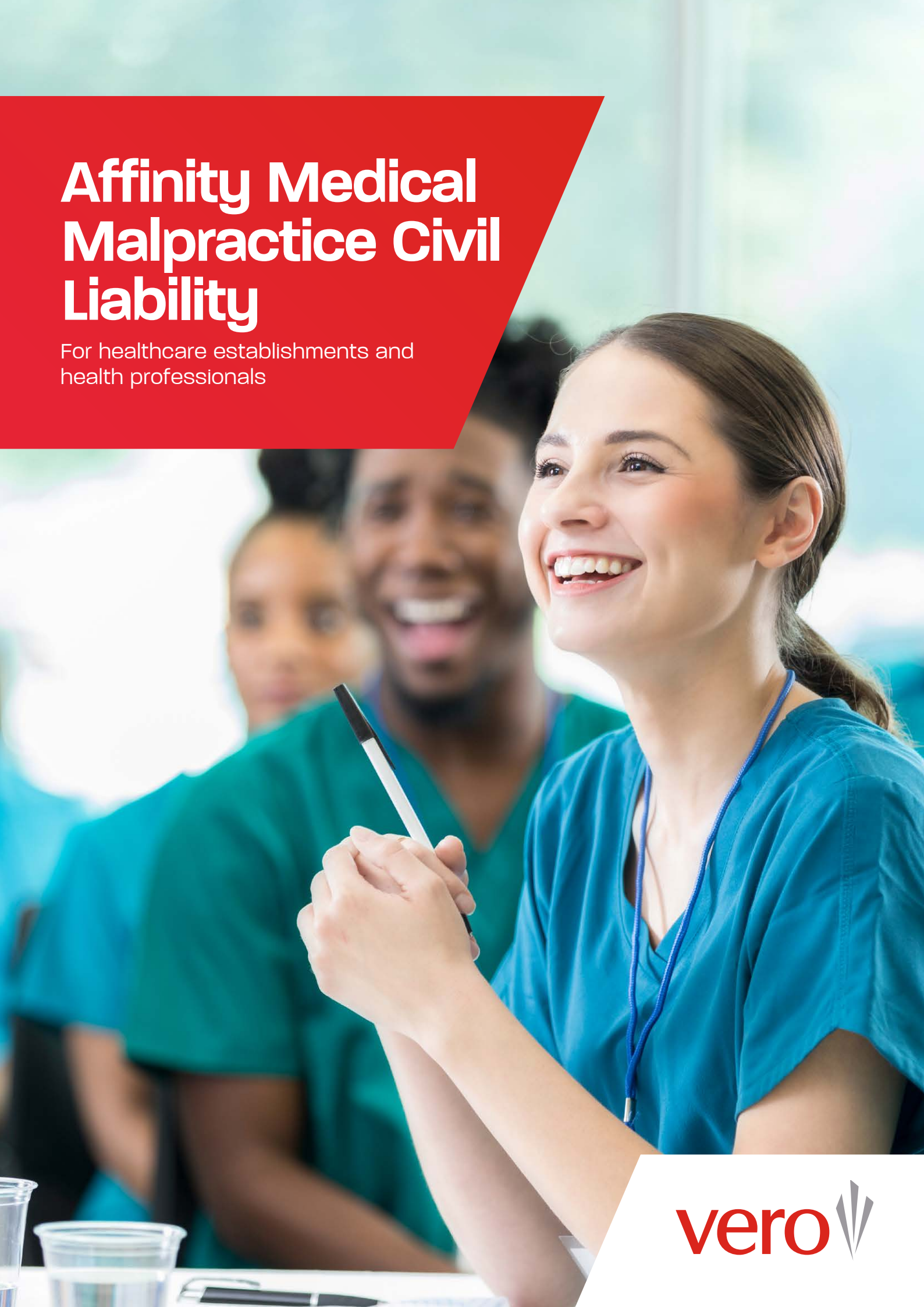
Affinity Medical Malpractice Civil Liability

For healthcare establishments and health professionals



vero

Affinity 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 Defamation 6
6.4 Intellectual property 7
6.5 Liability of the insured for acts, errors or omissions of contractors and consultants 7
6.6 Liquidated damages 7
6.7 Privacy and confidentiality 7
7. Extensions 7
7.1 Abuse defence cost and inquiry costs 7
7.2 Advancement of costs 8
7.3 Compensation for court attendance 8
7.4 Continuous cover 8
7.5 Dishonesty of employees and principals / Medicare benefits fraud 9
7.6 Emergency defence costs and inquiry costs 9
7.7 Excess reduction 9
7.8 Extended reporting period 9
7.9 Good samaritan acts 10
7.10 Inquiry costs 10
7.11 Joint venture liability 10
7.12 Legal consultation 11
7.13 Lost documents 11
7.14 Newly acquired subsidiary 12
7.15 Public relations expenses 12
7.16 Run off cover 12
7.17 Sixty day reporting period 12
7.18 Spousal liability 13
7.19 Statutory liability 13
7.20 Students, volunteers, committee members and council members 13
7.21 Vicarious liability for medical practitioners and locum tenens 13

8. Optional extension 14
8.1 Public & products liability (claims made basis) 14
9. Exclusions 21
9.1 Section 1 21
9.1.1 Prior claims or known circumstances 21
9.1.2 Retroactive date 21
9.1.3 Professional fees 21
9.2 Section 2 21
9.2.1 Abuse 21
9.2.2 Asbestos 22
9.2.3 Assumption of liability 22
9.2.4 Childbirth 22
9.2.5 Directors and officers liability 22
9.2.6 Dishonest, fraudulent or criminal acts 22
9.2.7 Employer's liability 22
9.2.8 Fines, penalties, punitive or aggravated damages 22
9.2.9 Goods sold, stored, supplied or distributed 22
9.2.10 Intoxicants and drugs 22
9.2.11 Medical practitioners 23
9.2.12 Mental or psychological injury arising from a privacy or data breach 23
9.2.13 Radioactivity 23
9.2.14 Related parties 23
9.2.15 Subrogation waiver 23
9.2.16 Terrorism 24
9.2.17 Trade debts 24
9.3 Section 3 24
9.3.1 Sanctions exclusion 24
10. Claims conditions 24
10.1 Claims notifications 24
10.2 Claims co–operation 24
10.3 Claims conduct 25
10.4 Claims settlement 25
10.5 Allocation of loss 25
10.6 Recovery rights 27
10.7 Application of recoveries 27
11. General conditions 27
11.1 Assignment 27
11.2 Authorisation 27
11.3 Cancellation 27
11.4 Endorsements 28
11.5 Goods and services tax 28
11.6 Governing law 28
11.7 Interpretation 28
11.8 Material change 28
11.9 Other insurance 29
11.10 Payment of Premium 29

11.11 Severability and non-imputation 29
11.12 Territorial and jurisdictional limits of cover 29
11.13 Variation of the policy 29
11.14 Words with special meaning 30
12. Definitions 30

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.

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) that 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 (Cth), 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 (Cth): 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.

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 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.

Overseas or worldwide activities

If this policy provides cover for the conduct of activities outside of Australia or claims brought in legal jurisdictions outside of Australia, it is possible other countries' laws or regulations may nevertheless prevent this policy from responding to provide that cover. If you conduct activities overseas you may wish to seek specific advice in relation to the relevant countries' insurance requirements from your insurance broker or a legal professional.

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 (Cth), Personal Property Securities Act 2009 (Cth), Corporations Act 2001 (Cth), Autonomous Sanctions Act 2011 (Cth), Income Tax Assessment Act 1997 (Cth), Income Tax Assessment Act 1936 (Cth), Taxation Administration Act 1953 (Cth), A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the Australian Securities and Investments Commission Act 2001 (Cth), 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);
- former Group companies while within the Group's technology infrastructure;
- 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 the General Insurance Code of Practice (the Code). 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

The Code Governance Committee is an independent body which monitors and enforces the Code and has powers to impose sanctions on Code subscribers for non-compliance.

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: claims@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** 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** 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

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

(a) subject to (3.1)(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) the liability of the **Insurer** for **Defence Costs** in respect of any one **Claim** will not exceed an amount equal to the **Limit of Indemnity**.

3.2. If the 'Basis of Limit' in the **Schedule** is specified as 'Costs within Limit':

(a) subject to (3.2)(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 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 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
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** 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**,

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

The **Excess** is deducted from compensation, **Claimant's Costs** 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**, **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 extensions 7.1 'Abuse defence costs and inquiry costs' and 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**.

For the purpose of extension 7.15 'Public relations expenses', all **Public Relations Expenses** 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 **Adverse Publicity Event** and shall attract one **Excess**.

6. Insurance clarification

For the purpose of clarifying the scope of cover under clause 1. 'Insuring clause' of this **Policy**, civil liability include, but is not limited to:

6.1 Consumer Protection Legislation

Claims arising from or in respect of 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

Claims arising from or in respect of breach of contractual liability, notwithstanding exclusion 9.2.3 'Assumption of 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 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 **Insured** did not make the defamatory material or statement with ill intent or for an improper purpose.

6.4 Intellectual property

Claims arising from or in respect of the 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**.

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

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

The indemnity under clause 1. 'Insuring clause' of this **Policy** does not extend to civil liability of the **Insured** for compensation and **Claimant's Costs** arising in respect of any act, error or omission of a **Medical Practitioner** in respect of their conduct as a **Medical Practitioner**. This means that indemnity under clause 1. 'Insuring clause' of this **Policy** will not extend to the **Insured** for civil liability arising in respect of the **Healthcare Services** provided by a **Medical Practitioner** or to the **Medical Practitioner** who committed the act, error or omission.

In the event of any conflict between this insurance clarification and extension 7.21 'Vicarious liability for medical practitioners and locum tenens' or any **Endorsement** providing cover in respect of civil liability arising in respect of the **Healthcare Services** provided by a **Medical Practitioner**, that extension and those **Endorsements** will prevail.

6.6 Liquidated damages

Claims arising from or in respect of liability for liquidated damages, notwithstanding exclusion 9.2.3 'Assumption of liability', provided that the **Insurer** will not be liable for any 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.

6.7 Privacy and confidentiality

Claims arising from or in respect of the 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 (ACT) or similar privacy legislation in Australia or New Zealand including any amendment, consolidation, re-enactment, replacement or successor of such legislation.

7. Extensions

Where these 'Extensions' are noted as 'Included' in the **Schedule**, only then is the **Policy** extended to the following covers. All such '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 alleged abuse; 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:

(i) 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

(ii) 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**:

(iii) the **Inquiry Notice** is first received by the **Insured** and notified to the **Insurer** during the **Policy Period**;

(iv) such **Inquiry Notice** arises directly from conduct allegedly committed by the **Insured** in the course of conducting the **Healthcare Services**; and

(v) 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**).

For the purpose of (b) above, "competently" means with the degree of skill, care and diligence which would reasonably be expected of a reasonable person in the circumstances.

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 in respect of a **Claim** under the terms and conditions of this **Policy**, then all amounts paid to the **Policyholder** under this clause in respect of that **Claim** 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** or **Inquiry Notice**, 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** or **Inquiry Notice** 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** or **Inquiry Notice** 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 (the relevant professional indemnity policy which the **Insured** was insured under at this time is referred to as "the previous policy" in this extension); and

(c) the **Insurer** will not be liable to indemnify the **Insured** to the extent that the **Insurer** would not have been liable to indemnify the **Insured** under the terms and conditions of the previous policy, had such facts or circumstances been notified to the **Insurer** while the previous policy was in force. For the avoidance of doubt, the terms and conditions of this **Policy** also apply, such that the **Insurer** will not be liable to indemnify the **Insured** under this extension where cover is otherwise excluded under this **Policy**;

(d) the **Insurer's** limit of indemnity in respect of any **Claim** or **Inquiry Notice** resulting from such facts or circumstances is the lesser of:

   (i) the **Insurer's** limit of indemnity under the terms of the previous policy;

   (ii) if the aggregate limit of indemnity of the previous policy has been eroded by the payment of claims or other amounts under the previous policy such that the available aggregate limit of indemnity of the previous policy is less than the amount noted under (i) above, the available aggregate limit of indemnity;

   (iii) the **Limit of Indemnity** under this **Policy**; or

   (iv) any relevant sub-limit under this **Policy**.

   The terms of this **Policy** otherwise apply, including the requirement to pay the **Excess**;

(e) if any **Claim** or **Inquiry Notice** resulting from such facts or circumstances would have been subject to a sub-limit of cover under the previous policy, then the **Insurer's** liability for such **Claim** or **Inquiry Notice** shall be limited to the lesser of:

(i) such sub-limit under the terms of the previous policy;

(ii) if such sub-limit noted under (i) above has been eroded by the payment of claims or other amounts under the previous policy, the remaining amount of such sub-limit; or

(iii) any applicable sub-limit of cover under this **Policy**.

(f) 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** or **Inquiry Notice** prior to the **Policy Period**. For the purpose of this extension, prejudice will include any lost opportunity to resolve the **Claim** or **Inquiry Notice** and increased costs incurred in defending a **Claim** or **Inquiry Notice** due to the delay in notification.

For the purpose of (d)(ii) above, "aggregate limit of indemnity" means the maximum aggregate limit of indemnity, the limit of indemnity plus any reinstatement of such limit, or equivalent provisions under the previous policy.

As an example of the operation of paragraph (d), if the aggregate limit of indemnity of the previous policy has been completely eroded by the payment of claims or other amounts under the previous policy, such that there is no available aggregate limit of indemnity, then no cover will be available under this **Policy**.

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** 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 by any of the **Policyholder's** or **Subsidiaries' Employees** or **Principals**, including but not limited to **Medicare Benefits Fraud**, occurring or committed in connection with the **Healthcare Services**.

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

Provided that nothing in this extension shall require the **Insurer** to indemnify any of the **Policyholder's** or **Subsidiaries' Employees** or **Principals** who have 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 reasonable **Inquiry Costs** without the **Insurer's** prior consent until such time as the **Insured** contacts or could reasonably have contacted the **Insurer**.

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 Excess reduction

Notwithstanding clause 4. 'Excess', if the **Excess** is specified as 'Costs Inclusive' in the **Schedule**, and a **Claim** is settled or disposed of without incurring any **Defence Costs**, then the **Excess** for that **Claim** shall be reduced by $10,000 with no minimum **Excess** amount.

7.8 Extended reporting period

7.8.1 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 of three hundred and sixty five days at an additional premium of 100% of the **Full Annual Premium**.

In the event that the **Policyholder** obtains insurance that covers substantially the same risk exposure as this **Policy**, then any purchased extended reporting period will cease on the date that such insurance incepts.

In the event that the **Policyholder** cancels the **Policy**, then any purchased extended reporting period will cease on the effective date of such cancellation.

Where the extended reporting period ceases as set out above and the **Policyholder** has paid an additional premium, the **Insurer** will retain the pro rata portion of additional premium for the portion of the extended reporting period that has elapsed prior to the cessation of the extended reporting period. The **Insurer** will refund to the **Policyholder** the balance of the premium actually paid (including applicable and refundable stamp duty,

GST and other government charges or levies) less any non-refundable government charges, unless there have been any notifications during the extended reporting period or the **Policy** is separately cancelled due to fraud.

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.

7.8.2 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**.

7.9 Good samaritan acts

The **Insurer** will indemnify the **Insured** against civil liability for compensation and **Claimant's Costs** 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**; and

(c) regular or overtime wages, salaries or fees of the **Insured** are excluded from this indemnity.

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**.

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.

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** 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 a maximum of two hours legal advice for the **Policy Period** from the legal firm specified in the **Schedule** on matters 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 is no cost payable by the **Policyholder** or the **Insured** 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) 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;

(c) the **Insurer** will not be liable for loss or damage caused by or arising directly or indirectly from, in connection with or in respect of any **Cyber Act**;

(d) the **Insurer** will not be liable in respect of loss or damage caused by riot or civil commotion; and

(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.

Where the **Documents** are in electronic format, the **Policyholder** must:

A. ensure the following information technology ("IT") security measures are in place or undertake reasonable enquiries to verify whether a third party to whom the **Policyholder** has entrusted the **Documents**, has the following IT security measures in place:

  1. procedures to back up such **Documents** at least once a week;

  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

B. do everything that a reasonable person in the **Policyholder's** position would do to ensure that the abilities listed in sub-clause A.1. and A.2. above are enabled and fully utilised on an ongoing basis by either the **Policyholder** or the third party.

If the **Policyholder** fails to comply with paragraphs A. and B. of this extension, the **Insurer** may be able to:

  (i) refuse to pay a claim by reason of that failure, but only to the extent that such failure caused or contributed to the loss which gives rise to the claim; or

  (ii) reduce its liability by an amount that fairly represents the extent to which the **Insurer** has been prejudiced by that failure.

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 acquired subsidiary

If the **Policyholder** acquires a **New Subsidiary**:

(a) that has total annual revenue (by reference to the **New Subsidiary's** most recent financial statements as at the time of acquisition) of no greater than 25% of the total annual revenue of the **Policyholder** as disclosed in the **Proposal**, the definition of **Insured** will be extended to 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 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 **New Subsidiary** was acquired; or

(b) that has total annual revenue (by reference to the **New Subsidiary's** most recent financial statements as at the time of acquisition) of greater than 25% of the total annual revenue of the **Policyholder** as disclosed in the **Proposal**, the definition of **Insured** 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 and ending sixty (60) days thereafter or at the 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 **New Subsidiary** was acquired.

In relation to (b) above, where the **Policyholder** wishes to have cover for the **New Subsidiary** beyond the Subsidiary Cover Period, the **Policyholder** must 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 **Policyholder** provides the **Insurer** with written acceptance of the **Insurer's** offer.

This extension does extend cover:

(i) to any **New Subsidiary** that is domiciled or incorporated in the United States of America or its territories or protectorates; or

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

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**:

(a) for 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 could reasonably 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 could reasonably 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 imposed upon the **Insured** in a proceeding, prosecution, investigation, inquiry, hearing or other action 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).

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 (c) 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 9.2.11 'Medical practitioners', the **Insurer** will indemnify the **Policyholder** against civil liability for compensation and **Claimant's Costs** 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**.

The indemnity provided under this extension will not extend to provide cover to the **Medical Practitioner** themselves.

8. Optional extension

8.1 Public & products liability (claims made basis)

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

The cover provided by this extension is on a 'claims made and notified' basis. See the 'Claims made and notified basis of coverage and retroactive date' notice in the notices section of the policy wording for further information.

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** and the **Maximum Aggregate Limit of Indemnity**.

8.1.1 Definitions

This extension adopts the definitions in section 12 'Definitions' of the policy wording (Policy Definitions), to the extent they are not otherwise varied by the definitions in this section 8.1.1 (Extension Definitions). The Extension Definitions apply to this extension only and do not amend or otherwise vary the Policy Definitions unless expressly stated.

The definition of **Insured** is extended to include:

(a) any past and/or present **Principal Party**, in respect of the liability of such **Principal Party** arising out of:

  (i) the performance by or on behalf of the **Policyholder** or its **Subsidiaries** of any contract or agreement for the performance of work for such **Principal Party**, but only to the extent required by such contract or agreement and in any event only for such coverage as is provided by this extension and subject to the 'Public and Products Liability Limit' specified in the **Schedule**;

  (ii) any **Products** sold or supplied by the **Policyholder** or its **Subsidiaries**, but only in respect of the **Policyholder's** or its **Subsidiaries'** own acts or omissions in connection with such **Products** and in any event only for such coverage and subject to the 'Public and Products Liability Limit' specified in the **Schedule**;

(b) every officer, member, **Employee** or voluntary helper of the **Policyholder's** or its **Subsidiaries'** canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charity or welfare work and/or child care facilities, while acting in their respective capacities as such, other than a **Medical Practitioner** acting in their capacity as such; and

(c) any director, partner, proprietor, officer or executive of the **Policyholder** or its **Subsidiaries** in respect of private work undertaken by the **Policyholder's** or its **Subsidiaries' Employees** for such person, and any **Employee** whilst actually undertaking such work.

Advertising Injury means any unintentional:

(a) defamation;

(b) piracy, unfair competition, idea misappropriation or invasion of rights of privacy;

(c) infringement of copyright or passing off of title or slogan; or

(d) breach of the misleading or deceptive conduct provisions of any consumer protection legislation or similar legislation of any country, state or territory,

committed or alleged to have been committed during the **Policy Period** in any advertisement, publicity article, broadcast, telecast or via an internet website or social media, and caused by or arising out of the **Insured's** advertising activities.

Aircraft means any craft or machine designed to travel through air or space, other than unmanned inflatable balloons used for advertising or promotional purposes or model aircraft.

Business means the **Healthcare Services** described in the **Schedule** and shall also include the following when undertaken in connection with the **Healthcare Services**:

(a) the ownership of premises and/or the tenancy thereof by the **Insured**;

(b) participation in any exhibition or conference by or on behalf of the **Insured**;

(c) the provision of sponsorships by or on behalf of the **Insured**;

(d) private work undertaken by the **Insured's Employees** for any of the **Insured's** directors, partners, proprietors, officers or executives; and

(e) the provision and/or management of any canteen, social and/or sporting clubs or educational, welfare and/or child care facilities by or on behalf of the **Insured**, which are primarily for the benefit of the **Insured's Employees**.

Business also means the **Policyholder's** internal first aid, medical, ambulance or fire fighting services that are not provided to third parties as part of the **Healthcare Services**.

Damage to Property means:

(a) physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom; and/or

(b) loss of use of tangible property which has not been physically damaged, destroyed or lost, provided that such loss of use is caused by or arises out of physical damage of other tangible property.

Drone means registered remotely piloted aircraft (other than fireworks, rockets, balloons or kites) used in connection with the **Business**.

Hovercraft means any vessel, craft or machine made or intended to transport persons or property over land or water supported on a cushion of air, other than an **Aircraft**, **Land Vehicle** or **Watercraft**.

Incidental Contract means:

(a) any written rental, lease or hiring agreement of real or personal property, other than with respect to any term or condition contained in such rental, lease or hiring agreement that requires the **Insured** to insure such property;

(b) any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;

(c) any written contract with any railway authority for the loading, unloading and/or transport of **Products**, including contracts relating to the operation of railway sidings; and

(d) any contract specified as an 'Incidental Contract' in the **Schedule**.

Land Vehicle means any type of machine on wheels or on 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.

Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury**, **Damage to Property** or **Advertising Injury** that is neither expected nor intended from the standpoint of the **Insured**.

With respect to **Personal Injury** or **Damage to Property**, 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**.

Personal Injury means

(a) bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish or mental injury, including loss of consortium resulting therefrom;

(b) the effects of false arrest, false imprisonment, wrongful detention, wrongful entry or wrongful eviction, invasion of the right to private occupation, malicious prosecution or humiliation;

(c) the effects of defamation;

(d) the effects of assault and battery not committed by or at the direction of the **Insured**, unless committed for the purpose of preventing or eliminating danger to persons or property; and

(e) the effects of 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.

Principal Party means a principal party with whom the **Policyholder** has entered into a contract to provide the **Healthcare Services** for such principal party.

Products means anything (after it has ceased to be in the possession or control of the **Insured**) manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, resupplied, distributed, imported or exported, by or on behalf of the **Insured**, including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products and anything which by law the **Insured** is deemed to have manufactured in the course of the **Business** including discontinued products.

Territorial Limits means anywhere within Australia including its external territories.

Watercraft means any vessel, craft or machine made or intended to float on or in or travel on or through water other than model boats.

8.1.2 Public liability insuring clause

The **Insurer** will indemnify the **Insured** against legal liability to pay compensation and **Claimant's Costs** 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**; 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' specified in the **Schedule**.

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

Section 4 'Excess' of the **Policy** shall not apply to this extension.

8.1.3 Products liability insuring clause

The **Insurer** will indemnify the **Insured** against legal liability to pay compensation and **Claimant's Costs** 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**; or

(c) **Advertising Injury**,

happening within the **Territorial Limits** as a result of an **Occurrence** and caused by or arising from the **Insured's Products**, less the amount of the 'Products Liability Excess' specified in the **Schedule**.

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

Section 4 'Excess' of the **Policy** shall not apply to this extension.

Exclusion 9.2.9 'Goods sold, stored, supplied or distributed' of the **Policy** shall not apply to this section 8.1.3 'Products liability insuring clause'.

8.1.4 Additional benefits

1. Care, custody and control expenses extension to section 8.1.2 'Public liability insuring clause'

Notwithstanding exclusion (e) 'Property in the insured's care, custody or control' of section 1 'Public liability exclusions' under section 8.1.5 'Exclusions' , the cover under section 8.1.2 'Public liability insuring clause, is extended to include the **Insured's** legal liability to pay compensation and **Claimant's Costs** arising from damage to:

(a) clothing and personal effects of **Principals**, **Employees** or visitors at the **Insured's** premises;

(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**; or

(e) tangible property not owned by the **Insured** (and not being property referred to in paragraph (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**, subject to the **Insurer's** maximum liability for such property damage under this paragraph (e) being $250,000 for each and every **Occurrence**.

2. Pollution expense extension to section 8.1.2 'Public liability insuring clause' and section 8.1.3 'Products liability insuring clause'

Notwithstanding exclusion (l) 'Pollution' of section 3 'Public liability and products liability exclusions' under section 8.1.5 'Exclusions' , the cover under section 8.1.2 'Public liability insuring clause' and section 8.1.3 'Products liability insuring clause' is extended to include the **Insured's** legal liability to pay compensation and **Claimant's Costs** in respect of any **Claim** arising from:

(a) **Personal Injury** or **Damage to Property** caused by or arising directly or indirectly from, in connection with or in respect of the actual, alleged or threatened discharge, dispersal, release, seepage, migration 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); and

(b) any costs or expenses incurred in preventing, removing, nullifying or cleaning-up any discharge, dispersal, release, seepage, migration or escape as described in paragraph (a) above,

provided that the discharge, dispersal, release, seepage, migration or escape arises from an event which:

(i) is sudden, identifiable, unintended and unexpected from the standpoint of the **Insured**;

(ii) takes place in its entirety at specific time and place; and

(iii) occurs outside of the United States of America, its territories or protectorates.

The total aggregate liability of the **Insurer** in respect of all **Claims** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** arising from such **Personal Injury** or **Damage to Property** and for such costs or expenses under this extension, shall not exceed the 'Pollution Sub-limit' specified in the **Schedule**.

8.1.5 Exclusions

In addition to the exclusions set out in section 9 'Exclusions' in the **Policy** and any **Endorsements** to the **Policy**, the following exclusions shall also apply to this extension:

1. Public liability exclusions

The **Insurer** shall not be liable under section 8.1.2 'Public liability insuring clause' and any additional benefits under section 8.1.4 'Additional Benefits' that apply to section 8.1.2 'Public liability insuring clause' for:

(a) Aircraft, watercraft and hovercraft

Personal Injury or **Damage to Property** caused by or arising directly or indirectly, in connection with or in respect of the operation, ownership, possession or use by or on behalf of the **Insured** of any **Aircraft**, **Hovercraft** or **Watercraft** (other than a **Watercraft** not exceeding 15 metres in length, whilst such **Watercraft** is on, in or under water).

(b) Defective work

the cost of performing, completing, correcting or improving any work done or undertaken by any of the **Insured**.

(c) Land vehicles

Personal Injury or **Damage to Property** caused by or arising from the use of a **Land Vehicle** owned by, or in the physical or legal control of the **Insured** which is registered, required by law to be registered, or in respect of which insurance is required by virtue of any legislation which applies to its use (whether or not such insurance is effected).

This exclusion (c) 'Land vehicles' shall not apply to:

(i) liability 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;

(ii) **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 or thoroughfare, and where applicable legislation does not require insurance against such liability. For the avoidance of doubt, a stopping area, such as a loading zone, and pedestrian thoroughfares are taken to be beyond the limits of a carriageway;

(iii) **Personal Injury** or **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 applicable legislation does not require insurance against such liability; or

(iv) **Personal Injury** where the insurance required by virtue of any legislation does not provide indemnity, and the lack of indemnity is not due to a breach of legislation relating to **Land Vehicles**.

(d) Products liability

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**.

(e) Property in the insured's care, custody or control

Damage to Property:

(a) happening to property belonging to any of the **Insured**; or

(b) happening to property in the **Insured's** physical or legal care, custody or control, other than provided for under section 8.1.4 'Additional benefits', clause 1 'Care, custody and control expense extension to Section 8.1.2. 'Public liability insuring clause'.

(c) Property worked on by the insured

Personal Injury or **Damage to Property** arising directly or indirectly from, in connection with or in respect of physical damage to, destruction of or loss of that part of any property upon which the **Insured** is or has been working.

2. Products liability exclusions

The **Insurer** shall not be liable under section 8.1.3 'Products liability insuring clause' and any additional benefits under section 8.1.4 'Additional Benefits' that apply to Section 8.1.3 'Products liability insuring clause' for:

(a) Aircraft products

Personal Injury or **Damage to Property** caused by or arising out of any **Product** that is an **Aircraft** or is incorporated in an **Aircraft** with the **Insured's** knowledge and which affects the flying capabilities of an **Aircraft**.

(b) Product recall or replacement

the cost of recalling, withdrawing, replacing or repairing **Products** or of making any refund on the price paid for **Products**, provided that this exclusion (b) does not apply to liability for physical damage to or destruction of **Products** caused by other **Products** if they were physically independent at the time of such physical damage or destruction.

(c) Public liability

any **Claim** indemnifiable under section 8.1.2 'Public liability insuring clause' of this extension.

(d) USA

Personal Injury, **Damage to Property** or **Advertising Injury**:

(i) happening in the United States of America, its territories or protectorates; or

(ii) caused by **Products** exported by any of the **Insured** to the United States of America, its territories or protectorates.

3. Public liability and products liability insuring clauses exclusions

The **Insurer** shall not be liable under section 8.1.2 'Public liability insuring clause', section 8.1.3 'Products liability insuring clause' or section 8.1.4 'Additional benefits' for:

(a) Advertising injury

Advertising Injury arising directly or indirectly from, in connection with or in respect of:

(i) failure of performance of contract, however this exclusion shall not apply to unauthorised appropriation of ideas based upon breach of an implied contract;

(ii) infringement of trade mark, service mark or trade name, however this exclusion shall not apply to titles or slogans;

(iii) incorrect description of any good or **Product**; or

(iv) mistake in advertised price.

(b) Asbestos

Personal Injury or **Damage to Property** arising directly or indirectly from, in connection with or in respect of asbestos, asbestos fibres or derivatives of asbestos. In the event of any conflict between this exclusion and exclusion 9.2.2 'Asbestos' in the **Policy**, this exclusion shall prevail.

(c) Cyber, privacy breach and confidential or personal information breach

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:

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

(B) 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.

(d) Defamation

Personal Injury or **Damage to Property** arising out of the publication or utterance of any defamatory matter or material:

(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.

(e) Drones

any liability directly or indirectly from, in connection with or in respect of the operation, ownership, possession or use of **Drones**.

(f) Employer's liability

(i) any liability in respect of which the **Insured** is or would be entitled to indemnity under any fund, scheme, policy of insurance or self insurance pursuant to or required by any legislation relating to workers' compensation whether or not such insurance has been effected;

(ii) imposed by the provisions of any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination;

(iii) any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of the **Insured's Employees**.

(g) Liability under agreement

liability assumed under a contract or agreement that requires the **Insured** to:

(i) effect insurance over property; or

(ii) accept liability regardless of fault. However, this exclusion (g)(ii) does not apply where:

(A) that liability would otherwise exist at law in the absence of the contract or agreement; or

(B) the contract is an **Incidental Contract** and liability does not arise due to an obligation to insure rented, leased or hired property or an obligation to indemnify a landlord irrespective of fault.

(h) Loss of use

Claims in respect of the loss of use of tangible property which has not been physically damaged or destroyed resulting from:

(i) a delay in or lack of performance by or on behalf of any of the **Insured** of any contract or agreement; or

(ii) 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 the **Insured**. However, this exclusion (h)(ii) 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**.

(i) Medical malpractice

any **Claim** indemnified under clause 1 'Insuring clause' of the **Policy**, any extension to that clause, or any **Endorsement** to the **Policy** except to the extent such **Endorsement** expands or clarifies the cover provided by this extension.

(j) Other insurance

liability for which an **Insured** is entitled to indemnity under:

(a) any other insurance policy available from or through any third party; or

(b) any insurance policy which is specified in an endorsement, and any renewal or replacement of that insurance policy,

unless the **Insured** entered into that policy in their own name.

(k) Penalties, punitive damages and intellectual property infringement

any amount by way of fines, penalties, exemplary, punitive or aggravated damages or in respect of liquidated damages, or incurred under a penalty clause, or in respect of infringement of copyright or patent.

(l) Pollution

(i) **Personal Injury** or **Damage to Property** arising directly or indirectly from, in connection with or in respect of the actual, alleged or threatened discharge, dispersal, release, seepage, migration 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);

(ii) any costs or expenses incurred in preventing, removing, nullifying or cleaning-up any discharge, dispersal, release, seepage, migration or escape as described in (i) above.

This exclusion (l) does not apply to a discharge, dispersal, release, seepage, migration or escape that is covered under section 8.1.4 'Additional benefits' clause 2 'Pollution expense extension to section 8.1.2 'Public liability insuring clause' and section 8.1.3 'Products liability insuring clause'.

(m) Professional advice or services

any liability arising directly or indirectly from, in connection with or in respect of the rendering of or failure to render any professional services or advice by any of the **Insured**. This exclusion (m) shall not apply to advice provided in connection with the sale of that **Product**, if no fee is charged for that advice.

(n) Reckless and wilful failure to take care

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

(a) the **Insured's** reckless or wilful disregard for the condition of premises and plant;

(b) the **Insured's** reckless or wilful failure to ensure that all **Employees** have appropriate training applicable to their roles;

(c) the **Insured's** reckless of wilful failure to monitor their **Employees'** compliance with relevant standards;

(d) any breach of any statute or non-compliance with statutory obligations, by-laws or regulations committed by the **Insured** with reckless or wilful intent;

(e) the **Insured's** reckless or wilful failure to prevent **Personal Injury**, **Damage to Property**, **Advertising Injury** or any other loss, damage or expense; or

(f) the **Insured's** reckless or wilful failure to prevent the manufacture, sale or supply of defective **Products**.

(o) Sexual assault, harassment or molestation in connection with the insured's childcare facilities

Personal Injury arising directly or indirectly from, in connection with or in respect of actual, threatened or perceived sexual assault, sexual harassment or molestation occurring at or in connection with childcare facilities provided or managed by or on behalf of the Insured.

(p) War

any liability directly or indirectly from, in connection with or in respect of from war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to a popular rising, military rising, military or usurped power.

8.1.6 Claims conditions

In addition to the claims conditions in section 10 of the **Policy**, the following claims conditions also apply to Section 8.1:

1. The **Insured** must, where reasonably possible, take all reasonable steps to:

(a) preserve all property, any **Product**, appliance and plant and any other thing that the **Insured** knows or suspects is connected with an **Occurrence**, loss or **Claim**, until the **Insurer** has had an opportunity to determine whether such property or things may assist in the investigation or defence of a **Claim** or in the exercise of rights of subrogation; and

(b) continue preserving any property, any **Product**, appliance and plant and any other things the **Insurer** has determined may assist in the investigation or defence of the **Claim** or in the exercise of rights of subrogation, until such property or things are no longer required for that purpose

("reasonable steps of preservation").

Provided that if the **Insured's** compliance with this clause would limit their ability to continue operating their **Business**, the **Insurer** must make their determination as soon as reasonably possible.

The reasonable steps of preservation may include:

(i) preventing or limiting access to a location where the **Occurrence** happened, except for the purposes of taking steps to prevent other **Occurrences** happening;

(ii) securing and preventing access to any **Product** connected with an **Occurrence**, except for the purposes of taking to steps to prevent other **Occurrences** happening; or

(iii) ceasing use of and limiting access to any appliance or plant that caused the **Occurrence**, except for the purpose of taking steps to prevent other **Occurrences** happening.

Any costs (including time and effort) incurred by the **Insured** to comply with the above requirements shall be borne by the **Insured**, unless otherwise covered under the **Policy**.

2. The **Insured** must provide the **Insurer** with an opportunity of inspection and obtain the **Insurer's** consent prior to effecting the alteration or repair of any thing connected with an **Occurrence**, loss or **Claim**.

Any costs (including time and effort) incurred by the **Insured's** to comply with this requirement shall be borne by the **Insured**, unless otherwise covered under the **Policy**.

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** or **Inquiry Notice** first received by 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**, **Defence Costs**, **Public Relations Expenses**, compensation for court attendance or loss of or damage to **Documents** 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**, **Defence Costs**, **Public Relations Expenses**, compensation for court attendance or loss of or damage to **Documents** 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**, **Defence Costs**, **Public Relations Expenses**, compensation for court attendance or loss of or damage to **Documents** 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**, liability, compensation, **Inquiry Costs**, **Inquiry Notice**, **Claimant's Costs**, **Defence Costs**, **Public Relations Expenses**, compensation for court attendance or loss of or damage to **Documents** 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, commissions or charges or the refund of professional fees, commissions 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**, **Defence Costs**, **Public Relations Expenses**, compensation for court attendance or loss of or damage to **Documents**:

9.2.1 Abuse

arising directly or indirectly from, in connection with 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, in connection with 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, in connection with or in respect of any 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 insurance clarification 6.2 'Contractual liability', insurance clarification 6.2 shall prevail.

9.2.4 Childbirth

arising directly or indirectly from, in connection with 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, in connection with 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, in connection with 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, in connection with 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, in connection with 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, in connection with 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, in connection with 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:

(a) a **Principal** was aware of such influence and did not prevent the person who is under the influence of intoxicants or drugs from performing such services; or

(b) no **Principal** had knowledge of such influence.

Provided that in the case of paragraph (b), this exclusion shall only apply to exclude cover for the person who is under the influence of intoxicants or drugs, but shall not exclude cover for any other person or entity.

For the purpose of this exclusion the term:

(i) "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; and

(ii) "competently" means with the degree of skill, care and diligence which would reasonably be expected of a reasonable person in the circumstances.

9.2.11 Medical practitioners

arising directly or indirectly from, in connection with 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, except as provided for in extension 7.21 'Vicarious liability for medical practitioners and locum tenens'

9.2.12 Mental or psychological injury arising from a privacy or data breach

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.

9.2.13 Radioactivity

arising directly or indirectly from, in connection with 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, in connection with 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 trustee of a trust of which an **Insured** or a **Relative** of an **Insured** is a beneficiary;

(e) 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

(f) 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**; or

(g) any company, trust or person having a direct or indirect financial, executive or controlling interest in the **Insured**, unless such interest is less than 20%.

This exclusion shall not apply to:

(i) a cross-claim or **Claim** brought by an **Insured** against another **Insured** for the purposes of contribution or indemnity where a claim is brought by a third party; or

(ii) a **Claim** brought by or on behalf of a **Policyholder's** or **Subsidiaries' Employee** directly in relation to **Healthcare Services** provided by an **Insured** to that **Employee**.

9.2.15 Subrogation waiver

arising directly or indirectly from, in connection with 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**.

9.2.16 Terrorism

arising directly or indirectly from, in connection with 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**.

9.2.17 Trade debts

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

9.3 Section 3

9.3.1 Sanctions exclusion

The **Insurer** will not provide any cover, pay any claim, make any payment (including any refund), or provide any benefit under this **Policy**, if doing so will expose the **Insurer** to, or contravene or violate any sanction, prohibition, restriction, proscription or prevention under any sanctions, laws or regulations, including but not limited to sanctions, laws or regulations of Australia, New Zealand, the European Union, the United Kingdom or the United States of America or those set out in any United Nations resolutions.

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 10 'Claims conditions', the **Insurer** may be able to:

(a) refuse a claim but only to the extent that such failure caused or contributed to the loss which gives rise to the 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 or other 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 8.1.3 'Products liability insuring clause' 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

10.3.1 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.

10.3.2 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

10.5.1 When this clause applies

This clause applies to any civil liability for compensation and **Claimant's Costs**, **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.

10.5.2 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.

10.5.3 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.**

10.5.4 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 any of the following in relation to a **Claim**:

(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, **Claimant's Costs** 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 by contacting the **Insurer** and specifying 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 (including applicable and refundable stamp duty, GST and other government charges or levies) 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**, and sub-limit 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 ITCs. The **Insured** should, therefore, consider the net amount (after all ITCs) 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 (Cth).

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

11.8.1 The policyholder's obligation to notify the insurer of certain matters

The **Policyholder** must notify the **Insurer** during the **Policy Period** as soon as reasonably possible of any of the following matters:

(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) if the **Insured** commences the manufacture, sale, supply or distribution of a new **Product** (where optional extension 8.1.3 - 'Products liability insuring clause' 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 reasonably possible.

11.8.2 What will happen once the policyholder contacts the insurer

Following notification of the matters referred to in (a) to (f) 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). Factors taken into account when considering the provision of cover include but are not limited to the nature of the matter or matters notified under paragraphs (a) to (e), 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 provide additional cover is not effective until the **Policyholder** provides written acceptance of the **Insurer's** offer. Until that time, the changes in cover notified in the offer are not covered.

The **Policyholder** is entitled to cancel the **Policy** at any time, including where the **Insure**r does not offer to cover the change in risk or the **Policyholder** does not accept the **Insurer's** offer to cover the change in risk.

If a **Claim** arises from changes in risk 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**:

(a) refusing a claim, but only to the extent that such failure caused or contributed to the loss which gives rise to the claim;

(b) reducing a claim, but only by an amount that fairly represents the extent to which the Insurer's interests are prejudiced by that failure; and/or

(c) cancelling 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 (Cth);

(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 reasonably 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**.

11.14 Words with special meaning

Some of the words in this insurance policy have special meanings. These meanings can be found in section 12 'Definitions' of the **Policy**. If a word has a special meaning, it appears in this document in bold type and with a capital letter. Capitalised words used in the **Endorsements** and in the **Schedule** without bolding have the same meaning given to them as in section 12 'Definitions' of the **Policy** unless they are defined differently in an **Endorsement**. If the words are defined differently in an **Endorsement** that definition only applies to that **Endorsement**, unless clearly specified otherwise in that **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.

Claimant's Costs means legal costs and expenses the **Insured** is liable to pay to the person making a **Claim** against the **Insured**.

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

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.

Control has the meaning given by section 50AA of the Corporations Act 2001 (Cth).

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

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 or stored or used in or by a **Computer System**.

Defence Costs means the costs and expenses incurred by the **Insurer**, or by the **Insured**, in defending, investigating or settling any **Claim** (not being **Claimant's Costs**).

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 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

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

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

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 2001 (Cth)) 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 **Subsidiary**;

(c) any past and/or present **Employee** of the **Policyholder** or **Subsidiary**, but:

  (i) only in his or her capacity as such; and

  (ii) not in respect of his or her conduct as a **Medical Practitioner**,

(d) any past and/or present **Principal** of the **Policyholder** or **Subsidiary**, 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

(e) 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 a dishonest or fraudulent demand for a refund made against Medicare, the Pharmaceutical Benefits Scheme and other government programs administered by Medicare Australia.

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**.

New Subsidiary means a subsidiary, as defined in the Corporations Act 2001 (Cth), of the **Policyholder** which is acquired by the **Policyholder** during the **Policy Period**.

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**.

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.

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, as defined in the Corporations Act 2001 (Cth), of the **Policyholder**, which:

(a) was a subsidiary at the commencement date of the **Policy Period**;

(b) is created by the **Policyholder** during the **Policy Period**; or

(c) is a former subsidiary of the **Policyholder**, only in respect of civil liability arising out of any act, error or omission in relation to the conduct of the **Healthcare Service** occurring prior to the date such subsidiary ceased to be a subsidiary of the **Policyholder**.

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

End of Policy wording.