pty Ltd (ABN 68 127 707 975; AFSL 501769) will be acting under an authority given to it by the insurer and will be effecting the contract as agent of the insurer and not the insured.

General Advice Warning

We do not recommend an insurance policy for you, we only offer the policies available to us from the insurers listed on our website. Any advice provided is General Advice only.

General Advice is advice that has been prepared without considering your current objectives, financial situation or needs.

Therefore, before acting on this advice, you should consider the appropriateness of the advice having regard to your current objectives, financial situation or needs. If the advice provided relates to the acquisition or possible acquisition of a new insurance policy you should read the Product Disclosure Statement and/ or Policy Wording (available on our website) before making any decision about whether to acquire such a financial product.

Renewing the Policy (including Auto-Renewal)

We will send you notification of whether the insurer is prepared to negotiate to renew the policy and if so, on what terms, at least 14 days before the expiry date of your policy.

Unless we require a new proposal or declaration from you to determine your premium or decide to offer renewal (we will tell you by email if this is the case), the renewal notice will show the premium for the new period of insurance and may also include notice of any changes to the terms of your policy.

If you wish to take up such a renewal offer and you are happy the information is accurate and you have no further disclosure to make to insurers under your duty of disclosure (see Duty of Disclosure Notice, above), you will not have to do anything and **if we do not hear from you 7 days before the expiry of your current period of insurance we will automatically deduct / charge the renewal premium from your account / credit or debit card.** If you do not wish to take up the renewal offer **you must contact us** before we deduct this payment which will be within the week before your policy expires.

When you receive a renewal offer, you must tell us before expiry if the information contained in it is incorrect or incomplete and make such additional disclosure to us as is required pursuant to your duty of disclosure. We will then consider the additional information and whether and on what terms we are able to arrange for policy renewal.

If we are not able to automatically renew your policy we will send you an email notification for you to either complete your renewal online or to contact us. Please ensure you keep us updated of any change to your email address.

Commission and Fees

For each insurance product the insurer will charge you a premium. We receive from the insurer a commission that is a percentage of this premium, varying between 0% and 30%.

We also charge per policy a platform fee of \$20 to \$200 (ex. GST) for the policies we arrange. This fee relates to the delivery of the service from BizCover to you including but not limited to the provision and maintenance of the technology platform and the services provided by BizCover's consulting and administrative personnel. It is calculated based on factors including the work involved, the nature of your business and the product selected.

If you elect to pay your premium by monthly instalments, we will also charge you an instalment administration charge of \$8 per month (ex. GST).

If you pay by credit or debit card we may charge you a card (including arrangement & handling) fee. This fee covers the cost of bank charges etc. associated with such facilities.

All fees payable for services will be advised to you separately from your premium on the invoices we provide.

Policy Cancellation

You may cancel your policy at any time by providing **written notice** to us. The insurer may cancel your policy in accordance with the Insurance Contracts Act, 1984 (Cth).

BizCover Remuneration Rights on Policy Cancellation

On cancellation of any insurance policy effected through BizCover, unless the cancellation takes place within any applicable cooling off period, **you agree that the commission and any fees paid to BizCover are non refundable to you** and may be deducted by BizCover from any refund otherwise payable by the insurer to you on cancellation of the policy, irrespective of any terms to the contrary in the policy.

Privacy Collection Notice

We generally collect personal information from you or through service providers that act for us. However, there may be occasions when we collect it from someone else where they hold relevant information.

We will use your personal information for the purposes for which it was collected (usually to arrange a quote for insurance or an insurance policy for you; assist you with any claims you may make; or to contact you), other related purposes and for the other purposes outlined in our Privacy Policy.

You may choose not to give us your personal information, but this may affect our ability to provide you with a product or service, including arranging a quote for insurance or an insurance policy for you, communicate with you or respond to your enquiries.

We may disclose your personal information to insurers, our service providers our referral partners (if you purchased through us as a result of referral) and other parties, as detailed in our Privacy Policy.

For more details on what personal information we collect, how we collect it and from whom, and how we hold, use and disclose your personal information please refer to our Privacy Policy. The Privacy Policy also provides information about how you can access your personal information, seek correction of it and complain about a breach of privacy law and how we will deal with such a complaint.

You can access our Privacy Policy at www.bizcover.com.au/privacy or you can contact us and request a copy be sent to you.

By mail:

Privacy Officer
BizCover Pty Ltd
Level 2, 338 Pitt Street, Sydney NSW 2000

By email:

customerresolution@bizcover.com.au

Dispute Resolution

We have complaint handling and internal dispute resolution procedures in place. This service is available to you free of charge. Clients who are not satisfied with our services may contact our Customer Resolution Officer on **1300 249 268** or **customerresolution@bizcover.com.au** to raise any concerns they have. We will respond to your complaint within fifteen (15) working days and if you are not satisfied with our answer and request us to do so, we will treat your complaint as a dispute. The matter will then be referred to our internal disputes resolution officer and they will respond to you within fifteen (15) working days. If you are still not happy with the outcome you may be able to have your matter considered by the Australian Financial Complaints Authority (AFCA). AFCA provides a free and independent dispute resolution service for consumers who have general insurance disputes falling within its terms of reference.

Determinations of AFCA are binding on us but are not binding on you. Contact details for AFCA are:

Phone: 1800 931 678

Email: info@afca.org.au

Post: GPO Box 3, Melbourne VIC 3001

Website: www.afca.org.au

Disclosure relating to Hollard International BV

Hollard International BV is a shareholder in BizCover and via a related party, The Hollard Insurance Company Pty Limited, sells (non-retail) insurance policies through the brand RelyOn via the BizCover platform.



Bizcover Online Medical Malpractice Civil Liability

For healthcare establishments and health professionals



Your Declarations

What you told us on 02 Apr 2022

It is important that you check the information you have given us and notify us of any changes or corrections. This is an important part of your duty of disclosure.

What is your occupation?	Aged and/or Disability Care Worker
Total Number of Staff (including Directors, Partners and Employees)?	1
Business address:	11 Singapore Road EDMONDSON PARK, 2174 NSW
Estimated Annual Revenue	\$100,000
As at today's date does the insured have Professional Indemnity Insurance currently in force that has been paid for?	Yes
Please specify your revenue by business activity:	
Aged and/or Disability Care Worker	100%
Do you hold the appropriate qualifications, industry experience and/or training for the activities you wish to insure?	Yes
In the last 10 years, have any claims for a breach of professional duty been made against the Business, it's predecessors in business or it's current or former partners/principals/directors or employees?	No
After enquiry, are you aware of any circumstances which may result in a claim against the business or any of its Partners, Principals, Directors or employees?	No
Do you perform any medical treatments or procedures that are required to be undertaken by a qualified medical practitioner?	No
Would you like to note your landlord on the Public Liability section of your Policy?	No
In the last 10 years, has your business or you or any partner or director:	
• Had any business insurance/liability claims? • Suffered any loss or damage which would have been covered by the proposed insurance policy? • Had any insurance declined or cancelled? • Been convicted of any criminal offence? • Been liable for any civil offence or pecuniary penalties? • Been declared bankrupt or involved in business which became insolvent or subject to any form of insolvency administration (e.g. liquidation, receivership or voluntary administration)?	No
Is the insured eligible for the NSW Small Business Stamp Duty Exemption i.e. the insured is a NSW based small business with turnover of less than \$2 million per annum? Note: The exemption is effective for Public Liability and Professional Indemnity policies incepting on and after Jan 1 2018	Yes
I declare that at the time of taking out or renewing my insurance policy, I am a Capital Gains Tax small business entity (within the meaning of section 152-10 (1AA) of the Income Tax Assessment Act 1997 of the Commonwealth). I am a small business individual / partnership/ company and/ or trust, which is carrying on a business in NSW, and the business has an aggregated turnover of less than \$2 million.	Yes

Declaration

You agree that:

- A. You are authorised by all parties included in this insurance application (including any partners/principals/directors) to:
 - a. make this application;
 - b. make these declarations; and
 - c. accept the terms and conditions for this insurance contract on their behalf.
- B. You have made all necessary enquiries into the accuracy of the responses given in this insurance application and confirm that the statements and particulars given are true and complete and that no material facts have been omitted or misstated.
- C. Before you enter into a contract of insurance, you have a duty of disclosure under

the Insurance Contracts Act. We may ask you questions that are relevant to the insurer's decision to insure you and on what terms. If we do, you must tell us anything that you know and that a reasonable person in the circumstances would include in their answer. You have this duty until the insurer agrees to insure you. If you do not tell us anything that you are required to, the insurer may cancel your contract or reduce the amount they will pay you if you make a claim, or both. If your failure to tell us is fraudulent, the insurer may refuse to pay a claim and treat the contract as if it never existed.

- D. This insurance is issued by BizCover Pty Ltd (ABN 68 127 707 975; AFSL 501769). Any advice we provide is general advice only and does not take into account your objectives, financial situation or needs. It is up to you to consider those matters in deciding to purchase.
- E. The insurance available through BizCover is limited to the policies and insurers listed on our website.
- F. BizCover acts under a binder agreement with the insurer unless we state otherwise. In any event, we act as agent of the insurer. This means that we represent and act for the insurer only.
- G. Upon a purchase, BizCover receives commission from the insurer, which is an agreed percentage or amount of the premium payable for the policy. We will also charge you a platform fee for each policy you purchase.
- H. A cooling-off period may apply to the policy you purchase. Your Policy Wording or PDS will confirm whether a cooling-off period applies and your entitlements as a result. If you cancel any insurance policy purchased through BizCover after any applicable cooling-off period, the commission and any fees paid to us are non-refundable.
- I. The Policy Wording or PDS will be sent to you soon. You must review all of the documents we send you to ensure suitability for your needs.
- J. After the policy is taken out we will email to you:
 - a. the Policy Wording or PDS and any applicable Supplements or Endorsements to them;
 - b. our Service Terms;
 - c. our Financial Services Guide (where applicable)

Arpana Andrew
sole trader
12/3/2024

On-line Medical Malpractice Civil Liability Insurance

Medical Malpractice is a Professional Indemnity Wording which has been tailored for the Healthcare Sector.



Policy Schedule (Effective Date: 02 Apr 2024)

PLEASE READ THE ENTIRE POLICY CAREFULLY

Policy Number:	LPS016832716-M30633
Policyholder:	EVEREST DISABILITY SERVICES AUSTRALIA PTY LTD
Broker Name:	BizCover Pty Limited
Broker Address:	Level 2, 338 Pitt Street, Sydney NSW 2000
Health Care Services:	• Aged and/or Disability Care Worker
Policy Period:	From 02 April 2024 4 pm (Local Standard Time) To 02 April 2025 4 pm (Local Standard Time)
Premium:	\$200.00
GST:	\$20.00
Stamp Duty:	\$0.00
Total:	\$220.00
Limit of Indemnity:	\$1,000,000
Maximum Aggregate Limit of Indemnity:	\$3,000,000
Basis of Limit:	Costs In Addition
Excess:	\$250 Inquiry Costs Excess: \$250
Retroactive Date:	Unlimited
Policy Wording:	E87595_V8459_250521_A_Vero_Bizcover_Online_Med_Malpractice_LR
Extensions:	7.1 Abuse defence costs and inquiry costs 7.2 Advancement of costs 7.3 Compensation for court attendance 7.4 Continuous cover 7.5 Dishonesty of employees and principals/Medicare benefits fraud 7.6 Emergency Defence Costs and Inquiry Costs 7.7 Extended reporting period 7.8 Former subsidiary 7.9 Good samaritans act 7.10 Inquiry costs 7.11 Joint venture liability 7.12 Legal consultation 7.13 Lost documents 7.14 Newly created or acquired subsidiary 7.15 Public relations expenses 7.16 Run off cover 7.17 Sixty day reporting period 7.18 Spousal liability

- 7.19 Statutory liability
- 7.20 Students, volunteers, committee members and council members
- 7.21 Vicarious liability for medical practitioners and locum tenens

Optional Extensions:

Principals Previous Business:	Included
Public and Products Liability:	Included
The Business:	EVEREST DISABILITY SERVICES AUSTRALIA PTY LTD
Business Address:	11 Singapore Road, EDMONDSON PARK, NSW, 2174
Excess Applicable to Section A:	\$500
Excess Applicable to Section B:	\$500
Public and Products Liability Limit:	\$10,000,000
Public and Products Liability Retroactive Date:	Unlimited

Sub-Limits & Excesses:

Sub-Limits and Excesses:

- Abuse defence costs and inquiry costs - \$100,000
- Compensation for court attendance: \$500 per person each day, subject to a maximum of \$20,000 for all persons any one Claim
- Emergency Defence Costs and Inquiry Costs: \$100,000
- Inquiry Costs: \$500,000 or an amount equal to the Limit of Indemnity, whichever is the lesser
- Inquiry Costs Excess: as per policy excess
- Lost Documents: \$500,000 or an amount equal to the Limit of Indemnity, whichever is the lesser
- Public Relations Expenses: \$50,000
- Public Relations Expenses Excess: \$1,000
- Statutory Liability: \$50,000

Endorsements:

Healthcare Services Amendment Endorsement

The Healthcare Services described in the Schedule are amended to include:

and any associated training activities.

Carer Outdoor Activity Exclusion Endorsement

The following is added as an Exclusion in Section 2 of the Exclusions to the Policy:

arising directly or indirectly from or in respect of a client's participation in any outdoor, dangerous or physically strenuous activity where the Insured has *recklessly or wilfully* failed to:

- (a) exercise reasonable care for the health, safety and wellbeing of the client in assessing the client's suitability for that activity; or
- (b) appropriately supervise that client during their participation in the activity.

Cyber Amendments Endorsement – Med Mal (V10/23)

A. The following is added as an additional paragraph to extension 7.10 'Inquiry costs':

This extension does not apply to an investigation, inquiry or hearing arising from or in respect of a **Privacy Breach** for which the **Insured** has an obligation under the Privacy Act 1988 (Cth) (including any amendment, consolidation, re-enactment, replacement or successor of such legislation) to notify the Office of the Australian Information

Commissioner (OAIC) (or other responsible agency or person as set out in the Privacy Act 1988 (Cth) or any amendment, consolidation, re-enactment, replacement or successor of such legislation) and affected individuals to whom the information relates.

B. Paragraph (d) of extension 7.13 'Lost documents' is deleted and replaced with the following:

(d) the **Insurer** will not be liable:

(i) in respect of loss or damage caused by riot or civil commotion; or

(ii) for loss or damage caused by or arising directly or indirectly from, in connection with or in respect of any **Cyber Act**,

C. Paragraph (c) of extension 7.19 'Statutory liability' is deleted and replaced with the following:

(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** but not for any compensatory civil penalty imposed upon the **Insured** based on any breach of any obligations in relation to any 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 (ACT) or similar privacy legislation in Australia or New Zealand (including any amendment, consolidation, re-enactment, replacement or successor of such legislation).

D. The following is added as an exclusion in sub-clause 8.1.4 'General exclusions (applicable to Sections A and B)' of optional extension 8.1 'Public and Products Liability (claims made basis)':

any liability arising directly or indirectly from, in connection with or in respect of:

(i) any access to or disclosure of any **Private and Confidential Information** or **Personal Information**;

(ii) (a) total or partial destruction, distortion, erasure, corruption, theft, misappropriation, misuse or alteration of **Data**;

(b) total or partial inability or failure to receive, send, access, manipulate or use **Data** for any time or at all; or

(c) any **Loss of Use**, reduction in functionality, restriction of access or inability to manipulate, repair, replace, restore or reproduce any **Data**; or

(iii) any corruption, **Loss of Use** or misuse of or inability to access, process, use or operate any **Computer System**.

This exclusion does not apply to:

(I) **Bodily Injury, Damage to Property** or **Advertising Injury** or arising out of the circumstances described in sub-paragraphs (i), (ii) or (iii) above; or

(II) mental anguish, mental injury, shock, fright or loss of consortium arising out of the circumstances described in sub-paragraph (iii) above. For avoidance of doubt, the exclusion continues to apply to mental anguish, mental injury, shock, fright or loss of consortium arising out of the circumstances described in sub-paragraphs (i) and (ii) above.

For the purposes of this exclusion only, the following definitions apply:

Bodily Injury means death, bodily injury, sickness or disease sustained by a person.

Bodily Injury does not include mental impairment, mental injury, mental anguish, shock,

fright, mental illness, humiliation, discrimination or any injury arising out of invasion of privacy, breach of confidentiality, defamation and/or loss of consortium.

Damage to Property means loss of, physical damage to or destruction of tangible property including the loss of use of tangible property resulting from such loss of, physical destruction to or destruction of such tangible property. Tangible property does not include **Data**.

Loss of Use means the inability to obtain the intended benefit which is not resulting from damage to tangible property.

Personal Information means any information from which an individual may be reasonably identified or contacted, including an individual's name, telephone number, email address, tax file number, Medicare number, credit card details or any other non-public personal information as defined in the Privacy Act 1988 (Cth) including any amendment, consolidation, re-enactment, replacement or successor of such legislation.

Private and Confidential Information means any information (including **Data**) other than **Personal Information** that is not publicly available and where disclosure may affect the economic, competitive or commercial interests of the owner of the information including trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods.

E. The following is added as an exclusion in section 2 of the exclusions to the **Policy**:

for any mental or psychological injury, mental anguish, shock, fright or loss of consortium, arising directly or indirectly from, in connection with or in respect of:

(a) any **Privacy Breach**;

(b) total or partial destruction, distortion, erasure, corruption, theft, misappropriation, misuse or alteration of **Data**;

(c) total or partial inability or failure to receive, send, access, manipulate or use **Data** for any time or at all; or

(d) any inability to obtain the intended benefit, reduction in functionality or restriction of access of any **Data** or inability to manipulate, repair, replace, restore or reproduce any **Data**.

Provided that this exclusion shall not apply to the extent a person sustains mental or psychological injury, mental anguish, shock, fright or loss of consortium arising from bodily injury sustained as a result of their treatment by a health practitioner being impacted by an event described in paragraphs (a) to (d) above.

For the purposes of this exclusion, "bodily injury" means death, bodily injury, sickness or disease sustained by a person. Bodily injury does not include mental or psychological injury, mental anguish, shock, fright or loss of consortium.

F. The following are added as definitions to section 12 of the **Policy**:

Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer**

System.

Data means information, facts, concepts, code or any other information of any kind that is converted, recorded or transmitted in a form to be accessed, communicated, displayed, distributed, interpreted, processed, transmitted, stored or used in or by a **Computer System**.

Privacy Breach means an incident involving the unauthorised disclosure, loss, modification, misuse, interference or access of:

(a) personal information, as defined in the Privacy Act 1988 (Cth) including any amendment, consolidation, re-enactment, replacement or successor of such legislation, or

(b) third party corporate information that is identified as confidential.

Legal Adviser:

[View Legal Consultation Hotline Details here:](https://www.vero.com.au/content/dam/suncorp/insurance/vero/documents/policy-documents/vero-legal-consult-hotline-panel.pdf)

<https://www.vero.com.au/content/dam/suncorp/insurance/vero/documents/policy-documents/vero-legal-consult-hotline-panel.pdf>

Claims Notification:

All claims notification addressed to:

Professional Risks Liability Claims

GPO Box 346

Sydney NSW 2001

Telephone: 1300 888 073

Fax: 1300 066 150

E-mail: lodgeclaim@vero.com.au

Issued on behalf of AAI Limited ABN 48 005 297 807 trading as Vero Insurance

Issued in Sydney, NSW on 12 Mar 2024



Bizcover Online Medical Malpractice Civil Liability

For healthcare establishments and health professionals



Bizcover Online Medical Malpractice Civil Liability Insurance Policy

Introduction	1
Notices	1
Policy wording	5
A. Agreement between Policyholder and the Insurer	5
B. Where 'prior consent' is required from the Insurer	5
C. Payment of reasonable amounts of any costs, charges expenses and fees under this Policy	5
D. Policy terms	5
1. Insuring clause	5
2. Limit of indemnity and maximum aggregate limit of indemnity	5
3. Defence costs	5
4. Excess	5
5. Aggregation of claims and notices	6
6. Insurance clarification	6
6.1 Consumer Protection Legislation	6
6.2 Contractual liability	6
6.3 Intellectual property	6
6.4 Defamation	6
6.5 Liability of the Insured for acts, errors or omissions of contractors and consultants	7
6.6 Privacy complaints	7
7. Extensions	7
7.1 Abuse defence cost and inquiry costs	7
7.2 Advancement of costs	7
7.3 Compensation for court attendance	8
7.4 Continuous cover	8
7.5 Dishonesty of employees and principals /Medicare benefits fraud	8
7.6 Emergency Defence Costs and Inquiry Costs	8
7.7 Extended reporting period	8
7.8 Former subsidiary	9
7.9 Good samaritan acts	9
7.10 Inquiry costs	9
7.11 Joint venture liability	9
7.12 Legal consultation	10
7.13 Lost documents	10
7.14 Newly created or acquired subsidiary	10
7.15 Public relations expenses	11
7.16 Run off cover	11
7.17 Sixty day reporting period	11
7.18 Spousal liability	11
7.19 Statutory liability	11
7.20 Students, volunteers, committee members and council members	12
7.21 Vicarious liability for medical practitioners and locum tenens	12

8. Optional extension	12
8.1 Public and Products Liability (claims made basis)	12
8.1.1 Section A – Public liability	12
8.1.2 Section B – Products liability	13
8.1.3 Limit of indemnity and defence costs	14
8.1.4 General exclusions (applicable to Sections A and B)	14
8.1.5 Definitions	15
9. Exclusions	16
9.1 Section 1	16
9.1.1 Prior claims or known circumstances	16
9.1.2 Retroactive date	16
9.1.3 Professional fees	16
9.2 Section 2	17
9.2.1 Abuse	17
9.2.2 Asbestos	17
9.2.3 Assumption of liability	17
9.2.4 Childbirth	17
9.2.5 Directors and officers liability	17
9.2.6 Dishonest, fraudulent or criminal acts	17
9.2.7 Employer’s liability	17
9.2.8 Fines, penalties, punitive or aggravated damages	17
9.2.9 Goods sold, stored, supplied or distributed	18
9.2.10 Intoxicants and drugs	18
9.2.11 Liquidated damages	18
9.2.12 Medical practitioners	18
9.2.13 Radioactivity	18
9.2.14 Related parties	18
9.2.15 Sanctions	18
9.2.16 Subrogation waiver	18
9.2.17 Terrorism	18
9.2.18 Trading debts	18
9.2.19 War	19
10. Claims conditions	19
10.1 Claims notifications	19
10.2 Claims co-operation	19
10.3 Claims conduct	20
10.4 Claims settlement	20
10.5 Allocation of loss	20
10.6 Recovery rights	21
10.7 Application of recoveries	22

11. General conditions	22
11.1 Assignment	22
11.2 Authorisation	22
11.3 Cancellation	22
11.4 Endorsements	22
11.5 Goods and services tax	22
11.6 Governing law	23
11.7 Interpretation	23
11.8 Material change	23
11.9 Other insurance	23
11.10 Payment of Premium	24
11.11 Severability and non-imputation	24
11.12 Territorial and jurisdictional limits of cover	24
11.13 Variation of the policy	24
12. Definitions	24

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 respond to claims first made against the Insured and notified to the Insurer during the Policy Period (or notified in accordance with the terms of any applicable additional or extended reporting 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 below your reference. A reference to "you" or "your" in the notices section below includes the Insured.

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. Bizcover Pty Ltd (ABN 68 127 707 975; AFSL 501769) arranges the insurance and AAI Limited (ABN 48 005 297 807) trading as Vero Insurance issues the insurance.

Your duty of disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract. You do not need to tell us anything that:

- ▼ reduces the risk we insure you for; or
- ▼ is common knowledge; or
- ▼ we know or should know as an insurer; or
- ▼ we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

Claims made and notified basis of cover and retroactive date

This policy is issued on a 'claims made and notified' basis. This means that the policy covers claims:

- (a) first made against you during the policy period; and
- (b) you tell us about during the policy period.

Where your policy has an additional or extended reporting period, subject to the terms of the policy, you may have:

- ▼ an additional period to tell us about claims first made against you during the policy period; and/or
- ▼ cover for claims first made against you during the extended reporting period and which you tell us about during the extended reporting period — provided the claims are based on an act, error, or omission alleged to have been committed prior to the expiry of the policy period.

Pursuant to section 54 of the Insurance Contracts Act 1984, if you tell us about claims first made against you during the policy period (or additional or extended reporting period, if applicable), after the policy period and any applicable additional or extended reporting period expires, we may be able to reduce our liability by an amount that fairly represents the extent to which our interests were prejudiced as a result of your delay in notifying us of the claim.

Written notification of facts pursuant to section 40(3) of the Insurance Contracts Act 1984: If during the policy period, you learn about facts that might lead to a claim and you tell us in writing about these facts as soon as reasonably practicable after you became aware of those facts but before the end of the policy period, we will treat any subsequent claim arising from those facts as though it was made against you during the policy period.

The policy doesn't cover claims or potential claims that you knew about prior to the policy period which would have put a reasonable person in your position on notice that a claim may be made against you. (There are some exceptions to this rule if a 'Continuous Cover' extension applies).

If a retroactive date is applied or shown on the policy schedule, the policy doesn't cover claims resulting from an act or failure to do something before that date.

Average provision

If your policy provides for 'Costs in Addition' to the limit of indemnity and if a payment in excess of the limit of indemnity available under your policy has to be made to dispose of a claim, the insurer shall only be liable for the percentage of the costs and expenses incurred with the insurer's prior consent that is a proportionate ratio to the amount of indemnity available under this policy.

Preservation of rights of recovery / subrogation waiver

This policy contains provisions that have the effect of excluding the insurer's liability for a loss or liability incurred due to the insured, entering into:

- (a) any agreement whereby the insured releases, agrees not to sue or, waives or prejudices any rights of recovery;
- (b) any deed or agreement excluding, limiting or delaying the legal rights of recovery against another party; or
- (c) any agreement or compromise whereby any rights or remedies to which the insurer would be subrogated are or may be prejudiced.

Privacy statement

AAI Limited trading as Vero Insurance is the insurer and issuer of your commercial insurance product, and is a member of the Suncorp Group, which we'll refer to simply as "the Group".

Why do we collect personal information?

Personal information is information or an opinion about an identified individual or an individual who is reasonably identifiable. We collect personal information so that we can:

- ▼ identify you and conduct appropriate checks;
- ▼ understand your requirements and provide you with a product or service;
- ▼ set up, administer and manage our products and services and systems, including the management and administration of underwriting and claims;
- ▼ assess and investigate any claims you make under one or more of our products;
- ▼ manage, train and develop our employees and representatives;
- ▼ manage complaints and disputes, and report to dispute resolution bodies; and
- ▼ get a better understanding of you, your needs, your behaviours and how you interact with us, so we can engage in product and service research, development and business strategy including managing the delivery of our services and products via the ways we communicate with you.

What happens if you don't give us your personal information?

If we ask for your personal information and you don't give it to us, we may not be able to provide you with any, some, or all of the features of our products or services.

How we handle your personal information

We collect your personal information directly from you and, in some cases, from other people or organisations. We also provide your personal information to other related companies in the Group, and they may disclose or use your personal information for the purposes described in 'Why do we collect personal information?' in relation to products and services they may provide to you. They may also use your personal information to help them provide products and services to other customers, but they'll never disclose your personal information to another customer without your consent.

Under various laws we will be (or may be) authorised or required to collect your personal information. These laws include the Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Personal Property Securities Act 2009, Corporations Act 2001, Autonomous Sanctions Act 2011, Income Tax Assessment Act 1997, Income Tax Assessment Act 1936, Taxation Administration Act 1953, A New Tax System (Goods and Services Tax) Act 1999 and the Australian Securities and Investments Commission Act 2001, as those laws are amended and includes any associated regulations.

We will use and disclose your personal information for the purposes we collected it as well as purposes that are related, where you would reasonably expect us to. We may disclose your personal information to and/or collect your personal information from:

- ▼ other companies within the Group and other trading divisions or departments within the same company (please see our Group Privacy Policy for a list of brands/companies);
- ▼ any of our Group joint ventures where authorised or required;
- ▼ customer, product, business or strategic research and development organisations;
- ▼ data warehouse, strategic learning organisations, data partners, analytic consultants;
- ▼ social media and other virtual communities and networks where people create, share or exchange information;
- ▼ publicly available sources of information;
- ▼ clubs, associations, member loyalty or rewards programs and other industry relevant organisations;

- ▼ a third party that we've contracted to provide financial services, financial products or administrative services – for example:
 - ▼ information technology providers,
 - ▼ administration or business management services, consultancy firms, auditors and business management consultants,
 - ▼ marketing agencies and other marketing service providers,
 - ▼ claims management service providers,
 - ▼ print/mail/digital service providers, and
 - ▼ imaging and document management services;
- ▼ any intermediaries, including your agent, adviser, a broker, representative or person acting on your behalf, other Australian Financial Services Licensee or our authorised representatives, advisers and our agents;
- ▼ a third party claimant or witnesses in a claim;
- ▼ accounting or finance professionals and advisers;
- ▼ government, statutory or regulatory bodies and enforcement bodies;
- ▼ policy or product holders or others who are authorised or noted on the policy as having a legal interest, including where you are an insured person but not the policy or product holder;
- ▼ in the case of a relationship with a corporate partner such as a bank or a credit union, the corporate partner and any new incoming insurer;
- ▼ the Australian Financial Complaints Authority or any other external dispute resolution body;
- ▼ credit reporting agencies;
- ▼ other insurers, reinsurers, insurance investigators and claims or insurance reference services, loss assessors, financiers;
- ▼ legal and any other professional advisers or consultants;
- ▼ hospitals and, medical, health or wellbeing professionals;
- ▼ debt collection agencies;
- ▼ any other organisation or person, where you've asked them to provide your personal information to us or asked us to obtain personal information from them, eg your mother.

We'll use a variety of methods to collect your personal information from, and disclose your personal information to, these persons or organisations, including written forms, telephone calls and via electronic delivery. We may collect and disclose your personal information to these persons and organisations during the information life cycle, regularly, or on an ad hoc basis, depending on the purpose of collection.

Overseas disclosure

Sometimes, we need to provide your personal information to – or get personal information about you from – persons or organisations located overseas, for the same purposes as in 'Why do we collect personal information?'.

The complete list of countries is contained in our Group Privacy Policy, which can be accessed at www.vero.com.au/privacy, or you can call us for a copy.

From time to time, we may need to disclose your personal information to, and collect your personal information from, other countries not on this list. Nevertheless, we will always disclose and collect your personal information in accordance with privacy laws.

How to access and correct your personal information or make a complaint

You have the right to access and correct your personal information held by us and you can find information about how to do this in the Suncorp Group Privacy Policy.

The Suncorp Group Privacy Policy also includes information about how you can complain about a breach of the Australian Privacy Principles and how we'll deal with such a complaint. You can get a copy of the Suncorp Group Privacy Policy.

Please use the contact details in **Contact Us**.

Contact us

For more information about our privacy practices including accessing or correcting your personal information, making a complaint, obtaining a list of overseas countries or giving us your marketing preferences you can:

- ▼ Visit www.vero.com.au/privacy
- ▼ Speak to us directly by phoning us on: 1300 888 073 or
- ▼ Email us at privacyaccessrequests@vero.com.au

General Insurance Code of Practice

We support and adhere to the General Insurance Code of Practice. A copy of the Code can be obtained from the Insurance Council of Australia by:

▼ Telephone (02) 9253 5100 or 1300 728 228

▼ Website www.insurancecouncil.com.au

Our complaints handling procedures

We are committed to:

- ▼ listening to what you tell us;
- ▼ being accurate and honest in telling you about our products and services;
- ▼ communicating with you clearly; and
- ▼ resolving any complaints or concerns you have in a fair, transparent and timely manner.

How to contact us with a complaint

Let us know

If you experience a problem, are not satisfied with our products or services or a decision we have made, let us know so that we can help.

Contact us

▼ By phone: 1300 888 073

▼ By email: privacyaccessrequests@vero.com.au

Complaints can usually be resolved on the spot or within 5 business days.

Review by our Customer Relations Team

If we are not able to resolve your complaint or you would prefer not to contact the people who provided your initial service, our Customer Relations team can assist:

▼ By phone: 1300 264 470

▼ By email: idr@vero.com.au

▼ In writing: Vero Customer Relations Team, PO Box 14180, Melbourne City Mail Centre VIC 8001

Customer Relations will contact you if they require additional information or they have reached a decision.

When responding to your complaint you will be informed of the progress of and the timeframe for responding to your complaint.

Seek review by an external service

We expect our procedures will deal fairly and promptly with your complaint. However, if you remain dissatisfied, there are external dispute remedies such as mediation, arbitration or legal action you may pursue.

Policy wording

A. Agreement between Policyholder and the Insurer

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

B. Where 'prior consent' is required from the Insurer

There are some covers under the **Policy**, where the **Insured** will need to obtain the **Insurer's** prior consent, for example, before incurring costs. Where prior consent is required, consent must be obtained from the **Insurer**, unless the extension 7.6 'Emergency Defence Costs and Inquiry Costs' applies or is otherwise specified in the **Policy**. The **Insurer's** consent will not be unreasonably withheld or delayed.

Where prior consent has not been obtained as required, it does not mean the **Insured** cannot make a claim. However, the **Insurer** may be able to reduce the claim payable by an amount that fairly represents the extent to which the **Insurer's** interests were prejudiced by the failure to obtain prior consent.

C. Payment of reasonable amounts of any costs, charges expenses and fees under this Policy

A range of different costs, charges, expenses and fees are covered under this **Policy**. Unless otherwise specified in the **Policy**, the **Policy** provides cover for the 'reasonable' amount of such cost, charge, expense or fee. Reasonable amount means an amount that is not excessive and where the **Insured** has given reasonable consideration in the circumstances to the different courses of action available prior to incurring the amount and the course of action taken was prudent in that context.

Where consent is required before incurring such costs, when the **Insured** contacts the **Insurer** to seek the **Insurer's** consent, the **Insured** can let the **Insurer** know the steps it has taken to consider the courses of action available and discuss the circumstances with the **Insurer**. If the amounts which are to be incurred are reasonable in the circumstances, the **Insurer** will provide consent for the costs to be incurred.

D. Policy terms

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

1. If the 'Basis of Limit' in the **Schedule** is specified as 'Costs in Addition':

- (a) subject to (1)(b), the **Insurer** will, in addition to the **Limit of Indemnity**, pay reasonable **Defence Costs** incurred with the **Insurer's** prior consent in connection with a **Claim** under this **Policy**; and
- (b) if the total amount of compensation and claimant's costs and expenses required to dispose of any one **Claim** ("Total Claim Amount") exceeds the **Limit of Indemnity**, the **Insurer** shall only be liable for the percentage of reasonable **Defence Costs** that is a proportionate ratio to the Total Claim Amount that is indemnified by the **Limit of Indemnity**.

2. If the 'Basis of Limit' in the **Schedule** is specified as 'Costs Inclusive':

- (a) subject to (2)(b), the **Insurer** will pay reasonable **Defence Costs** incurred with the **Insurer's** prior consent in connection with a **Claim** under this **Policy**; and
- (b) the liability of the **Insurer** for compensation, claimant's costs and expenses and reasonable **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 reasonable **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:

1. compensation;
2. claimant's costs and expenses; and
3. reasonable **Defence Costs**,

that are collectively equal to or less than the **Excess** for any one **Claim**. The **Insurer** has no liability for the amount of compensation, claimant's costs and expenses or reasonable **Defence Costs** that is equal to or 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:

1. compensation; and
2. claimant's costs and expenses,

that are collectively equal to or 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 equal to or less than the **Excess** for any one **Claim**.

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

The **Principal Policyholder** must pay the amount of any reasonable **Inquiry Costs** that is equal to or less than the **Excess** for any one **Inquiry Notice**. The **Excess** is deducted from reasonable **Inquiry Costs** payable before the application of the 'Inquiry Costs Sub-limit' specified in the **Schedule**. The **Insurer** has no liability for the amount of reasonable **Inquiry Costs** that is equal to or less than the **Excess** for any one **Inquiry Notice**.

The **Principal Policyholder** must pay the amount of any reasonable **Public Relations Expenses** that is equal to or less than the **Excess** for any one **Adverse Publicity Event**. The **Excess** is deducted from the reasonable **Public Relations Expenses** payable before the application of the 'Public Relations Expenses Sub-limit' specified in the **Schedule**. The **Insurer** has no liability for the amount of any reasonable **Public Relations Expenses** that is equal to or less than the **Excess** for any one **Adverse Publicity Event**.

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

The method for payment of the **Excess** will depend on the particular circumstances of the **Claim**, for example:

- (a) the **Insurer** may pay the amount of compensation, claimant's costs and expenses, **Defence Costs** or **Inquiry Costs** that is less than the **Excess**, and then require repayment of this amount from the **Principal Policyholder**;
- (b) the **Insurer** may deduct the amount of the **Excess** from the amount payable by the **Insurer** to the **Insured**; or
- (c) the **Insurer** may require the **Principal Policyholder** to pay the **Excess** directly to a third party.

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 7.10 'Inquiry Costs', all **Inquiry Notices** arising out of, based upon, attributable to or in respect of any one inquiry or hearing shall be considered to be one **Inquiry 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, but is not limited to:

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, re-enactment, replacement or successor of such legislation, to the extent that such **Claims** are not otherwise excluded under this **Policy**.

6.2 Contractual liability

Notwithstanding exclusion 9.2.3 'Assumption of liability', contractual liability, provided that:

1. the **Insurer** will not be liable for any liability assumed by the **Insured** under a deed or agreement (for example under any express warranty, guarantee, hold harmless agreement or indemnity clause) unless such liability would have attached to the **Insured** in the absence of such deed or 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 Defamation

Claims arising from or in respect of defamation, provided that:

1. the defamation arises from the conduct of the **Insured's Healthcare Services**; and
2. the defamation is not made by the **Insured** with express malice.

6.5 Liability of the Insured 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.

The indemnity will not extend to the contractor and/or consultant themselves 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 Abuse defence cost and inquiry costs

Notwithstanding exclusion 9.2.1 'Abuse', the **Insurer** will indemnify the **Insured** for:

- (a) reasonable **Defence Costs** incurred with the **Insurer's** prior consent arising from; and
- (b) reasonable **Inquiry Costs** incurred with the **Insurer's** prior consent in respect of,

alleged abuse, but not abuse allegedly perpetrated by:

- 1. any person performing any volunteer service for or on behalf of the **Insured**; or
- 2. any person the **Insured** knew or a reasonable person in the professional position of the **Insured** ought to have known had previously:
 - 2.1. committed abuse; or
 - 2.2. been convicted of abuse; or
 - 2.3. been the subject of a prior complaint in respect of abuse,

provided that:

- (a) this extension will not respond to assist any **Insured** who has perpetrated the conduct as alleged or who by act or omission condoned such conduct; and
- (b) the total liability of the **Insurer** for all reasonable **Defence Costs** and **Inquiry Costs** under this extension will not exceed \$100,000 in the aggregate during the **Policy Period**. Any reasonable **Inquiry Costs** paid under this extension shall be deducted from, and are not in addition to, the 'Inquiry Costs Sub-limit' specified in the **Schedule** applicable to extension 7.10 'Inquiry Costs'.

Further provided that in respect of reasonable **Inquiry Costs**:

- (c) the **Inquiry Notice** is first received by the **Insured** and notified to the **Insurer** during the **Policy Period**;
- (d) such **Inquiry Notice** arises directly from conduct allegedly committed by the **Insured** in the course of conducting the **Healthcare Services**; and
- (e) regular or overtime wages, salaries or fees of the **Insured** are excluded from this indemnity.

For the purposes of this extension, 'abuse' has the same meaning given to it in exclusion 9.2.1 'Abuse'.

7.2 Advancement of costs

The **Insurer** will advance reasonable **Defence Costs** and reasonable **Inquiry Costs**, incurred by the **Insurer** or the **Insured** with the **Insurer's** prior consent, as they are incurred and prior to final adjudication of a **Claim**.

If and to the extent that the **Insured** is not entitled to coverage under the terms and conditions of this **Policy**, then the **Insurer** will cease to advance such costs and any amounts previously advanced shall be repaid to the **Insurer**.

The **Insurer** may not refuse to advance reasonable **Defence Costs** or reasonable **Inquiry Costs** by reason only that the **Insurer** considers that:

- (a) the conduct referred to in exclusion 9.2.6 'Dishonest, Fraudulent or Criminal Acts' has occurred, until such conduct is established; or
- (b) any services as referred to in exclusion 9.2.10 'Intoxicants and Drugs' were rendered or failed to be rendered competently or at all, by any person under the influence of intoxicants or drugs, until it is established that they were under such influence,

by a formal written admission by the relevant **Insured** or final, non-appealable adjudication of a judicial or arbitral tribunal (other than in a proceeding brought by the **Insurer**).

The **Insurer** may not refuse to advance reasonable **Defence Costs** or reasonable **Inquiry Costs** pursuant to extension 7.1 'Abuse Defence Costs and Inquiry Costs' by reason only that the **Insurer** considers that the conduct referred to in exclusion 9.2.1 'Abuse' has occurred, until such conduct is either established, or it has been established the **Insured** condoned such conduct, by a formal written admission by the relevant **Insured** or final, non-appealable adjudication of a judicial or arbitral tribunal (other than in a proceeding brought by the **Insurer**).

7.3 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 in connection with a **Claim** 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 \$500 per person for each day on which attendance is required subject to a maximum of \$20,000 for all persons for any one **Claim**.

If and to the extent that the **Policyholder** is not entitled to coverage under the terms and conditions of this **Policy**, then all amounts paid to the **Policyholder** under this clause shall be repaid to the **Insurer** by the **Policyholder**.

7.4 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;
- (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**.

7.5 Dishonesty of employees and principals /Medicare benefits fraud

The **Insurer** will, notwithstanding exclusion 9.2.6 '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.

7.6 Emergency Defence Costs and Inquiry Costs

Notwithstanding Claims Condition 10.4 'Claims Settlement', if, due to an emergency, the **Insured** is unable to request the **Insurer's** consent prior to the incurring of **Defence Costs** or **Inquiry Costs** then the **Insured** may incur reasonable **Defence Costs** or **Inquiry Costs** without the **Insurer's** prior consent until such time as the **Insured** contacts or could reasonably have contacted the **Insurer**.

The total liability of the **Insurer** under this Extension will not exceed \$100,000 in the aggregate for the **Policy Period**.

An emergency may include a circumstance where the **Insured** needs to respond to a request arising from the service of a legal document in a very short stipulated timeframe (for example, outside of business hours), where the **Insured** is not reasonably able to contact the **Insurer** in that timeframe.

In the event the **Insured** incurs reasonable **Defence Costs** or **Inquiry Costs** without the **Insurer's** prior consent after such time the **Insured** could reasonably have contacted the **Insurer** to request the **Insurer's** prior consent, the **Insurer** may reduce its liability for such **Defence Costs** or **Inquiry Costs** by an amount that fairly represents the extent to which the **Insurer's** interests are prejudiced by the **Insured's** failure to request the **Insurer's** prior consent.

7.7 Extended reporting period

7.7.1 Purchasing an 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 as detailed in 7.7.2 below.

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

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.

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** cancels the **Policy** or 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 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.

7.7.2 Details of the extended reporting period

Where the **Principal Policyholder** has purchased an extended reporting period, the 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**.

During the extended reporting period the **Insured** may continue to notify the **Insurer** of **Claims**:

1. where the **Claim** is first made against the **Insured** during the **Policy Period** or extended reporting period; and
2. provided the **Claims** result from the conduct of the **Healthcare Services** 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**.

7.8 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**.

7.9 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 9.2.4 'Childbirth,' this extension shall apply.

7.10 Inquiry costs

The **Insurer** will indemnify the **Insured** for reasonable **Inquiry Costs** incurred with the **Insurer's** prior consent, provided that:

- (a) the **Inquiry Notice** is first received by the **Insured** and notified to the **Insurer** during the **Policy Period**;
- (b) such **Inquiry Notice** arises directly from conduct allegedly committed by the **Insured** in conducting the **Healthcare Services**;
- (c) regular or overtime wages, salaries or fees of the **Insured** are excluded from this indemnity; and
- (d) the total liability of the **Insurer** for all reasonable **Inquiry Costs** under this extension will not exceed in the aggregate, during the **Policy Period**, the 'Inquiry Costs Sub-limit' specified in the **Schedule**.

If there is an entitlement to indemnity for **Inquiry Costs** for an inquiry or hearing under extension 7.1 'Abuse 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.

7.11 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) where:
 - (i) the **Insurer** required a declaration of the **Policyholder's** income derived from participation in such joint venture for the purpose of calculating the **Full Annual Premium** for this **Policy**, whether in the **Proposal** or otherwise; and
 - (ii) the income derived from participation in such joint venture was not included in the declaration, the premium otherwise payable by the **Policyholder** will be adjusted accordingly by the **Insurer** at the time of the **Claim** in relation to the **Insured**.

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

7.12 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**; and
- (b) the **Policyholder** must provide the legal adviser with the policy number, **Policy Period** and name of the **Policyholder**.

There will be no cost payable by the **Policyholder** for the legal advice.

7.13 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** for the reasonable costs and expenses 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, either:
 - (i) the **Policyholder**; or
 - (ii) any third party to whom a reasonable person in the **Policyholder's** professional position would entrust the **Documents** with the expectation that the **Documents** would be protected from loss or damage;
- (b) where the **Documents** are in electronic format, the **Policyholder** has:
 - (i) ensured the following information technology ("IT") security measures are in place or has undertaken reasonable enquiries to verify whether a third party that the **Policyholder** has entrusted the **Documents** with, has the following IT security measures in place:
 1. procedures in place to back up such **Documents** at least once a week; and
 2. active and up-to date IT security that, at a minimum, has the ability to:
 - i. identify and remove software viruses and other types of harmful and malicious software ("Viruses");
 - ii. automatically scan files, documents, emails, email attachments, folders and other means of storing, transmitting and using digital information, for Viruses;
 - iii. provide firewall protection; and
 - iv. automatically receive updates from the relevant provider of such Virus and firewall protection; and
 - (ii) done everything that a reasonable person in the **Policyholder's** position would do to ensure that the abilities listed in (b)(i)(1) and (2) above are enabled and fully utilised on an ongoing basis by either the **Policyholder** or the third party;
- (c) the amount of any claim for such costs and expenses shall be supported by proof of loss or damage to **Documents** (for example bills and accounts) which shall be subject to approval by an appropriately qualified and experienced professional or advisor 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 or Territory 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:
 - (i) mould;
 - (ii) vermin or pest infestation; or
 - (iii) fading, 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 Sub-limit' specified in the **Schedule**.

7.14 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 ("Subsidiary Cover 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 by the **Policyholder**.

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; or
- (ii) the conduct, prior to the creation or acquisition of such **Subsidiary**, of services that are not the same as those conducted by the **Policyholder** and covered under this **Policy**.

Where the **Policyholder** wishes to have cover for the new **Subsidiary** beyond the Subsidiary Cover Period, it should contact the **Insurer** to discuss and the **Insurer** will confirm whether it is willing to offer cover, on what terms and for what additional premium.

When the **Policyholder** contacts the **Insurer**, the **Insurer** must provide its response as soon as possible but no later than the end of the Subsidiary Cover Period, or, where the **Policyholder** contacts the **Insurer** less than five business days before the end of the Subsidiary Cover Period, the **Insurer** must provide its response within five business days.

Any offer by the **Insurer** to provide ongoing cover for such new **Subsidiary** is not effective until the **Insurer** receives the **Policyholder's** written acceptance of the **Insurer's** offer.

7.15 Public relations expenses

The **Insurer** will indemnify the **Policyholder** for the reasonable **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**.

Provided that:

- (a) the **Insurer** will only indemnify the **Policyholder** for the reasonable **Public Relations Expenses** that are incurred during the first thirty days immediately following the **Adverse Publicity Event**; and
- (b) the reasonable **Public Relations Expenses** are incurred with the **Insurer's** prior consent.

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

7.16 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.

7.17 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**.

For a late notification after this period of time (unless otherwise provided for under this **Policy**), the **Insurer** may be able to refuse to pay a claim or reduce its liability by an amount that fairly represents the extent to which the **Insurer** has been prejudiced by the **Insured's** delay to notify the **Insurer** of a **Claim**.

7.18 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**.

7.19 Statutory liability

Notwithstanding exclusion 9.2.7 'Employer's Liability' and exclusion 9.2.8 'Fines, Penalties, Punitive or Aggravated Damages', the **Insurer** will indemnify the **Insured** for:

- (a) reasonable **Defence Costs** incurred with the **Insurer's** prior consent 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**;
 - (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 Sub-limit' specified in the **Schedule**, and all payments will be part of and not in addition to the **Limit of Liability**.

7.20 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:

- (a) only in their capacity as such;
- (b) only in relation to their conduct of the **Healthcare Services**; and
- (c) not in respect of their conduct as a **Medical Practitioner**.

For the purposes of clarity, no person specified above is an **Insured** in respect of their conduct as a **Medical Practitioner**.

7.21 Vicarious liability for medical practitioners and locum tenens

Notwithstanding exclusion 9.2.12 '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**;
- (b) **Damage to Property** other than:
 - (i) property belonging to any of the **Insured**; or
 - (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 Liability 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 15 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 **Land 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:

- (a) **Personal Injury or Damage to Property** occurring during the loading or unloading of a **Land Vehicle** caused by or arising from the delivery or collection of goods to or from the **Land Vehicle** where such **Personal Injury or Damage to Property** occurs beyond the limits of any carriageway, and where Statutory Insurance is not required against liability for such **Personal Injury or Damage to Property**. For avoidance of doubt, a stopping area, such as a loading zone and pedestrian thoroughfares are taken to be beyond the limits of a carriageway;
 - (b) **Personal Injury or Damage to Property** directly or indirectly caused by or arising from the use of a **Land Vehicle** (other than a **Land Vehicle** owned or used by or on behalf of the **Insured**) whilst that **Land Vehicle** is in a car park owned or operated by the **Insured** other than for income or reward as a car park operator;
 - (c) **Personal Injury, Damage to Property** caused by the use of any tool, plant or equipment forming part of or attached to or used in connection with any **Land Vehicle** and where Statutory Insurance is not required against liability for such **Personal Injury or Damage to Property**; or
 - (d) **Personal Injury** where the Statutory Insurance does not provide indemnity, and the lack of indemnity is not due to a breach of legislation relating to **Land Vehicles**.
5. **Personal Injury, 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 the rendering of or failure to render any professional advice or service by 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) personal possessions of **Principals, Employees** or visitors;
 - (b) 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**;
 - (c) premises (including fixtures and fittings) leased or rented to any of the **Insured**;
 - (d) **Land 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**; and
 - (e) 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), (c) or (d) above) 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**;
- (b) **Damage to Property** other than:
 - (i) property belonging to any of the **Insured**; or
 - (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 Liability 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;
 - (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 completely separate and independent of each other at the time of such physical damage or destruction.

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

- (a) happening in the United States of America; or
- (b) caused by **Products** exported by any of the **Insured** to the United States of America.

For the purposes of this definition the United States of America includes its territories and protectorates.

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:
 - (i) the **Insured** did not expect and did not intend for such discharge, dispersal, release or escape to occur; and
 - (ii) such discharge, dispersal, release or escape 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:
 - (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; or
 - (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 9.2.2 'Asbestos', this exclusion shall prevail.

9. **Personal Injury, Damage to Property or Advertising Injury** arising directly or indirectly from:
- (i) the **Insured's** reckless or willful disregard for the condition of premises and plant;
 - (ii) the **Insured's** reckless or willful failure to ensure that all **Employees** have appropriate training applicable to their roles;
 - (iii) the **Insured's** reckless or willful failure to monitor their **Employees'** compliance with relevant standards;
 - (iv) any breach of any statute or non-compliance with statutory obligations, by-laws or regulations committed by the **Insured** with reckless or wilful intent;
 - (v) the **Insured's** reckless or willful failure to prevent **Personal Injury** and/or **Damage to Property** and/or **Advertising Injury** and/or any other loss, damage or expense; or
 - (vi) the **Insured's** reckless or willful failure to prevent the manufacture, sale or supply of defective **Products**.

8.1.5 Definitions

For the sake of clarity in this extension 8.1 'Public and Products Liability', the following are not tangible property: facts, concepts and information converted to a form usable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.

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

1. '**Insured**' means:
 - 1.1. the **Insured** as defined in section 12 'Definitions' of this **Policy**, including any **Endorsements** amending that definition;
 - 1.2. any party with whom the **Policyholder** has entered into a contract to provide **Healthcare Services**, in respect of the liability of such party 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;
 - 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 **Principal** of the **Policyholder** in respect of private work undertaken by any **Employee** for such **Principal** and any such **Employee** whilst actually undertaking such private work.
2. '**Business**' means the 'Business' described in **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:
 - 3.1. anywhere in the world except the United States of America;
 - 3.2. business visits to the United States of America of the **Policyholder's Principals** or **Employees** who are non-residents in the United States of America, other than where such persons perform manual work.

For the purposes of this definition the United States of America includes its territories and protectorates.

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, illness, 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 entry, wrongful eviction, wrongful detention, invasion of the right to private occupation, malicious prosecution 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) defamation unless arising out of **Advertising Injury**; or

(d) discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by or at the direction of the **Insured**, but only with respect to liability other than fines and penalties imposed by law.

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**;
- 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. **'Land Vehicle'** means any type of machine on wheels or caterpillar tracks made or intended to be propelled by other than manual or animal power, which is designed to travel primarily on land. **Land vehicle** includes any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.

9. **'Advertising Injury'** means injury arising out of:

- (a) 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 Abuse

arising directly or indirectly from or in respect of:

- (a) actual or alleged abuse; or
- (b) any redress scheme or other arrangement established for victims of abuse; or
- (c) any actual or alleged failure to detect, act upon or prevent abuse.

The **Insurer** will not defend any action, suit or proceedings, nor advance **Defence Costs** or **Inquiry Costs** in relation to any matter listed above, other than as provided for in extension 7.1 'Abuse Defence Costs and Inquiry Costs'.

For the purposes of clarification, under this exclusion, 'abuse' includes, but is not limited to:

- (i) any verbal, non-verbal, mental or physical abuse of any person;
- (ii) sexual abuse, sexual assault, acts of indecency, sexual harassment or molestation;
- (iii) neglect, deprivation, bullying, physical interference with any person or assault of any kind;
- (iv) any verbal or non-verbal communication, behaviour or conduct with, or having, a sexual connotation;
- (v) any verbal or non-verbal communication, behaviour or conduct intended to harass, abuse or humiliate, including but not limited to hazing.

9.2.2 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.

9.2.3 Assumption of liability

arising directly or indirectly from or in respect of liability that would not be assumed in the ordinary course of, and as a necessary part of the **Healthcare Services** as would be customary for a prudent operator carrying on business of the same nature as the **Insured**. In the event of any conflict between this exclusion and the insurance clarification 6.2 'Contractual liability', 6.2 shall prevail.

9.2.4 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.

9.2.5 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.

9.2.6 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, other than provided in extension 7.5 'Dishonesty of employees and principals /Medicare benefits fraud'.

9.2.7 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**.

9.2.8 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.

9.2.9 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**.

9.2.10 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**.

For the purpose of this exclusion the term "drug" does not include pharmaceutical drugs prescribed by a **Medical Practitioner** to such person, unless the rendering of services whilst under the influence of such drugs was against the advice or recommendation of that **Medical Practitioner** or the manufacturer of the drugs.

9.2.11 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.

9.2.12 Medical practitioners

arising directly or indirectly from or in respect of any services rendered or failure to render services by a **Medical Practitioner** including but not limited to care, analysis, reporting, diagnosis, treatment, medical advice, the provision of service or goods, or the administering, prescribing or supplying of medication in respect of the physical or mental health of a person, or a breach of any Commonwealth, State or Territory health or medical laws or regulations in force in Australia and its external territories.

9.2.13 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.

9.2.14 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**.

9.2.15 Sanctions

that would be in contravention of any sanction, prohibition or restriction under United Nations resolutions or trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

9.2.16 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, other than a deed or agreement the **Insured** has entered into at the direction of or with the prior consent of the **Insurer**.

9.2.17 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**.

9.2.18 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**.

9.2.19 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

In the event of a failure by the **Insured** to comply with a provision requiring the **Insured's** compliance under this section, the **Insurer** may be able to:

- (a) refuse a **Claim**;
- (b) reduce its liability to pay a **Claim** by an amount that fairly represents the extent to which the **Insurer's** interests are prejudiced by the failure to comply; or
- (c) cancel the **Policy**.

10.1 Claims notifications

The **Insured** must give the **Insurer** a notification of any **Claim** made against the **Insured** and any **Inquiry Notice** received by the **Insured**, as soon as reasonably possible within the **Policy Period** (or any additional or extended reporting period applicable under the **Policy**).

Every legal document or other communication the **Insured** receives (including letters, demands, writs, summons and legal processes) relating to such **Claim** or **Inquiry Notice** shall be forwarded to the **Insurer** as soon as possible after receipt.

All notifications to the **Insurer**, including but not limited to **Claims** and any legal documents and other communications specified above, must be sent to the 'Claims Notification' address specified in the **Schedule**.

10.2 Claims co-operation

The **Insurer** may make any investigation as is reasonably required in relation to the **Claim** or **Inquiry Notice**.

The **Insured** must:

- (a) cooperate and provide the **Insurer** with reasonable assistance in connection with any investigation, negotiation, recovery, defence and legal proceeding or settlement of a **Claim** or **Inquiry Notice**. This assistance may include:
 - (i) lodging a police report;
 - (ii) providing a more detailed version of facts, including signing statements and affidavits;
 - (iii) providing further information, evidence and documentation;
 - (iv) attending court or meetings with appointed legal experts;
 - (v) making available **Employees** and **Principals** and other personnel for interviews, meetings and court attendance;
 - (vi) providing contact details of individuals (if available) who may have information that is relevant to the **Claim** (to the extent that the provision of such details would not breach any legally enforceable privacy or confidentiality requirement); or
 - (vii) providing access to systems and records (to the extent that doing so would not breach any legally enforceable privacy or confidentiality requirement); and
- (b) where reasonably possible, take steps to avoid or diminish further loss, for example:
 - (i) stopping use of processes or documentation which the **Insured** suspects may have contributed to the loss claimed by the third party;
 - (ii) stopping the sale, supply and distribution of a **Product** (where optional extension 8.1.2 'Products Liability' applies) that the **Insured** suspects of causing or has caused bodily injury, death, illness or disability or physical destruction of tangible property;
 - (iii) checking the functionality of any processes or security in place that are intended to prevent loss or damage;
 - (iv) avoiding confrontational engagement with an aggravated claimant;
 - (v) maintaining a detailed record of all communications with any party about the loss; or
 - (vi) where the **Insured** is the **Policyholder**, taking steps which a reasonable person in the **Insured's** professional position would take (for example, suspending an employee) where the **Insured** has confirmed or suspects dishonesty or a fraudulent or malicious act or omission or abuse of any person, has contributed to the loss claimed by the third party, and
- (c) provide the **Insurer** with an opportunity of inspection prior to effecting the alteration or repair of anything connected with a **Claim**.

Any costs of the **Insured** to comply with the above requirements shall be borne by the **Insured**, unless otherwise covered under the **Policy**.

10.3 Claims conduct

Conducting defence and settlement of the Claim

The **Insurer** has the right and full discretion, but is not obligated take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** or investigation relating to an **Inquiry Notice** (including in relation to insured, underinsured and uninsured losses). The **Insurer** may engage legal or other representatives to assist in the conduct of the **Claim** or **Inquiry Notice**.

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

Where the Insured disputes the approach to defending the Claim

If the **Insured** disputes the **Insurer's** approach to defending the **Claim** or **Inquiry Notice**, the **Insured** and **Insurer** shall endeavor to settle this dispute by mediation administered by the Australian Disputes Centre (ADC) before having recourse to arbitration or litigation.

The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to the ADC (the Guidelines).

The terms of the Guidelines are hereby deemed incorporated into this **Policy**.

10.4 Claims settlement

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

If the **Insured** objects to a proposal by the **Insurer** to resolve any **Inquiry Notice** covered under this **Policy** and wishes to contest the matter, then the **Insured** may so elect, but the **Insurer's** liability for **Inquiry Costs** in respect of any such **Inquiry Notice** so contested will not exceed the amount which, but for such election, would have been incurred by the **Insurer** to resolve the matter, subject to the 'Inquiry Costs Excess' and the 'Inquiry Cost Sub-limit' specified in the **Schedule**.

10.5 Allocation of loss

When this clause applies

This clause applies to any civil liability for compensation and claimant's costs and expenses, **Defence Costs** and compensation for court attendance in respect of any **Claim**, and **Inquiry Costs** (referred to collectively as "Loss" under this clause), which is either or both:

- (a) in respect of more than one person or entity (at least one of whom is an **Insured**), whether jointly or severally; or
- (b) partly covered and partly not covered under this **Policy**,
(together 'Loss to be Allocated').

The **Insurer** must decide a fair and reasonable allocation of the covered part of the Loss to be Allocated among the relevant **Insureds** and the **Insurer** having regard to the extent of each **Insured's** comparative responsibility for the Loss to be Allocated.

What the Insurer must take into account when deciding Loss to be Allocated

The **Insurer's** consideration of what is fair and reasonable shall include without limitation, the following factors:

- (a) the nature of the **Claim** or **Inquiry Notice** against each **Insured**;
- (b) the issues of fact and law in relation to each **Insured**;
- (c) the content and the manner of the conduct of any defence of the **Claim** or **Inquiry Notice**;
- (d) the relative degree of personal responsibility for the Loss;
- (e) the extent to which the **Insured's** responsibility for the Loss is joint, several or shared;
- (f) the extent to which any person or entity, other than that **Insured**, would obtain a benefit from the payment by the **Insurer**;
- (g) the extent to which the Loss is solely of that **Insured**;
- (h) the extent to which the issues in the **Claim** or **Inquiry Notice** against that **Insured** are in common with the issues in the **Claim** or **Inquiry Notice** against any other person or entity;
- (i) the extent to which the Loss is partly covered and partly not covered under this **Policy**; and
- (j) in the event of a settlement, the likely comparative responsibility had the settlement not occurred.

If the Insured does not agree with the Insurer's decision relating to the Allocation of Loss

If the **Insured** wishes to dispute the **Insurer's** decision in respect of allocation, each party agrees that the dispute must be referred for expert determination in accordance with the Australian Disputes Centre's ("ADC") Rules for Expert Determination ("Rules") available on the ADC's website, to an expert agreed by the parties, or if the parties do not agree on an expert, an expert appointed by the ADC in accordance with the Rules.

Each party agrees to sign an agreement with the expert that confirms the following matters, unless contrary to the Rules or the requirements of the ADC:

- (a) the payment of fees for the appointed expert (Note: refer to 'Cost of the expert determination' below for more information);
- (b) the expert may:
 - (i) consider relevant industry practice;
 - (ii) consider all information presented to the expert by either party;
 - (iii) request more information from either party; or
 - (iv) request a meeting with the parties to which they may bring their legal representatives or other persons with information or knowledge relevant to the determination (Note: in accordance with the Rules, the meeting is not a hearing);
- (c) the expert must provide a determination, subject to receiving all information required, within thirty days after the agreement is signed, unless:
 - (i) another time is agreed between the parties, in which case the agreement will provide for this timeframe; or
 - (ii) the expert must comply with a timeframe as set by the ADC, in which case the agreement will provide for this timeframe;
- (d) the expert must provide written reasons for the determination;
- (e) the expert's decision will be binding on the parties and final; and
- (f) the liability of the expert to either party (including liability for negligence) will be excluded to the full extent permitted by law.

This allocation applies for all purposes under this **Policy** including Extension 7.2 'Advancement of Costs'.

Any allocation of Loss will not apply to or create a presumption with respect to the allocation of other Loss on account of such **Claim**.

Cost of the expert determination

The **Insurer** will pay for the cost of the expert determination above, including the **Insured's** share of the costs.

The ADC may require each party to bear the cost of the expert determination in equal proportions and require each party to individually pay their share of any cost required directly (including any fee, deposit or other amount charged). Where this is required, the **Insured** must pay the costs accordingly and the **Insurer** will separately reimburse the **Insured** for the cost of the expert determination.

10.6 Recovery rights

10.6.1 Preservation of rights of recovery

The **Insured** must not, without the **Insurer's** prior consent, enter into:

- (a) any agreement whereby the **Insured** releases, agrees not to sue on, waives or prejudices, any rights to recover from a person or organisation who is or could have been liable to compensate the **Insured** for any loss, damage or legal liability;
- (b) any deed or agreement excluding, limiting or delaying the legal rights of recovery against another party; or
- (c) any arrangement or compromise or do any act whereby any rights or remedies to which the **Insurer** would be subrogated in respect to such loss, damage or legal liability are or may be prejudiced.

Where the **Insured** does not comply with the above, the **Insurer** may not cover the **Insured** under this **Policy** for any such loss, damage or legal liability.

10.6.2 Rights of recovery

In the event of any payment under this **Policy**, the **Insurer** will be subrogated to all the **Insured's** rights of recovery against any person or organisation.

The **Insurer** has the right and full discretion but is not obligated to take over and conduct in the name of the **Insured** any recovery action (including in relation to insured, uninsured and underinsured losses). The **Insurer** may engage legal or other representatives to assist in the conduct of any recovery action.

The **Insurer** shall not exercise its rights of subrogation against an **Insured** in connection with a **Claim**, unless it can establish that exclusion 9.2.6 'Dishonest, Fraudulent or Criminal Acts' applies to that **Claim** and to that **Insured**.

10.7 Application of recoveries

All recoveries obtained from other parties will be allocated, after the settlement of any **Claim** under this **Policy**, as follows:

- (a) firstly, to the benefit of the **Insured** to reduce or extinguish the amount of compensation, claimants costs and expenses or **Defence Costs** to the extent that such amounts would have been paid under this **Policy** but for the fact that such amounts exceed the sum of:
 - (i) the **Limit of Indemnity**, or the amount of any specified limit applicable to a specific clause where applicable;
 - (ii) if the 'Basis of Limit' is specified as 'Costs in Addition', **Defence Costs** payable in addition to the **Limit of Indemnity**;
 - (iii) the **Excess** where applicable;
- (b) secondly, to the benefit of the **Insurer** for all sums paid in settlement, defence or investigation of any **Claim** under this **Policy**; and
- (c) thirdly, to the benefit of the **Insured** for the **Excess** under this **Policy**.

All recoveries will be applied as above only after deduction of the reasonable cost of obtaining such recovery. All recoveries made prior to settlement of any **Claim** under this **Policy** will be held for the benefit of the **Insurer** and applied as stated above after settlement if any is made.

Recoveries do not include any amount recovered from insurance, surety, reinsurance, security or indemnity taken for the benefit of the **Insurer**.

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 direction, statement, act or omission of the **Principal Policyholder** for all purposes under this **Policy**, subject to Claims Condition 10.3 'Claims Conduct' and General Condition 11.11 'Severability and Non-Imputation'.

11.3 Cancellation

The **Principal Policyholder** may cancel this **Policy** at any time in writing to the **Insurer** and specify the date from which it would like to cancel the **Policy**. The date cannot be earlier than the date the **Insurer** receives the request.

The **Insurer** may cancel this **Policy** where the law allows the **Insurer** to do so, including where:

- (a) an **Insured** has failed to comply with a provision of the **Policy**; or
- (b) the **Policyholder** has failed to comply with a provision of the **Policy** including with respect to payment of premium.

Upon cancellation, 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. The **Insurer** will refund to the **Principal Policyholder** the balance of the premium actually paid less any non-refundable government charges, unless there have been any notifications during the **Policy Period** or the **Policy** is cancelled due to fraud, in which case no refund shall be given.

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 the premium, the **Insurer** will charge the **Policyholder** an amount on account of GST, stamp duty and any other government charges and levies that apply. The premium also includes any discounts the **Insurer** has given the **Policyholder**, and these discounts are applied before the addition of any applicable government taxes and charges.

The **Insured** must tell the **Insurer** about the input tax credit (ITC) the **Insured** is entitled to for their premium and the **Insured's** claim, each time the **Insured** makes a claim. If the **Insured** does not give the **Insurer** this information or if the **Insured** tells the **Insurer** an incorrect ITC, the **Insurer** will not pay any GST liability the **Insured** incurs.

The **Insurer's** liability to the **Insured** will be calculated taking into account any ITC to which the **Insured** is entitled for any acquisition which is relevant to the claim, or to which the **Insured** would have been entitled had the **Insured** made a relevant acquisition.

In respect of the **Insured's Policy**, where the **Insured** is registered for GST purposes the **Insured** should calculate the insured amount having regard to the **Insured's** entitlement to input tax credits. The **Insured** should, therefore, consider the net amount (after all input tax credits) which is to be insured and determine an insured amount on a GST exclusive basis.

This outline of the effect of the GST on the **Insured's Policy** is for general information only. The **Insured** should not rely on this information without first seeking expert advice on the application of the GST to the **Insured's** circumstances.

'GST', 'input tax credit' and 'acquisition' 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 as soon as possible, notify the **Insurer** of any change to the **Healthcare Services** or where optional extension 8.1 'Public and Products Liability' applies, any change to the **Insured's Products** or **Business** that would change the nature of the risk covered by this **Policy**. These changes might include the following:

- (a) if the **Insured** starts (or intends to start) conducting services that differ from the **Healthcare Services**;
- (b) if the **Insured** starts (or intends to start) conducting specific activities (being activities specifically asked about on the **Proposal** or by the **Insurer**), where at the time of commencing or renewing the **Policy**, the **Insured** had advised the **Insurer** that it did not conduct those specific activities, including any express or passive confirmation of such at the time of renewing the **Policy**;
- (c) the **Insured** commences the manufacture, sale, supply or distribution of a new **Product** (where the optional extension 8.1.2 Section B - 'Products liability' applies);
- (d) if there has been a loss of or condition imposed upon any licence or authority required by the **Insured** to conduct the **Healthcare Services** or operate the **Insured's Business**;
- (e) if there has been a loss of or condition imposed upon any professional membership held by the **Insured** in connection with the **Healthcare Services** or the **Insured's Business**; or
- (f) the **Policyholder** or **Insured** becomes **Insolvent**.

If the **Policyholder** has not told the **Insurer** about any of the above matters having occurred during any other period of insurance the **Policyholder** held this **Policy** with the **Insurer**, the **Policyholder** must notify the **Insurer** as soon as possible.

What will happen once the Policyholder contacts the Insurer

Following notification of the matters above, the **Insurer** will advise the **Policyholder** as to whether it is willing to provide additional cover or continue offering cover, and if so, on what terms (for example, any endorsements, additional excess or special condition that may need to be applied) and for what additional premium (if any). This will be based on the **Insurer's** risk appetite and underwriting guidelines.

If the change in risk means that the risk is no longer acceptable under the **Insurer's** risk appetite or underwriting guidelines, the **Insurer** may cancel the **Policy**.

Any offer by the **Insurer** to cover the changes in risk as notified to the **Insurer** are not effective until the **Insurer** receives the **Policyholder's** written acceptance of the **Insurer's** offer. Until that time, the changes notified are not covered.

The **Policyholder** is entitled to cancel the **Policy** at any time, including where the **Insurer** does not offer to cover the changes notified or the **Policyholder** does not accept the **Insurer's** offer to cover the changes.

If a **Claim** arises from the change in risk notified which are not yet covered or the **Insurer** does not agree to provide cover, the **Insurer** may reduce or refuse to pay such **Claim** to the extent it arises from change in risk.

If the **Policyholder** does not contact the **Insurer** as required, it may lead to the **Insurer** reducing or refusing a **Claim** and/or canceling this **Policy**.

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 as soon as possible 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. This is to enable the **Insurer** to exercise its right to seek contribution from the insurer of that other insurance.

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** where the law allows it to do so.

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 possible 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; and
- (b) **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 7.1 'Abuse Defence Costs and Inquiry Costs' only, prosecution of the **Insured**; and
- (c) for the purpose of cover under extension 7.19 '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 costs and expenses incurred by the **Insurer**, or by the **Insured**, 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:

- (a) **Inquiry Costs** in which case it means the amount shown in the **Schedule** as the 'Inquiry Costs Excess'; or
- (b) **Public Relations Expenses** in which case it means \$1,000.

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, statutory regulatory body, tribunal or legally constituted industry or professional board but excluding any Royal Commission, any parliament or any committee of a parliament.

Inquiry Costs means the legal costs and expenses (not being **Defence Costs**) incurred by the **Insured**:

- (a) 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**;
- (b) in responding to any notice from a Royal Commission; or
- (c) arising out of any notice from a Royal Commission requiring the **Insured's** attendance at an investigation, inquiry or hearing held before that Royal Commission.

Inquiry Notice means any notice that may result in the **Insured** incurring **Inquiry 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) in respect to the **Policyholder**, an event having the same or similar effect to (a) to (e) above, occurring under the law of any jurisdiction outside of the Commonwealth of Australia.

Insured means:

- (a) the **Policyholder**;
- (b) any past and/or present **Employee** of the **Policyholder**, but:
 - (i) only in his or her capacity as such; and
 - (ii) not in respect of his or her conduct as a **Medical Practitioner**,
- (c) any past and/or present **Principal** of the **Policyholder**, but:
 - (i) only in his or her capacity as such; and
 - (ii) not in respect of his or her conduct as a **Medical Practitioner**; and
- (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.

For the purposes of clarity, no person is an **Insured** in respect of their conduct as a **Medical Practitioner**.

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 person registered or licensed as a medical practitioner under a Commonwealth, State or Territory law that provides for the registration or licensing of medical practitioners.

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 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**.

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.

