

# Mable Combined Public & Products Liability & Professional Indemnity Insurance

Policy Wording



# Important Information

## About Canopius

The insurers of this Policy are the underwriters of Canopius Syndicate 4444 at Lloyd's ("Underwriters", "We", "Us" or "Our").

Canopius Asia Pte Ltd t/as Canopius Australia & Pacific ABN: 16 782 552 577, AFS License No. 520341 has been authorised by the Underwriters to act on their behalf to deal in and provide general advice and handle and settle Claims in relation to this insurance. Canopius Asia Pte Ltd t/as Canopius Australia & Pacific is an Australian Financial Services Licensee authorised to deal in and provide general advice on general insurance products.

Canopius Asia Pte Ltd t/as Canopius Australia & Pacific has a binding authority which means it can enter into, vary or cancel this insurance and handle and settle Claims without reference to Us provided it acts within the binding authority. When providing these services, Canopius Asia Pte Ltd t/as Canopius Australia & Pacific acts for Us and does not act on Your behalf.

## About Lloyd's

Lloyd's is the world's specialist insurance and reinsurance market. With expertise earned over centuries, Lloyd's is the foundation of the insurance industry and the future of it. Led by expert underwriters and brokers who cover more than 200 territories, the Lloyd's market develops the essential, complex and critical insurance needed to underwrite human progress. Backed by diverse global capital and excellent financial ratings, Lloyd's works with a global network to grow the insured world - building resilience for businesses and local communities and strengthening economic growth around the world.

## About the Policy

Where Underwriters agree to enter into a Policy, it is a contract between Underwriters and the Insured (see the definition of "Insured" for details of who is covered by this term). The Policy is entered into subject to the payment to Underwriters of the premium by the Insured, including

government taxes and charges, and the Policy terms and conditions (including Limits of Indemnity and the Deductibles).

We will provide insurance in accordance with the terms of this Policy. This Policy is made up of this Policy wording which sets out Our standard terms, and Schedule (which We issue to confirm the issue of the contract and which contain additional information specific to the Insured and the Policy), and any agreed endorsements. Please read them carefully to ensure that this Policy meets Your requirements. These are all important documents and should be carefully read together and kept in a safe place for future reference.

To be valid, this Policy must have attached to it a Schedule signed by an authorised officer of Canopius Asia Pte Ltd t/as Canopius Australia & Pacific.

### **Notices**

We will send all notices in relation to the Policy to:

- the Insured's nominated insurance intermediary, until Underwriters receive written notice to the contrary from the Insured named in the Schedule;
- if there is no nominated intermediary, the Insured specified in the Schedule, acting on behalf of all the Insureds

### **General Insurance Code of Conduct**

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to [www.insurancecode.org.au](http://www.insurancecode.org.au)

Canopus Asia Pte Ltd T/A Canopus Australia & Pacific and Certain Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of Code is to raise standards of practice and service in the general insurance industry.

## Privacy

Canopus Asia Pte Ltd t/as Canopus Australia & Pacific is committed to protecting the privacy of the personal information You provide Us. Canopus Asia Pte Ltd t/as Canopus Australia & Pacific collects, uses and retains Your personal information in accordance with the National Privacy Principles. For full details on how We use Your information, please refer to our Privacy Notice available on Our website [www.canopus.com/privacy](http://www.canopus.com/privacy).

We need to collect the personal information on the applicable proposal form to consider Your application for insurance and to determine the Premium (if Your application is accepted) when You are applying for, changing or renewing an insurance Policy with Us. This information will also be used if You lodge a claim under Your Policy. We may also need to request additional information from You in connection with Your application or a claim. If You do not provide Us with this information, or any additional information We request, We may not be able to process Your application or offer You insurance cover or respond to any claim.

We may disclose the personal information We collect:

- To Our relevant employees and related entities involved in delivering our services;
- If Your insurance broker collects this form from You, to that broker;
- To facilitators such as legal firms, professional experts such as accountants, actuaries, engineers and technology experts;
- To Our appointed third party administrators (TPAs) for claims assessment and administration services;
- To Our service providers based within Australia or overseas such as the United Kingdom, who assist us in delivering our services;
  - To the insurance companies with whom We transact business;
  - To the Lloyd's Syndicates We represent (which are located in the United Kingdom);
  - To insurance reference bureau or credit reference bureau;

- To reinsurers or reinsurance brokers (which may include reinsurers located outside of Australia).

Where We do disclose the information as above the recipient may hold the information in accordance with its own privacy statement/policies. Those may include, by way of example, disclosing the information to and storage of that information by its associated entities which may be located overseas. We may also be required to provide Your personal information to others for purposes of public safety and law enforcement and if required by law or by a law enforcement body to do so.

You may request access to Your personal information and where necessary, correct any errors in this information (some restrictions and costs may apply). If You would like to access a copy of Your personal information or You wish to correct or update Your personal information, please contact Us by email at [privacy@canopius.com](mailto:privacy@canopius.com) or call Us on +61 (0)2 8537 3500.

By completing and returning a proposal form or providing Us with any additional information in connection with Your application, You agree to us using and disclosing Your information as set out above. This consent to the use and disclosure of Your personal information remains valid unless You alter or revoke it by giving Us written notice. When You give Us personal information about other individuals, we rely on You to have made or make the individual aware that You will or may provide their personal information to us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell us before You provide the relevant personal information to Us.

## **How to Contact Us**

Enquiries of a general nature should be addressed to Canopius Asia & Pacific and should be sent to:

Canopius Asia Pte Ltd t/as Canopius Australia & Pacific

Suite 25.04

Level 25, 52 Martin Place,

Sydney NSW 2000,

T: +61 (0)2 8537 3500

E: [info@Canopius.com](mailto:info@Canopius.com)

CLAIMS: All enquiries specific to making a claim and or notice of an event which is likely to give rise to a claim, please refer to the section below, How to Make a Claim.

COMPLAINTS: Any complaint relating to this Policy, please contact Your broker contact in the first instance and refer to the section below, How to Make a Complaint.

### **How to Make a Claim**

You or any person entitled to claim under this Policy must give Us or Our authorised agent written notice of any event which is likely to give rise to a claim, within thirty (30) days, or as soon as is reasonably practicable.

Please send the notice to:

DWF Claims

Currency House,

1002/23 Hunter Street

Sydney

NSW, 2000

Email: [CanopiusAUS@DWFCclaims.com](mailto:CanopiusAUS@DWFCclaims.com)

Telephone: +61 (7) 3013 2700

Once notified of Your claim, DWF will provide You with all the necessary claim forms. You must complete these forms in full and return to DWF along with all other information and documentation that is relevant to Your claim in order to ensure a quick and efficient claims assessment. These may include and are not limited to any invoices, medical certificates, Medical Practitioner reports, and employer reports. A failure to provide relevant information could delay processing of Your claim.

Any payments will be made in Australian Dollars (AUD) unless otherwise shown in the Policy Schedule.

### **How to Make a Complaint**

Lloyd's aim is to provide the highest service to its Australian policyholders and, to this end, has developed the following procedures for the fair handling of complaints from Lloyd's policyholders

including Insured's under this Policy. There are established procedures for dealing with complaints and disputes regarding Your insurance or claim.

If You have any concerns or wish to make a complaint in relation to this policy, Our services or Your insurance claim, please let Us know and We will attempt to resolve Your concerns in accordance with Our Internal Dispute Resolution procedure. Please contact Us in the first instance:

Attention: Complaints Office

Canopus Asia Pte Ltd t/as Canopus Australia & Pacific

Suite 25.04

Level 25, 52 Martin Place,

Sydney NSW 2000,

T: +61 (0)2 8537 3500

E: [Complaintsinbox@canopus.com](mailto:Complaintsinbox@canopus.com)

We will acknowledge receipt of Your complaint within 1 business day via phone or email and do Our utmost to resolve the complaint to Your satisfaction within 10 business days.

If We cannot resolve Your complaint to Your satisfaction, We will escalate Your matter to Lloyd's Australia who will review Your complaint within 10 business days. You will be kept informed of the review of Your complaint every 10 business days.

Lloyd's contact details are:

Lloyd's Australia Limited

Telephone: +61 (0)2 8298 0783

Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)

Post: Suite 1603 Level 16,

1 Macquarie Place

SYDNEY NSW 2000

A final decision will be provided to You within 30 calendar days of the date on which You first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if Your complaint is not resolved to Your satisfaction within 30 calendar days of the date on which You first made the complaint or at any time.

AFCA can be contacted as follows:

Telephone: 1800 931 678

Email: [info@afca.org.au](mailto:info@afca.org.au)

Post: GPO Box 3 MELBOURNE VIC 3001

Website: [www.afca.org.au](http://www.afca.org.au)

AFCA is an independent body that operates nationally in Australia and aims to resolve disputes between You and Your insurer. AFCA provides fair and independent financial services complaint resolution that is free of charge to consumers. Determinations made by AFCA are binding upon Us.

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If Your complaint is not eligible for consideration by AFCA, You may be referred to the Financial Ombudsman Service (UK) or You may seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to You.

The Underwriters accepting this Insurance agree that:

- if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia

Suite 1603

Level 16

1 Macquarie Place

SYDNEY NSW 2000



who has authority to accept service on the Underwriters' behalf;

- if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

### **Several Liability**

The subscribing Insurers obligations under the contracts of insurance to which they subscribe are several and not joint and are limited solely to their individual subscriptions. The subscribing Insurers are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

### **Your Duty of Disclosure**

This Policy is subject to the Insurance Contracts Act 1984 (Act). Under that Act You have a Duty of Disclosure. Before You take out insurance with Us, You have a duty to tell Us of everything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms. If You are not sure whether something is relevant You should inform Us anyway.

You have the same duty to inform Us of those matters before You renew, extend, vary, or reinstate Your contract of insurance. The duty applies until the Policy is entered into, or where relevant, renewed, extended, varied or reinstated (Relevant Time). If anything changes between when the answers are provided to Us or disclosures are made and the Relevant Time, You need to tell Us.

Your duty however does not require disclosure of matters that:

- reduce the risk;
- are common knowledge;
- We know or, in the ordinary course of Our business, ought to know; or
- We have indicated We do not want to know.

If You do not comply with Your duty of disclosure, We may be entitled to:

- reduce Our liability for any claim;
- cancel the contract;

- refuse to pay the claim; or
- avoid the contract from its beginning, if Your non-disclosure was fraudulent.

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# Mable Combined Public & Products Liability and Professional Indemnity Insurance

## 1 Definitions

When used in this policy, its *schedule* and its endorsements, the following definitions shall apply:

### 1.1 Act of terrorism

*act of terrorism* means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- 1.1.1 involves violence against one or more persons;
- 1.1.2 involves damage to property;
- 1.1.3 endangers life other than that of the person committing the action;
- 1.1.4 creates a risk to health or safety of the public or a section of the public; or
- 1.1.5 is designed to interfere with or to disrupt an electronic system.

### 1.2 Advertising liability

*advertising liability* means:

- 1.2.1 infringement of copyright of, or passing off of a title or slogan;
- 1.2.2 unfair competition, piracy or idea misappropriation contrary to an implied contract;
- 1.2.3 invasion of privacy; or
- 1.2.4 defamation, libel, slander

committed or alleged to have been committed during the *period of insurance* in any advertisement, publicity article, broadcast or telecast arising out of the *insured's* advertising

activities or any advertising activities conducted on the *insured's* behalf, in the course of advertising the *products*, goods or services related to those *products*.

### 1.3 **Affiliated Carer**

*affiliated carer* means an individual natural person or company or other entity who the *policy owner* notifies to us for the *period of insurance* as a person providing *approved care work* and who:

- 1.3.1 has not been referred to us for individual underwriting; or
- 1.3.2 has been referred to us for individual underwriting and has been accepted by us as an *insured*.

### 1.4 **Aircraft**

aircraft shall mean any vessel, craft or thing made, or intended, to fly or move in or through the atmosphere or space.

### 1.5 **Approved care work**

*approved care work* means work arranged and invoiced through the policy owner's 'Mable Group' website involving professional business practice. Approved care work excludes any activity undertaken by an affiliated carer outside of such an arrangement.

### 1.6 **Business**

*business* means all the *affiliated carer's* activities and operations stated in the schedule or the certificate of currency and:

- 1.6.1 for the purpose of Section 1; and
- 1.6.2 for the purpose of Section 2, the provision of professional business practice,

in respect of an *affiliated carer's approved care work* and as per the agreement with the corresponding client only, and for no other activities outside of this arrangement.

### 1.7 **Circumstances**

circumstances means any incident, occurrence, fact or matter which may give rise to a claim.

### 1.8 **Civil liability**

civil liability means liability of the insured to any civil cause of action for compensation, based solely on its provision of, or failure to provide, the professional business practice. It does not include any liability, of whatever nature and however arising, for aggravated, punitive or exemplary damages or for civil or criminal penalties, fines or sanctions.

### 1.9 **Claim**

claim means any oral or written demand for compensation from a third party which is received by an insured, including but not limited to a civil proceeding commenced by the service of a statement of claim, writ, complaint or similar pleading, or an arbitration or other alternative dispute resolution proceeding.

### 1.10 **Claim expenses**

claim expenses means all reasonable legal costs and expenses necessarily incurred with our prior written consent in the investigation, defence and settlement of any claim covered by this policy, except any internal or overhead expenses or costs incurred by an affiliated carer and any salary or remuneration of any employee.

### 1.11 **Compensation**

compensation means monies paid or agreed to be paid by judgment or settlement for:

- 1.11.1 Personal injury;
- 1.11.2 Property damage;
- 1.11.3 Advertising liability;
- 1.11.4 Malpractice; or
- 1.11.5 Civil liability.

### 1.12 Computer Virus

computer virus means an executable program or computer code segment that is self-replicating, requires a host program or executable segment in which it can be contained, and which destroys or alters the host, program or other computer code or data, causing undesired program or computer system operation.

### 1.13 Deductible

deductible means the amount an affiliated carer first bears in relation to each claim or occurrence and is specified in the schedule, in accordance with each Section of this policy. The deductible applies to all amounts payable under this policy including the indemnity provided under any Extensions of Cover (unless otherwise stated therein).

### 1.14 Employee

employee means:

- 1.14.1 any person under a contract of service or apprenticeship with an affiliated carer;
- 1.14.2 any labour master or person supplied;
- 1.14.3 any self-employed person working under contract with an affiliated carer and under its direction; or
- 1.14.4 any student or person undertaking work for an affiliated carer under a work experience or similar scheme,

whilst engaged in connection with the business

### 1.15 Employment Practices

employment practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment by an affiliated carer.

### 1.16 Family member

good samaritan act means treatment administered at the scene of a medical emergency, accident or disaster, by an insured or an affiliated carer, who is present either by chance or in response to an S.O.S. call following a disaster.

### 1.17 Good Samaritan Act

good samaritan act means treatment administered at the scene of a medical emergency, accident or disaster, by an insured or an affiliated carer, who is present either by chance or in response to an S.O.S. call following a disaster.

### 1.18 Hovercraft

hovercraft means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

### 1.19 Insolvency

insolvency means in relation to any insured:

- 1.19.1 being under administration or insolvent, each as defined in the Corporations Act 2001 (Cth);
- 1.19.2 having a controller (as defined in the Corporations Act 2001 (Cth)) appointed;
- 1.19.3 being in receivership, in receivership and management, in statutory management, in liquidation, in provisional liquidation, wound up, subject to any scheme of arrangement, assignment, composition or other form of moratorium or protection from creditors or in bankruptcy;
- 1.19.4 being otherwise unable to pay any debts as and when they fall due;
- 1.19.5 having anything with the same or similar effect happen under the laws of any jurisdiction.

### 1.20 Independent Support Worker

an individual natural person or company or other entity whom the Policy Owner notifies to the Insurer during the Period of Insurance as a person providing Approved Care Work and who:

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1.20.1. has not been referred to the Insurer for individual underwriting; or

1.20.2. has been referred to the Insurer for individual underwriting and has been accepted by the Insurer as an Insured.

### 1.21 Insured

insured means an affiliated carer, and includes:

- 1.21.1 any person who is, at inception of the period of insurance, a principal, partner or director of the affiliated carer;
- 1.21.2 any person who becomes, during the period of insurance, a principal, partner or director of the affiliated carer in respect of the provision of the insured's professional business practice;
- 1.21.3 any former principal, partner or director of the affiliated carer (in respect of work performed for and on behalf of the affiliated carer in the provision of the professional business practice); and
- 1.21.4 any past or present employee of the affiliated carer acting within the scope of their employment in the provision of the affiliated carer's professional business practice.

### 1.22 Insurer

The Insurers of this Policy are the underwriters of Canopius Syndicate 4444 and Axis Syndicate 1686 on behalf of Certain Underwriters at Lloyd's ("Underwriters", "We", "Us" or "Our").

### 1.23 Internet operations

internet operations means:

- 1.23.1 transfer of computer data or programmes by use of electronic mail systems by an affiliated carer

or the affiliated carer's employees, including for the purpose of this definition only, part-time and temporary staff, contractors and others within the affiliated carer's organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or trojan horse;

- 1.23.2 access through an affiliated carer's network to the world wide web or a public internet site by an affiliated carer or the affiliated carer's employees, including for the purposes of this

definition only, part-time and temporary staff, contractors and others within the affiliated carer's organisation;

- 1.23.3 access to the affiliated carer's intranet (meaning internal company information and computing resources) which is made available through the world wide web for the affiliated carer's customers or others outside the affiliated carer's organisation; and
- 1.23.4 the operation and maintenance of the affiliated carer's web site.

## 1.24 Inquiry

inquiry means any hearing related to the provision of the professional business practice by an insured or for representation at any inquest, fatal inquiry or criminal proceedings relating to an occurrence, which from such inquiry or hearing could lead to a claim for compensation being made against the insured which may be covered under this policy.

## 1.25 Inquiry costs

inquiry costs means reasonable legal, assessors, adjusters and expert witness costs incurred with our written consent but does not include any insured's or employee's salaries, wages, travel or accommodation expenses.

## 1.26 Limit of Liability

limit of liability means the Limit of Liability stated in the schedule.

## 1.27 Loss

loss means the following for which the insured is legally liable:

- 1.27.1 compensation and/or claimant's costs pursuant to an award or judgment against any insured;
- 1.27.2 settlements negotiated by us and consented to by the insured;
- 1.27.3 settlements negotiated by the insured but only with our prior written consent;
- 1.27.4 claim expenses;
- 1.27.5 inquiry costs.

But loss does not include:

- (i) wages, salary, commission, fees, charges and other form of remuneration or profit to be repaid, lost or foregone by the insured, as a result of a claim;
- (ii) any component of an award or settlement which represents the cost of performance of the insured's original contractual obligations, non-fulfilment or negligent performance of which has given rise to the claim;
- (iii) any aggravated, punitive or exemplary damages or any civil or criminal penalties, fines or sanctions.

For the purpose of the limit of liability, sub-limits and other applicable terms and conditions of the policy, loss also includes all other amounts covered by the policy,

including those amounts which are not dependent upon the making of a claim against any insured.

#### **1.28 Malpractice**

malpractice means the breach of a duty of care or a statutory duty (including but not limited to obligations arising under the Competition and Consumer Act 2010 (Cth) and related or similar legislation) owed solely and specifically to any person admitted to the care of the insured in the capacity of a person or entity providing the nursing and related professional business practice, other than medical services, associated with the conduct of the professional business practice, toward a recipient of those services.

#### **1.29 Medical personnel**

medical personnel means any person, whether authorised and legally licensed to do so or not, who provides medical services in connection with the professional business practice or at any premises at which the professional business practice is carried on.

#### **1.30 Medical services**

medical services means advice, treatment or other services provided to any person admitted to the care of the insured, of a sort which may only be provided by a duly qualified and licensed medical practitioner.

#### **1.31 Molestation**

molestation means any assault or abuse of a sexual nature, sexual molestation, indecent exposure, sexual harassment or intimidation, whether such act is the subject of criminal investigation or not.

#### **1.32 Motor vehicle**

motor vehicle means any type of machine and attachments thereto including a trailer designed for use on land only, and which travels on wheels or on self laid tracks and is propelled by other than manual or animal power.

### 1.33 North America

North America means:

- 1.33.1 the United States of America and Canada; and
- 1.33.2 any state or territory incorporated in, or administered by, the United States of America or Canada.

### 1.34 Occurrence

occurrence means an event, including continuous or repeated exposure to conditions, which results in personal injury, property damage or advertising liability neither expected nor intended from an affiliated carer's standpoint, during the period of insurance.

With respect to personal injury or property damage, all such exposure to substantially the same general conditions shall be deemed one occurrence.

With respect to advertising liability all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants, shall be deemed to arise out of one occurrence.

### 1.35 Period of insurance

period of insurance means the Period of Insurance stated in the schedule.

### 1.36 Personal injury

personal injury means:

- 1.36.1 bodily injury, death, disease, illness, disability, nervous shock, mental anguish or mental injury or loss of consortium;
- 1.36.2 false arrest, false detention, wrongful imprisonment, malicious prosecution or humiliation;
- 1.36.3 wrongful entry or wrongful eviction or other invasion of privacy;
- 1.36.4 defamation, libel or slander; and
- 1.36.5 assault and/or battery committed by or at the direction of an affiliated carer whilst engaged in the business and for the purpose of preventing or eliminating danger to persons or property.

### 1.37 Policy owner

policy owner means Mable Group Pty Ltd, ABN 93 119 778 193.

### **1.38 Pollutants**

pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

### **1.39 Privacy costs and expenses**

privacy costs and expenses means legal costs and expenses reasonably and necessarily incurred by the affiliated carer with our written consent arising out of:

1.39.1 an affiliated carer's defence or investigation of any claim or written complaint made against the insured for the unintentional breach of any duty of confidentiality owed to any patient arising at law or any unintentional breach of the Privacy Act 1988 (Cth), Health Records & Information Privacy Act 2002 (NSW), Health Records Act 2001 (Victoria) or Health Records (Privacy and Access) Act 1997 (ACT) or similar privacy legislation in any state or territory of the Commonwealth of Australia; and

1.39.2 an affiliated carer's attendance or representation before any Privacy Commissioner, Private Code Adjudicator, Administrative Tribunal or Court in relation to the unintentional breach of any of the above legislation.

Privacy costs and expenses shall not include any internal or overhead expenses of the insured or the salaries, wages or benefits of any insured, employee or in-house lawyers or other in-house professional advisers of the insured.

### **1.40 Products**

products means any goods or products manufactured, grown, extracted, produced, processed, treated, altered, handled, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by the affiliated carer (including packaging and containers) in connection with the business in or from the territorial limits, and after it has ceased to be the affiliated carer's property, or in the affiliated carer's custody or legal control.

### **1.41 Professional business practice**

professional business practice means the activities conducted by the affiliated carer as specified in the schedule and or certificate of currency. It does not include the provision of services as a superannuation trustee in any respect, nor acting in a capacity as a director or officer.

#### **1.42 Property damage**

property damage means:

- 1.42.1 physical damage to, or loss of or destruction of tangible property, including the subsequent loss of use of that property;
- 1.42.2 loss of use and/or loss of value of tangible property that has not been physically damaged, physically lost or physically destroyed provided such loss of use and/or loss of value is caused by physical damage to, physical loss of or physical destruction of other tangible property; and includes denial of access to property, premises, services or facilities, interference with or stoppage of vehicular or pedestrian traffic; and
- 1.42.3 trespass, nuisance or interference with right of way or right to light air or water, easement or quasi-easement.

#### **1.43 Retroactive date**

retroactive date means the Retroactive Date specified in the schedule.

#### **1.44 Schedule**

schedule means the Schedule attaching to and forming part of this policy, including any Schedule substituted for the original Schedule.

#### **1.45 Territorial limits**

territorial limits means anywhere in the world, except North America, North Korea, Cuba and Iran where the policy will only apply in respect of:

- 1.45.1 products exported to North America; and
- 1.45.2 business visits to North America by executives or sales persons normally resident in the Commonwealth of Australia or New Zealand.

#### **1.46 Watercraft**

watercraft means any vessel, craft or thing made, or intended to float on or in, or travel on or through or under water.

## 2 General Extensions of Cover – Section 1 and 2

Cover is automatically provided on the same terms and in the same manner as in the Insuring Clauses for both Section 1 and 2 (except as stated), for the features described below. Each feature is subject to all provisions of this policy, including any additional terms stipulated in connection with it, and no feature shall increase our limits of liability unless expressly stated otherwise.

### 2.1 Additional payments

In addition to the limit of liability, we agree to pay the claim expenses in the settlement or defence Of any claim for compensation in respect of which the insured is entitled to indemnity under this policy, or if sustained, would be so entitled of any claim which is the subject of indemnity under the Insuring Clauses, except:

- 2.1.1 where the insured's liability exceeds the available limit of liability, we shall only pay such proportion of the claim expenses as the available limit of liability bears to the insured's liability;
- 2.1.2 where the amount we have paid or incurred as claim expenses exceeds the share that we are obliged to pay, the insured shall upon demand pay to us the excess amount or alternatively, we may deduct the excess amount from any entitlements the insured may have at any time under this policy; and
- 2.1.3 in respect of any loss or occurrence in North America, or losses or occurrences in respect of which a claim for compensation is brought in a court of law in North America, the limit of liability specified in the schedule shall be inclusive of all such additional payments.

### 2.2 Claims preparation costs

We pay all reasonable and necessary out of pocket costs incurred by the insured at our request in the preparation of a defence to a claim covered by this policy, up to \$25,000 per affiliated carer with a total aggregate liability of \$1,000,000 for all insureds during any one period of insurance (which is included within and not in addition to the limit of liability) in respect of all claims covered by this policy.

Notwithstanding the deductible specified in the schedule this extension will be subject to an excess of \$1,000. Payments provided under this extension, shall not include any claim expenses.



### **2.3 Court attendance costs**

We agree to provide up to \$250 per day for an insured who is or was an employee of the insured and \$500 per day for any person who is or was a principal, partner or director of the insured for court attendance costs incurred by the insured, if the employee, principal, partner or director of the insured is legally compelled to attend a civil proceeding as a witness in a claim covered by this policy.

Our liability provided under this Extension of Cover shall not exceed \$25,000 per affiliated carer with a total aggregate liability of \$1,000,000 for all insureds during any one period of insurance and shall be part of and not in addition to the limit of liability.

### **2.4 Estates and legal representatives**

We agree to indemnify the estate, heirs, legal representatives or assignees of any insured who is incapable of managing their own affairs by reason of mental disorder or other incapacity or who is deceased, insolvent or bankrupt, in the same manner and to the same extent that the relevant insureds would be entitled to be indemnified in respect of claims made against them. This clause only provides an indemnity in accordance with the Insuring Clauses in respect of claims solely based on the conduct of the relevant insured or affiliated carer. It does not respond where the conduct is that of the insured's estate, heir, legal representative or assignee.

### **2.5 Good Samaritan Acts**

We agree to pay on behalf of any insured in respect of legal liability arising from the rendering of emergency first aid assistance, known as good samaritan acts, to any person other than relatives of the insured who reside with him/her provided, however, that we shall not be liable where the insured was acting at the time under a contract of employment with any employer other than the affiliated carer.

### **2.6 Inquiries**

We will pay on behalf of the insured the inquiry costs which the insured incurs in preparing for and attending an inquiry provided that a notice requiring the insured to attend the inquiry is first served upon the insured during the period of insurance and reported to us during the period of insurance.

Our liability provided under this Extension of Cover shall not exceed \$50,000 per affiliated carer with a total aggregate liability of \$1,500,000 for all insureds during any one period of insurance and shall be part of and not in addition to the limit of liability.

## **2.7 Public relations expenses**

Where the insured retains the services of a public relations consultant for the sole purpose of protecting the insured's reputation that has been brought to question as a direct result of a claim covered by this policy, we agree to pay any reasonable fee, costs and expenses of such public relations consultant. However:

- 2.7.1 the insured must notify us within 30 days of first becoming aware of the insured's reputation being brought into question and provide full written details outlining the circumstances surrounding the event; and
- 2.7.2 we must have given prior written consent to retain the services of such public relations consultants; and

Our liability provided under this Extension of Cover shall not exceed \$25,000 per affiliated carer with a total aggregate liability of \$1,000,000 for all insureds during any one period of insurance and shall be part of and not in addition to the limit of liability.

### 3 General Exclusions – Section 1 and 2

We will not pay anything under this policy, including claim expenses, in respect of:

#### 3.1 AIDS / HIV

any claim directly or indirectly arising from or in connection with any condition caused by or associated with Human Immunodeficiency Virus (HIV) or Lymphadenopathy Associated Virus (LAV) or the mutants derivatives or variations thereof or in any way related to the Acquired Immune Deficiency Syndrome (AIDS) or any syndrome or condition of a similar kind however named.

#### 3.2 Asbestos

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from asbestos or asbestos products or asbestos contained in any products.

However, this Exclusion does not apply to actual or alleged loss, cost, expenses or liability where such loss, cost, expense or liability is not related to asbestos content of goods, materials or products or completed operations.

#### 3.3 Contractual liability

any liability or obligation assumed by the affiliated carer under any agreement or contract except to the extent that:

- 3.3.1 the liability or obligation would otherwise have been implied by law;
- 3.3.2 the liability or obligation arises from a provision in a contract for lease of real or personal property other than a provision which obliges the affiliated carer to effect insurance or provide indemnity in respect of the subject matter of contract;
- 3.3.3 the liability or obligation is assumed by the affiliated carer under any warranty under the requirement of Federal or State legislation in respect to product safety;
- 3.3.4 the liability or obligation arises from a provision in a written contract with any public supplier for the supply of water, gas, electricity, fuel, sewerage or waste removal services, telephone and communications services, except contracts with such suppliers for the performance of work by the affiliated carer; or
- 3.3.5 the liability or obligation arises from a provision in a written contract with any railway authority, railway company or other independent carrier for the loading, unloading and/or transport of the affiliated carer's products, including any such contracts relating to the

operation of railway sidings.

### **3.4 Deliberate acts**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 3.4.1 any deliberate act or omission of the insured or their employee and which could reasonably have been expected, having regard to the nature and circumstances of such an act or omission; or
- 3.4.2 any wilful breach of any statute, contract or duty by the insured.

### **3.5 Electromagnetic fields**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from electromagnetic fields (EMF) or electromagnetic interference (EMI).

### **3.6 Fraud and dishonesty**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any actual dishonest, fraudulent, criminal, wilful or malicious conduct of any insured.

### **3.7 Injury to employees**

any liability to indemnify or pay compensation arising out of:

- 3.7.1 personal injury where any insured or employee is indemnified or entitled to be indemnified under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not the insured is a party to such contract of insurance;
- 3.7.2 any scheme created by legislation to provide compensation to persons who sustain personal injury arising out of or in the course of their employment; or
- 3.7.3 any claim for employment practices.

This policy shall not be drawn into contribution with such insurance or scheme. This Exclusion does not apply with respect to liability of others assumed by the affiliated carer under any written contracts.

However, if the insured:

- (i) is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or any common law liability (whether limited or not) for personal injury; or

- (ii) is not required to so insure or otherwise fund such liability by reason only that the personal injury is to a person who is not a 'worker' or 'employee' within the meaning of the relevant workers' compensation law or the personal injury is not an injury which is subject to such law,

then Section 1 of this policy will cover liability for personal injury to the extent that the insured's liability would not have been covered under any such fund, scheme, policy of insurance or self insurance arrangement had the insured complied with its obligations pursuant to such law.

### **3.8 Liquidated or punitive damages**

any liability or claim arising out of, based upon, attributable to or as a consequence of:

- 3.8.1 fines, taxes, penalties, treble or other multiple compensatory damages, exemplary, punitive, liquidated or aggravated damages; or
- 3.8.2 the return, restitution, or offset of fees, expenses or costs paid to an insured; or
- 3.8.3 any other damages deemed uninsurable in law.

### **3.9 Molestation**

any claim arising from actual or alleged molestation.

### **3.10 Other Insurance**

any claims where the Insured is entitled to indemnity under another policy of insurance, to the extent permissible at law.

### **3.11 Radioactive Contamination and Explosive Nuclear Assemblies Exclusion Clause**

- a) Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or
- b) any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
  - i. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### **3.12 War and Civil War Exclusion Clause**

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

### 3.13 **Terrorism**

for loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

Provided that, Exclusion 3.13 also excludes loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

## **4 General Conditions – Section 1 and 2**

The following General Conditions apply to both Section 1 and 2 of this policy.

### **4.1 Action against the Insurer**

The Insurer on behalf of Certain Underwriters at Lloyd's shall not be liable unless the policy owner, affiliated carer and insured have complied fully with all provisions of this policy nor until the amount of compensation has been finally determined, either by judgment against the one or more of policy owner, affiliated carer or insured or by written agreement with one or more of the policy owner, affiliated carer, insured, claimant and The Insurer.

### **4.2 Assignment**

This policy and any rights thereunder shall not be assigned without our prior written consent.

### **4.3 Cancellation / Termination**

- 4.3.1 The policy owner may cancel this policy by giving notice in writing to us at any time;
- 4.3.2 We may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (as amended), such cancellation to take effect 30 days from the time of receipt of notification by the policy owner;
- 4.3.3 After cancellation by the policy owner a refund of premium will be allowed pro rata of 80 percent of the premium for the unexpired period of insurance;
- 4.3.4 After cancellation by us a refund of premium will be allowed pro rata for the unexpired period of insurance.

### **4.4 Change of risk**

Every change materially affecting the facts or circumstances degree or amount of risk existing at the commencement of this insurance or at any subsequent renewal date shall be notified in writing to us as soon as such change comes to the notice of an affiliated carer or the policy owner including their officers or representatives. On receipt of such notice we may vary the terms of this policy and/or charge such additional premium as we may determine appropriate in the circumstances.

### **4.5 Changes to the policy**

The terms and conditions of this policy may only be altered by a written endorsement issued by us.

#### **4.6 Insurance Contracts Act**

Nothing contained in this policy intends to reduce or waive our, the policy owner's or an insured's privileges, rights or remedies available under the Insurance Contracts Act 1984 (Cth) as amended.

#### **4.7 Liability not to be admitted**

The insured shall not admit liability for or offer to or agree to settle any claim without the insurer written consent. The insurer shall be entitled to take over and defend any claim with full discretion in the conduct of that claim.

#### **4.8 Misrepresentation, misdescription, non-disclosure**

This policy is voidable in the event of fraudulent misrepresentation, misdescription or non-disclosure. We may deny a claim or reduce a claim amount if the policy owner, affiliated carer or an insured has failed to comply with the duties of utmost good faith or disclosure or if the policy owner, affiliated carer or an insured has made a false statement to us before the contract was entered into.

In determining whether any non disclosures or representations are grounds for not meeting a claim or reducing the claim amount we shall rely upon the relevant provisions of the Insurance Contracts Act 1984 (Cth).

#### **4.9 No cover under this policy**

Where the insured is not entitled to be indemnified under this policy, the insurer owes no duty of any kind and has no liability of any kind to the insured.

#### **4.10 Notice and Authority of Policy Owner**

The policy owner acts on behalf of all insured's for all purposes, including but not limited to the payment of deductible, payment or return of premium, receipt and acceptance of any extension issued to form a part of this policy, giving and receiving notice of cancellation or non-renewable, and the exercise of the rights provided in extended reporting periods.

It is further agreed that the policy owner must obtain an insurance application from each affiliated carer

through the policy owner's 'Mable Group' website before cover to that affiliated carer is provided.



#### **4.11 Payments in respect to Goods and Services Tax**

When we make a payment to the insured, or on behalf of the insured, under this policy for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the insured is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

When we make a payment to the insured, or on behalf of the insured, under this policy as compensation instead of payment for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the insured is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or supply.

#### **4.12 Plurals and titles**

The proposal, this policy, its schedule and any endorsements are one contract in which, unless the context otherwise requires:

- 4.12.1 headings are descriptive only, not an aid to interpretation;
- 4.12.2 singular includes the plural, and vice versa);
- 4.12.3 the male includes the female and neuter; and
- 4.12.4 after references to positions, offices or titles shall include their equivalents in any jurisdiction in which a claim is made.

#### **4.13 Proper law and jurisdiction**

The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with Australian law.

In the event of any dispute arising under this policy, including but not limited to its construction and/or validity and/or performance and/or interpretation, you will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

#### **4.14 Valuation and foreign currency**

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in Australian currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of loss under this policy is stated in a currency other than Australian dollars, payment under this policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars as reported in the Australian Financial Review on the date the final

judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

## Section 1 - Combined General Liability

### Introduction

Section 1 only forms part of this policy when Combined General Liability Section is shown in the schedule and is limited to the period of insurance indicated.

### 1 Insuring Clause

The Insurer on behalf of Certain Underwriters at Lloyd's, subject to the terms and conditions of this policy, will indemnify the insured for all amounts which the insured becomes legally liable to pay as compensation arising out of:

- 1.1 personal injury;
- 1.2 property damage; or
- 1.3 advertising liability,

happening during the period of insurance within the territorial limits as a result of an occurrence in connection with the business or products.

### 2 Limits of Liability

The Insurer on behalf of Certain Underwriters at Lloyd's liability, in respect of all compensation for:

- 2.1 Public Liability;
- 2.2 Products Liability; and
- 2.3 Advertising Liability;

under this policy as a result of any one occurrence and in the aggregate where applicable, shall not exceed the limits of liability specified in the schedule.

### 3 Extensions of Cover

In addition to the General Extensions of Cover – Section 1 and 2, the following cover is automatically provided on the same terms and in the same manner as in the Insuring Clause for Section 1 (except as stated), for the features described below. Each feature is subject to all provisions of this policy, including any additional terms stipulated in connection with it, and no feature shall increase our limit of liability unless expressly stated otherwise.

### 3.1 **Claims series clause**

- 3.1.1 An occurrence or series of occurrences which are attributable directly or indirectly or allegedly to the same event, condition, defect or hazard, or failure to warn shall be added together and treated as one occurrence, irrespective of the period of time after the commencement of the period of insurance or the number of persons or entities that sustain property damage and/or personal injury.
- 3.1.2 All such occurrences shall be deemed to have occurred on the day of the first of such occurrences.
- 3.1.3 The limits of liability specified in the schedule are non-cumulative.
- 3.1.4 We shall not indemnify the insured for any liability of whatsoever nature in connection with personal injury or property damage where such personal injury or property damage is in any way connected with or related to an occurrence or events or circumstances, whether of a continuous, intermittent or repeated exposure, which had occurred or commenced or existed prior to the date of inception of this policy.

### 3.2 **Dishonesty**

Notwithstanding General Exclusions – Section 1 and 2, 3.6 'Fraud and dishonesty', we agree to reimburse the insured for reasonable legal costs and expenses necessarily incurred with our prior written consent, in successfully defending any action or allegation, where the insured has been accused of theft of any property, by a client. Provided that:

- 3.2.1 the insurer has the right at anytime to take over the defence on behalf of the insured;
- 3.2.2 no indemnity is available where the dishonest was proven to be correct.

Our liability provided under this Extension of Cover shall not exceed \$25,000 per affiliated carer with a total aggregate liability of \$1,000,000 for all insureds during any one period of insurance and shall be part of and not in addition to the limit of liability.

### 3.3 **Overseas personal liability**

The insurer will indemnify the insured for legal liability incurred in connection with the business which may be deemed to include any liability incurred in a personal capacity by an employee or director (including the spouse or any family member of any such person while accompanying such employee or director) whilst travelling outside his or her country of domicile in connection with the business, provided that the employee or director is not entitled to indemnity under any other policy of insurance, self insurance or deductible programme effected in the insured's name or affiliated carer's.

## 4 Exclusions

The Insurer on behalf of Certain Underwriters at Lloyd's will not be liable under this policy in respect of:

### 4.1 Advertising liability

advertising liability directly or indirectly caused by, in connection with or contributed to by or arising from:

- 4.1.1 failure of performance of contract, but this shall not relate to claims resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;
- 4.1.2 incorrect description of any article or commodity; or
- 4.1.3 mistake in advertised price.

### 4.2 Aircraft products

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any of the affiliated carer's products which, with the affiliated carer's knowledge, are intended for incorporation into any critical part, the structure, machinery or controls of any aircraft.

### 4.3 Aircraft, watercraft, hovercraft

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the ownership, maintenance, possession, use or operation, loading or unloading, of any aircraft, watercraft or hovercraft (other than watercraft not exceeding 15 metres in length for use on inland or coastal waters).

### 4.4 Custody and control

property damage to property owned by, hired to or in the custody or control of the insured or any employee or any party acting on behalf of the insured, other than:

- 4.4.1 guests', visitors', directors', officers', employees' or partners' personal effects;
- 4.4.2 motor vehicles in a car park, unless the car park is owned or operated by the insured for reward;
- 4.4.3 premises at which the insured is undertaking work in connection with the business;
- 4.4.4 any building (including its fixtures and fittings) leased, hired or rented to the insured provided the insurer shall not be liable in respect of liability assumed by the insured under a tenancy or other agreement which would not have attached in the absence of such agreement; or

- 4.4.5 other property in the insured's charge or control (except while undergoing any process or being worked upon) for which the insured has not assumed any responsibility to obtain insurance, subject to a limit of \$50,000 for any one occurrence per affiliated carer and \$1,500,000 for all insureds in the aggregate during any one period of insurance.

#### 4.5 Information technology hazards

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 4.5.1 the affiliated carer's internet operations; or
- 4.5.2 property damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
- a) the use of any computer hardware or software;
  - b) the provision of computer or telecommunication services by the affiliated carer or on the affiliated carer's behalf; or
  - c) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

However, this Exclusion does not apply to:

- (i) personal injury, property damage or advertising liability arising out of any material which is already in print by the manufacturer in support of any of its products, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site; or
- (ii) liability which arises irrespective of the involvement of the affiliated carer's internet operations.

#### 4.6 Loss of use

any liability for any amount in respect of loss of use of tangible property which has not been damaged, lost or destroyed as a result of:

- 4.6.1 a delay in or lack of performance by or on behalf of any insured in respect of any contract or agreement; or
- 4.6.2 the failure of the products to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by an affiliated carer.

However, Exclusion 4.6.2 above does not apply to loss of use of other tangible property resulting from the sudden and accidental damage to or destruction of the products after such products have been put to use by any person or organisation other than the insured.

#### **4.7 Motor liability**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the use of a motor vehicle owned by, or in the physical or legal control of any insured:

4.7.1 which is required by law to be registered; or

4.7.2 in respect of which insurance is required by virtue of any legislation. However, this Exclusion does not apply to:

- (i) a motor vehicle (other than a motor vehicle owned or used by or on behalf of the insured) whilst that motor 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 property damage occurring during the loading or unloading of a motor vehicle caused by or arising from the collection or delivery of any goods from or to the motor vehicle where such personal injury or property damage occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability; or
- (iii) accidental or erroneous failure to maintain such statutory insurance;

#### **4.8 North America**

The Insurer will indemnify the Insured against their legal liability to pay compensation (including claimants costs' expenses and Defence Costs) in respect of Injury or Damage which occurs in the United States of America or Canada including their territories and protectorates arising from sales offices, exhibitions and/or travelling executives.

The following conditions apply to this extension:

4.8.1 This Policy excludes legal liability arising out of:

4.8.1.1 personal injury or property damage, or loss of use of property directly or indirectly caused by seepage, pollution or contamination.

4.8.1.2 Costs to remove, nullify or clean up seeping, polluting or contaminated substances.

4.8.1.3 Fines, penalties, punitive or exemplary damages.

4.8.2 The maximum amount The Insurer will pay is the Limit of Indemnity stated in the Schedule for any one Occurrence including claimants costs, expenses and Defence Costs.

4.8.3 The Insurer shall not be liable for any amount shown as a specified Deductible in the Schedule for this United States of America and/or Canada Sales Operation Extension.

4.8.4 This Policy shall not apply to nor indemnify any Insured domiciled and/or registered in the United States of America or Canada including their territories and protectorates, other than in respect of sales offices, exhibitions and/or travelling executives unless prior agreement has been received from The Insurer.

#### 4.9 **Pollution**

any liability arising out of:

4.9.1 personal injury or property damage directly or indirectly caused by, in connection with or contributed to by or arising from the discharge, seepage, migration, dispersal, release or escape of pollutants into or upon any property, land the atmosphere or any watercourse or body of water (including ground water);

4.9.2 personal injury or property damage directly or indirectly caused by, in connection with or contributed to by or arising from the discharge, seepage, migration, dispersal, release or escape of pollutants caused by any product that has been discarded, dumped, abandoned or thrown away by others;

4.9.3 the cost of removing, nullifying or cleaning up pollutants; or

4.9.4 the cost of preventing the escape of pollutants.

Exclusions 4.9.1 and 4.9.3 above shall not apply where the claim arises from a sudden identifiable, unintended and unexpected event from the affiliated carer's standpoint which takes place in its entirety at a specific time and place during the period of insurance and occurs outside of North America. However the total aggregate Limits of Liability during any one period of insurance shall not exceed the Limits of Liability.



#### **4.10 Professional, Treatment risk and Medical malpractice**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the rendering or failure to render and/or administer health care services or any error or omission in connection therewith.

#### **4.11 Professional Liability**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the rendering of or failure to render professional advice or service by You or any related error or omission but this Exclusion does not apply to Personal Injury or Property Damage arising from any professional advice or service not given for a fee;

#### **4.12 Repair and replacement**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 4.12.1 the cost of rectifying defective work carried out by or on behalf of the affiliated carer;
- 4.12.2 property damage to any of the affiliated carer's products causing personal injury or property damage; and
- 4.12.3 the costs or expenses of recalling, removing, repairing, recovering, altering or replacing the affiliated carer's products arising from a defect in or an error in connection with the sale or supply of such products or the guaranteed performance of the affiliated carer's products or the unsuitability thereof for the use for which they are supplied.

#### **4.13 Specific products and substances**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 4.13.1 urea formaldehyde;
- 4.13.2 silicon based human implants;
- 4.13.3 AIDS, HIV or HIV related illness;
- 4.13.4 contraceptives and RU 486;
- 4.13.5 human biological materials including extracts thereof (e.g. blood, plasma, plasmaproteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);
- 4.13.6 genetically modified seeds or organisms;
- 4.13.7 vaccines;

- 4.13.8 application or use of polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;
- 4.13.9 tobacco and tobacco related products;
- 4.13.10 the manufacture or supply of all pharmaceutical active ingredients including medical implants; or
- 4.13.11 DES and orally taken oxychinoline.

## 5 General Conditions

### 5.1 Action against Us

We shall not be liable unless the Insured has complied fully with all provisions of this policy nor until the amount of Compensation has been finally determined, either by judgment against the Insured or by written agreement with the Insured, the claimant and Us.

The Insured shall make a definite claim for any Personal Injury or Property Damage for which We may be liable within a reasonable time after such final determination.

### 5.2 Assignment

No assignment of interest under this policy shall bind with Us until our consent is endorsed herein. However, should any Insured die or be adjudged bankrupt or insolvent, We will consent to the assignment of this policy to such Insured's legal representative provided that written notice is given to Us within a reasonable time after the date of such death, bankruptcy or insolvency.

### 5.3 Cancellation

- 5.3.1 The Insured may cancel this policy at any time by giving notice in writing to us.
- 5.3.2 We may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (Cth), such cancellation to take effect within 30 days from the time of notification received by the Insured.
- 5.3.3 Upon cancellation by the Insured a refund of premium will be allowed pro rata of 80% of the premium for the unexpired Period of Insurance.
- 5.3.4 Upon cancellation by Us, a refund of premium will be allowed pro rata for the unexpired Period of Insurance.

### 5.4 Change in risk

Every change materially affecting the facts or circumstances existing at the commencement of or during the course of this policy, or at any subsequent renewal date, shall be notified to Us as soon as such change comes to the Insured's notice.

We reserve the right to accept or deny coverage at the time of such notification and to establish a separate rate and premium for any such coverage.

## **5.5 Claims assistance and cooperation**

The Insured must assist and cooperate with Us fully and promptly in relation to a claim, including:

- 5.5.1 supplying us with all information and assistance we may reasonably require;
- 5.5.2 allowing us to negotiate, defend or settle the claim:
  - 5.5.2.1 in the Insured's name and on the Insured's behalf; or
  - 5.5.2.2 in the name of and on behalf of any other party covered by the Insured's policy;
- 5.5.3 sending to us any claim, writ, summons, or full details of other relevant legal or other proceedings such as an impending prosecution or inquest the Insured receives or becomes aware of; and
- 5.5.4 as far as possible, preserve any Product, appliance, plant or other items which might prove necessary or useful as evidence until We have had an opportunity of inspection.

## **5.6 Control of claims**

- 5.6.1 The Insured shall not, without Our written consent, admit or repudiate liability, negotiate or make any offer, promise or payment in connection with any claim.
- 5.6.2 We shall be entitled, but not obligated, to take over and conduct in the Insured's name, the defence or settlement of any claim or to prosecute in the name of the Insured at its own expense and for its own benefit any claim, for indemnity or damages or otherwise against any persons, and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.
- 5.6.3 The Insured shall give all such information and assistance as We may require.

## **5.7 Cross liability**

Subject to General Condition 6.12 'Joint Insured' for the purpose of this policy, when an Insured consists of more than one party, the Insured shall be considered as a separate Insured as though a separate policy had been issued to each of the said parties but nothing herein contained shall operate to increase our Limits of Liability.

## **5.8 Discharge of any liability**

We may at any time pay the Limits of Liability (after deduction of sum or sums already paid), or any lesser sums for which any claim or claims can be settled, and shall then be

under no further liability in respect thereof except for the payment under Extension of Cover 3.1 'Additional payments' incurred prior to such payment.

In the event of a claim or series of claims arising from an Occurrence resulting in liability of the Insured to pay a sum in excess of the Limits of Liability, Our liability for Extension of Cover 3.1 'Additional payments' shall not exceed an amount being in the same proportion as Our payment bears to the total payment made by or on behalf of or to be made by the Insured in satisfaction of the claim or claims.

#### **5.9 Fraud**

If any claim upon this policy be in any respect fraudulent, or if any fraudulent means or devices be used by the Insured, or if any damage be occasioned by a wilful act of the Insured or with their connivance, all benefit under this policy shall be forfeited and the policy void.

#### **5.10 Headings**

Headings have been included for ease of reference, but do not form part of the policy.

#### **5.11 Inspection and audit**

We shall be permitted but not obligated to inspect the Insured's property and operations at any reasonable time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of an Insured or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation.

We may examine and audit the Insured's books and records at any time during the Period of Insurance and within three years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

#### **5.12 Joint Insured**

Where the Insured is comprised of more than one legal entity, information supplied to Us shall be deemed to have been furnished by and on behalf of all such entities, and any information supplied to us or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such entities.

#### **5.13 Liability not to be admitted**

The Insured shall not admit liability for or offer to or agree to settle any claim without Our written consent. We shall be entitled to take over and defend any claim with full discretion in the conduct of that claim.

#### **5.14 No cover under this policy**

Where the Insured is not entitled to be indemnified under this policy, We owe no duty of any kind and has no liability of any kind to the Insured.

#### **5.15 Notice and proof of claim**

Upon the discovery of any Personal Injury, or Property Damage loss or circumstance giving rise or which may give rise to a claim (whether or not the Insured believes the claim amount might fall below the applicable Deductible) under this policy, the Insured shall:

- 5.15.1 give notice in writing to Us as soon as practicable after the Insured becomes aware of such loss or circumstance and within 30 days thereafter provide, at the Insured's own expense, a written statement detailing all relevant information;
- 5.15.2 advise of the cause and the amount of loss and any other proof or information with respect to the claim that may be reasonably required;
- 5.15.3 furnish to us details of any other insurance covering or which may cover the same loss;
- 5.15.4 take reasonable steps to prevent further loss; and
- 5.15.5 at all reasonable times permit us or our agents to inquire into, investigate and examine the circumstances of any loss.

#### **5.16 Payments in respect to Goods and Services Tax**

When We make a payment under this policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that the Insured is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

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

#### **5.17 Premium**

Unless otherwise stated, the premium is adjustable. The Insured shall, within 60 days after the expiry of each Period of Insurance, provide such information as We may require to adjust the premium.

Any difference in premium shall be paid by or allowed to the Insured, provided that the adjusted premium will not be less than any minimum premium specified in the Schedule. The Insured shall at all times allow Us to inspect such records.

#### **5.18 Proper law and jurisdiction**

- 5.18.1 The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with Australian law.
- 5.18.2 In the event of any dispute arising under this policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, the Insured will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

#### **5.20 Reasonable precautions**

It is a condition precedent to Our liability under this policy that the Insured shall, at its own expense:

- 5.20.1 take, and cause to be taken, reasonable precautions to prevent Personal Injury, Property Damage and/or Advertising Liability;
- 5.20.2 comply with all statutory or local authority law, obligations and requirements or equivalent;
- 5.20.3 prevent the manufacture, sale or supply of defective Products; and
- 5.20.4 withdraw, inspect, repair, replace, trace, recall or modify any of the Products containing any defect or deficiency of which the Insured has knowledge or has reason to suspect.

#### **5.21 Subrogation**

We waive all rights of subrogation under this policy against:

- 5.21.1 any corporation or organisation the majority of whose capital stock is owned or controlled by the Insured.
- 5.21.2 any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this policy, except that if such corporation, organisation or person is protected from such loss by any other policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of such other policy.

## Section 2 – Professional Indemnity / Medical Malpractice Insurance

### Introduction

Section 2 only forms part of this policy when the Professional Indemnity / Medical Malpractice Insurance Section is shown in the schedule and is limited to the period of insurance indicated.

### 1 Insuring Clause

Subject to the terms and conditions of this policy, we agree to pay on behalf of the insured loss arising from Any claim, first made against the insured and notified to us during the period of insurance, in respect of:

- 1.1 malpractice; and;
- 1.2 civil liability,

committed or alleged to have been committed by the insured or for which the insured is responsible, in the conduct of the professional business practice.

### 2 Limits of Liability

Our total liability toward any and all insured in respect of all loss, directly or indirectly arising out of or in connection with:

- 2.1 any single claim;
- 2.2 all claims referable to the period of insurance; and
- 2.3 all losses otherwise covered under the policy,

shall not exceed the respective limit of liability or other applicable sub-limit prescribed in the policy and/or schedule and shall apply only to the amount by which such loss exceeds the prescribed amount of the applicable deductible. For the purposes of application of the limit of liability and the deductible, all claims arising directly or indirectly out of or in connection with the same source or originating cause shall be deemed to be a single claim.

### 3 Extensions of Cover

In addition to the General Extensions of Cover – Section 1 and 2, the following cover is automatically provided on the same terms and in the same manner as in the Insuring Clause for Section 2 (except as stated), for the features described below. Each feature is subject to all provisions of this policy, including any additional terms stipulated in connection with it, and no feature shall increase our limit of liability unless expressly stated otherwise.

#### 3.1 Legal Representation Expenses

We agree to pay to or on behalf of the Insured any legal representation costs resulting directly from the attendance by the insured at any investigation.

This Extension applies only if:

- a) the Insured is legally compelled to attend the investigation, and
- b) the notice or process requiring the insured to attend or answer questions is first served during the insurance period, and
- c) the insured's attendance is required because of the insured's conduct in the policyholder's professional business, and
- d) the insured notifies us during the insurance period that the insured is legally compelled to attend the investigation, and
- e) the investigation is not being held outside Australia, and
- f) our consent is obtained before the legal representation costs are incurred, and
- g) at our option, we can nominate the legal advisers to represent the insured.

The limit of liability listed in the Schedule for this Extension of Cover applies to all claims covered under 3.1 above, inclusive of claim expenses, and costs and expenses in 3.1 above, are in the aggregate.



Notwithstanding the deductible specified in the schedule this extension will be subject to an excess of \$25,000 inclusive of defence costs.

### 3.2 **Loss of documents**

Notwithstanding Exclusion 4.11 'Personal injury / property damage', we agree to indemnify the affiliated carer in respect of:

- 3.2.1 any civil liability claim made against the affiliated carer for loss, damage or destruction of any documents and/or computer records belonging to the affiliated carer or for which the affiliated carer is legally responsible, where the loss, damage or destruction occurs in the provision of the professional business practice after the retroactive date; and
- 3.2.2 all reasonable costs and expenses incurred by the affiliated carer in replacing and/or restoring such documents.

However,

- (i) we shall only be liable where any such loss, damage or destruction is notified to us within the period of insurance and rectification of which is undertaken as soon as practicable by the affiliated carer with our prior written consent, such consent not to be unreasonably withheld;
- (ii) we shall not be liable for any claim in 3.7.1 or costs and expenses in 3.7.2 directly or indirectly arising out of or in connection with computer virus, operational wear and tear or gradual deterioration however caused;
- (iii) we shall not be liable for any claim in 3.7.1 or costs and expenses in 3.7.2 directly or indirectly arising out of or in connection with any loss of money, negotiable instruments (including shares), bearer bonds, coupons, stamps, bank or currency notes.

The limit of liability listed in the Schedule for this Extension of Cover applies to all claims covered under 3.7.1 above, inclusive of claim expenses, and costs and expenses in 3.7.2 above, are in the aggregate.

Notwithstanding the deductible specified in the schedule this extension will be subject to an excess of \$5,000.

### 3.3 **Public Relations Expenses**

Where the insured retains the services of a public relations consultant for the sole purpose of protecting the insured's reputation that has been brought to question as a direct result of

a claim covered by the policy, we agree to pay any reasonable fee, costs and expenses of such public relations consultant.

Provided always that:

a) you must notify us within thirty (30) days of first becoming aware of your reputation being brought into question and provide full written details outlining the circumstances surrounding the event; and

b) we must have given prior written consent to retain the services of such public relations consultants; and

The limit of liability listed in the Schedule for this Extension of Cover applies to all claims covered under 3.3 above, inclusive of claim expenses, and costs and expenses in 3.3 above, are in the aggregate.

Notwithstanding the deductible specified in the schedule this extension will be subject to an excess of \$5,000.

### **3.4 Statutory Liability Defence Costs**

We will pay on behalf of the Insured to the extent permitted by law:

- (i) a penalty payable by the Insured as a result of a criminal or civil proceeding in respect of an offence under an Act which proceeding:
  - a) is served upon the Insured while this Policy is in force; and
  - b) We are told about in writing as soon as reasonably practicable while this Policy is in force; and

- c) arises from an act, error or omission on or after the Retroactive Date specified in the Schedule which occurred in the provision of Healthcare Services.
- (ii) Statutory Liability Defence Costs incurred in connection with proceedings specified in paragraph (i) above.
- (iii) We do not cover penalties, (or losses or liabilities) or any costs associated with any action or proceeding arising out of the alleged failure of the Insured to comply with any lawful consent, demand, determination, memorandum, notice, order, schedule or the like issued under an Act.

We reserve the right to recover any Statutory Liability Defence Costs paid under this Cover 3.4 from the Insured on whose behalf or for whose benefit Statutory Liability Defence Costs were paid in the event and to the extent that the Insured makes an admission in writing of any fraudulent, dishonest, malicious or intentional conduct, or it is subsequently established, directly or indirectly, by judgment or other final adjudication, that the Insured was not entitled to cover under this Policy.

The Retention applicable to this Cover 3.4 is \$500 for each and every Penalty inclusive of Statutory Liability Defence Costs.

This Cover is subject to an aggregate Sub-Limit of Indemnity as specified in the Schedule.

### 3.5 **Complaints & Investigation Costs**

We will pay on behalf of the Insured necessary and reasonable fees, costs and expenses incurred by the Insured in responding to or defending:

- (i) an inquiry, inquest, investigation or Complaint; or
- (ii) a criminal inquiry, investigation or proceeding; or
- (iii) (a coronial inquiry or inquest; or
- (iv) a Royal Commission,

Brought by or before an entity including a registration board, tribunal or complaints unit which has jurisdiction to investigate and determine an outcome for the Complaint; or investigation.

We will pay on behalf of the Insured:

- (i) all amounts payable by the Insured under orders or determinations of compensation made by the body; and
- (ii) any Defence Costs in respect of the complaint or investigation.

This Cover is subject to an aggregate Sub-Limit of Indemnity as specified in the Schedule.

### **3.6 Court Attendance Costs**

We will pay the Insured for the cost of attendance for any person described in (i) below who attends court as a witness in connection with a Claim notified to the Insurer and which the Insurer has confirmed is covered under this Policy:

- (i) for any Independent Support Worker \$250 per day

Any payment made under this clause shall be deemed to be a payment of Defence Costs.

This Cover is subject to an aggregate Sub-Limit of Indemnity as specified in the Schedule

No Retention shall apply to this clause.

### **3.7 Medicare & Private Health Insurer**

We will pay on behalf of the Insured reasonable fees, costs and expenses incurred by the Insured as a result of a Complaint which is commenced, commissioned or ordered and notified to the Insurer in the Period of Insurance in relation to a Private Health Insurer (registered under the Private Health Insurance Act 2007) or a Medicare compliance audit or review or a Professional Services Review including any alleged dishonest, fraudulent or criminal act, error or omission.

### **3.8 Reporting a Healthcare Professional**

We will pay on behalf of the Insured reasonable fees, costs and expenses incurred by the Insured as a result of a Complaint which is commenced, commissioned or ordered and notified to the Insurer in the Period of Insurance that arises from the Insured reporting an incident, healthcare professional, person or entity to a professional or statutory body or area health authority where the Insured was required to do so as result of an obligation imposed by law or in the public interest.

## 4 Exclusions

We will not be liable under this policy in respect of:

### 4.1 Abnormal duty

any claim directly or indirectly arising from or in connection with any duty or obligation assumed by the insured, which is not assumed in the normal conduct of the professional business practice.

### 4.2 Commercial risks

any claim arising from or in connection with any trading debt incurred by the insured.

### 4.3 Directors and officers

any claim directly or indirectly arising from or in connection with any insured acting in the capacity of a director or officer of a company, association or other legal entity.

### 4.4 Insolvency

any claim made against the insured, where all or part of such claim is directly or indirectly based upon or attributable to the insolvency of the insured or the suppliers of the insured.

### 4.5 Intoxicants and drugs

any claim directly or indirectly arising from or in connection with conduct or activities of any insured while under the influence of intoxicants and/or drugs or any malpractice or other failure to carry out the professional business practice competently or at all due to such influence, if such behaviour took place with the knowledge of a principal, partner, director, or supervisor of the affiliated carer.

### 4.6 Licensing inquires

any prosecution, inquiry, hearing, commission or other investigation in relation to any insured failing to be properly licensed, registered or accredited to provide professional business practice as required by any Acts, rules, regulations or industry codes of practice.

#### **4.7 Manufacturing / efficacy / faulty workmanship**

any claim, loss or other amount comprising, directly or indirectly arising out of or in connection with:

- 4.7.1 the repair, replacement, diminished utility or lack of efficacy for their intended purpose of any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the insured;
- 4.7.2 the cost of remedying any defect in any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the insured;
- 4.7.3 any cost of or expense incurred in withdrawing a product or good from sale or recalling any product or good; or
- 4.7.4 any elements of any insured's own costs or profit that may be included in the cost of rectifying any defects in work performed by or on behalf of an insured.

#### **4.8 Medical personnel / medical services**

any claim directly or indirectly arising from or in connection with any medical services or other act, error or omission of any medical personnel.

#### **4.9 Money and negotiable instruments**

any claim directly or indirectly arising from or in connection with any loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes.

#### **4.10 Owners and occupiers liability**

any claim directly or indirectly arising from or in connection in any way whatsoever with the occupation, leasing or ownership of any real or other property (whether mobile or immobile) by any insured.

#### **4.11 Personal injury / property damage**

- 4.11.1 any liability for personal injury suffered or incurred by any entity or person; and/or
- 4.11.2 any loss of property or property damage,

except and only to the extent that such personal injury or property damage has resulted or is alleged to have resulted solely from malpractice committed or alleged to have been committed in the conduct of the professional business practice.

#### **4.12 Prior and pending**

any claim made against or in any way intimated to the affiliated carer or the insured prior to the commencement of the period of insurance or directly or indirectly arising from or attributable to:

- 4.12.1 any facts or circumstances of which the affiliated carer or the insured was aware or of which a reasonable person in the circumstances would have been aware, prior to the commencement of the period of insurance, as matters out of which a claim against any insured might arise;
- 4.12.2 any facts or circumstances reported to an insurer under any insurance policy entered into before the commencement of the period of insurance; or
- 4.12.3 any facts disclosed to any insurer in any proposal for insurance prior to the commencement of the
- 4.12.4 period of insurance.

#### **4.13 Procedures**

any claim made for procedures in any way connected with the following:

- 4.13.1. Dry needling and/or acupuncture or any other equivalent procedure;
- 4.13.2. Drug & alcohol rehabilitation care;
- 4.13.3. Any duty or obligation assumed by the insured, which is not assumed in the normal conduct of the Healthcare Services and/or are medical services which require a consultation from a medical practitioner;
- 4.13.4. an Insured's failure to be properly licensed, registered, or accredited to provide professional services as required by any applicable legislation, rules, regulations, or industry codes of practice.

#### **4.14 Related entities**

any claim made against the insured by or on behalf of:

- 4.14.1 any insured, business venture or related entity of any insured which is owned, managed or operated directly or indirectly by any insured; or

4.14.2 any person who at the time of the conduct giving rise to the claim, is a family member, unless such person is acting without the co-operation or solicitation of any insured;

4.14.3 any parent or controlling entity, successor or assign of any insured;

4.14.4 any other person or entity, including but not limited to a trustee:

- a) who or which is controlled or operated by any insured; or
- b) where any insured has a direct or indirect financial interest, including but not limited to where any insured is a beneficiary of a trust.

#### **4.15 Retroactive date**

4.15.1 any claim directly or indirectly arising from or in connection with any conduct, act, error or omission which has taken place or is alleged to have taken place prior to the retroactive date.

#### **4.16 Royal Commission**

any claim or complaint directly or indirectly arising from or connected to a Royal Commission

#### **4.17 Superannuation trustee**

4.17.1 any claim directly or indirectly arising from or in connection with conduct of any insured in the capacity of a superannuation trustee, including but not limited to in connection with any employee benefit plan or superannuation fund.

#### **4.18 North America exposure**

4.18.1 any claim directly or indirectly arising out of or in connection with conduct of any insured anywhere within North America;

4.18.2 any legal proceedings which are brought before any court or tribunal having actual or purported jurisdiction within North America;

4.18.3 the enforcement of any judgment, order or award in or in connection with any proceeding brought before any court or tribunal having actual or purported jurisdiction within North America;

4.18.4 any claim which is pursued by way of Arbitration, Mediation, Conciliation, Expert Determination or any other form of alternative dispute resolution procedure taking place within or under the jurisdiction of North America, or for the recovery of any Award or costs issued or incurred in connection with any such procedure.

4.18.5 Please refer to the additional General Exclusions applicable to the whole policy.



## 5 Claims Conditions

The following Claims Conditions apply to Section 2 of this policy.

### 5.1 Advance payment of claim expenses

We will advance the claim expenses incurred by an insured in the defence of a civil liability claim, as they are incurred and prior to the final adjudication of the claim, where:

- 5.1.1 indemnity under this policy is confirmed in writing by us; or
- 5.1.2 at our absolute discretion, without admitting indemnity, we agree to advance such claim expenses.

All such payments shall be repaid to us by the insured (or where more than one insured has received such payments, by such insured severally and according to their respective interests) in the event and to the extent that the insured is not entitled to payment of such claim expenses under the terms and conditions of this policy.

### 5.2 Allocation

If both loss covered by this policy and loss not covered by this policy are incurred, either because a claim includes both covered and uncovered matters or because a claim is made against both insureds and others who are not insured under this policy (including those persons or entities referred to in the schedule as the insured), the insured and the insurer shall use their best efforts to agree upon a fair and proper allocation between covered loss and uncovered loss having regard to the relative legal and financial exposures attributable to the covered and uncovered parties and/or matters. We are only liable under this policy for amounts attributable to covered matters and parties, and own liability for loss, including claim expenses, otherwise payable by us shall be reduced to reflect such fair and proper allocation.

If we and the insured agree on an allocation of claim expenses, we shall, subject to Claims Condition 5.1 'Advance payment of claim expenses', advance claim expenses in accordance with that agreement. If the parties cannot agree on allocation, we shall, subject to Claims Condition 5.1 'Advance payment of claim expenses', advance claim expenses which we believe to be covered under the policy until a different allocation is negotiated, arbitrated, judicially or otherwise determined.

We, if requested by the insured, shall submit any dispute on allocation to a Senior Counsel to be mutually agreed or, in default of agreement, to be appointed by the President of the Bar Association in the relevant State or Territory, on the basis that the Senior Counsel shall determine the allocation of loss according to his or her view of the fair and proper allocation, but having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties, and the overriding intention referred to in this clause. The costs of Senior Counsel shall constitute claim expenses for the purposes of the policy and be part of and not in addition to the limit of liability.

Any such determined allocation of claim expenses on account of a claim shall be applied retroactively to all claim expenses on account of such claim, notwithstanding any prior advancement on a different basis. Any advancement of claim expenses shall be repaid to us by the insureds severally according to their respective interests, if and to the extent that we determine that such amounts paid by us are not insured by this policy.

Any allocation or advancement of claim expenses in connection with a claim shall not pre-determine the allocation of other loss on account of such claim. In any arbitration, suit or other proceedings between the insurer and the insureds no presumption shall exist concerning what is a fair and proper allocation between covered loss and uncovered loss, but will be governed by the intention set out in this clause.

### 5.3 **Defence and settlement**

The insured shall not admit liability for or settle any claim without our consent or incur any costs or expenses without our consent, which shall not unreasonably be withheld.

The insured shall assert all appropriate defences and cross-claims for contribution, indemnity or damages and shall take all reasonable steps in defence of the claim.

We shall not settle any claim against any insured without the consent of the relevant insured, which shall not unreasonably be withheld. We shall retain the right to actively participate in the defence and settlement of any claim in respect of which indemnity is sought under this policy.


If we and the insured cannot agree upon the appropriateness or otherwise of a settlement, then the matter will be determined in accordance with advice of Senior Counsel, the choice of whom shall be mutually agreed by the insured and us and whose fee shall be paid by us, in addition to the limit of liability.

### 5.4 **Handling and co-operation**

An insured shall, at its own cost, upon our request give all such information and assistance to us as we may reasonably require, to enable us to investigate and to defend a claim and to make any cross-claim for contribution, indemnity or damages and/or to enable us to determine our liability under this policy. In particular, an insured shall inform us of any other insurance, indemnity or other source of compensation, statutory, contractual or otherwise, pursuant to which the insured may be entitled to any benefit in respect of the claim.

We shall be entitled at our option (but not obliged) at any time to take over and conduct in the name of the insured the defence or settlement of any claim against the insured, and to claim indemnity or contribution at any time, in the name of the insured, from any party against whom the insured may have such rights.

If we wish to settle a claim and the insured is opposed to such settlement, our total aggregate payments for damages and claim expenses under this policy shall be limited to the amount by which the claim could have been settled in our opinion.



Legal fees and costs awarded to the insured shall pass to us to the extent of our payments under this policy.

**5.5 Multiple insured, claims and claimants**

All claims arising directly or indirectly out of or in connection with the same source or originating cause shall be considered to constitute a single claim for the purposes of the limit of liability and the deductible.

**5.6 Other insurance**

If loss, claim expenses or any other amounts insured under this policy are also potentially insured under any other insurance policy or policies, then the insured must advise us at the time of making a claim under this policy, and provide us with details of the other insurance.

This policy does not cover any claim or loss in respect of which the insured is entitled to indemnity under any other insurance.

**5.7 Subrogation**

If we grant indemnity under this policy in respect of any claim or loss then we shall be subrogated to all the insured's rights of recovery in respect of such claim or loss regardless of whether or not any payment has been made or the insured has been compensated in full for their loss. The insured will give all such assistance in the exercise of rights of recovery as we may reasonably require.

The insured must refrain from doing anything that might prejudice our actual or potential rights of recovery against any party. Any amounts recovered by us, shall be allocated in the following order; recovery costs, uninsured loss, limit of liability and deductible.

We agree not to exercise any such right of subrogation against any of the insured's directors, officers or employees unless the claim is brought about or contributed to by the dishonest, fraudulent, reckless, criminal or malicious act or omission of the director, officer or employee.

## 6 Additional Conditions

In addition to the General Conditions, the following Additional Conditions apply to Section 2 of this policy.

### 6.1 Deductible

Our obligation to pay loss (including compensation and claim expenses) in connection with any claim, or other amount under this policy, shall only be in excess of the deductible as stated the schedule or as otherwise stated in this policy.

The deductible shall be paid by the insured and shall be applicable to each claim and shall include loss and claim expenses. The deductible will be the first amount borne by the insured and shall remain uninsured.

Where we make a payment in relation to a claim which includes payment of part or all of the deductible the insured shall, within 30 days of being notified from us, reimburse us for the amount of the deductible paid by us.

### 6.2 Medical personnel insurance

It is a condition precedent to the right of the affiliated carer to be indemnified under this policy that the affiliated carer shall ensure that, and record the basis of its assurance that, any and all medical personnel who provide services for or on behalf of, are employed by or utilise the facilities of the affiliated carer are members in good standing of a Medical Defence Organisation recognised by the Australian Medical Association and regulated by the Australian Health Practitioner Regulation Agency (AHPRA), or are otherwise fully insured against all liability for their professional acts, errors, omissions and/or negligence.

### 6.3 Nursing staff

It is a condition precedent to the right of the affiliated carer to be indemnified under this policy that the affiliated carer ensure that, and record the basis of its assurance that, any and all nursing staff who provide services for or on behalf

of, are employed by or utilise the facilities of the affiliated carer are fully qualified, registered and licensed to perform all relevant activities as required by applicable legislation.

#### **6.4 Records**

The policy owner and each affiliated carer shall at all times:

- 6.4.1 maintain accurate descriptive records of all services and equipment used in procedures which shall be available for inspection and use by us or our duly appointed representatives insofar as they pertain to any claim hereunder; and
- 6.4.2 retain the records referred to in Additional Conditions 6.2 'Medical personnel insurance' and 6.3 'Nursing staff' for a period of at least seven (7) years from the date of treatment and, in the case of treatment of a minor, for a period of at least seven (7) years after that minor would attain majority; and
- 6.4.3 give us or our duly appointed representatives such information, assistance, signed statements or depositions as we may require; and
- 6.4.4 assist in the defence of any claim without charge to us.


#### **6.5 Severability and non-imputation**

Where this policy insures more than one party, the application for insurance is construed as a separate application by each affiliated carer.

When determining whether coverage is available under this policy:

- 6.5.1 any failure by an affiliated carer to comply with the duty of disclosure shall not be imputed to any other insured, where the other insured is innocent of and had no prior knowledge of the failure; and
- 6.5.2 for the purposes of the exclusions (other than Exclusion 4.12 'Prior or pending'), no facts pertaining to, conduct of or knowledge possessed by an insured shall be imputed to any other insured.

#### **6.6 Worldwide territorial / jurisdictional limits**



Subject to the terms and conditions of the policy (including but not limited to Exclusion 4.16 'North America exposure') and anything specified to the contrary in the schedule, this policy shall apply to:

- 6.6.1 conduct committed, attempted or alleged to have been committed or attempted, anywhere in the world;
- 6.6.2 claims made and actions brought anywhere in the world except for North Korea, Cuba or Iran.

If the schedule specifies a Territorial or Jurisdictional Limit, then coverage under this policy is restricted to the specified Limits. However, that specified Limit does not restrict the operation of Exclusion 4.16 'North America exposure'.