



MEDICAL MALPRACTICE COMBINED LIABILITY INSURANCE POLICY AUSTRALIA

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IMPORTANT INFORMATION

THIS POLICY

This policy is an important document. The policy wording and schedule together set out the cover provided, the amount insured and the terms and conditions of your insurance. Please read it carefully and keep it in a safe place.

Your Insurance Broker has arranged this Policy for you. If you have any questions about your cover, or you wish to contact ProRisk, please contact your Insurance Broker for assistance.

PRORISK

ProRisk, Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076, is a coverholder for certain Underwriters at Lloyd's. ProRisk has the authority to bind this policy on their behalf.

CLAIMS MADE POLICY

This policy is issued by ProRisk on a claims made and notified basis. This means that the policy only covers claims first made against you during the period of insurance and notified to ProRisk in writing during the period of insurance. The policy does not provide cover for any claims made against you during the period of insurance if at any time prior to the commencement of the period of insurance you were aware of facts which might give rise to those claims being made against you.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where the insured gives notice in writing to the insurer during the period of insurance of facts that might give rise to a claim against the insured, the insurer cannot refuse to pay a claim which arises out of those facts, by reason only that the claim is made after the period of insurance has expired.

YOUR DUTY OF DISCLOSURE

Section 21 of the *Insurance Contracts Act 1984* provides that before you enter into a contract of general insurance with an insurer, you have a duty to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of matter:

- That diminishes the risk to be undertaken by the insurer;
- That is of common knowledge;
- That your insurer knows, or in the ordinary course of its business, ought to know;
- As to which compliance with your duty of disclosure is waived by the insurer.

NON-DISCLOSURE

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

POLICY CANCELLATION

In the event of policy cancellation by the insured, ProRisk's cancellation rates will apply.

PRIVACY STATEMENT

ProRisk is bound by the obligations of the *Privacy Act 1988* (as amended) regarding the collection, use, disclosure and handling of personal information. We will protect the privacy of your personal information.

We collect personal information about you to enable us to provide you with relevant products and services, to assess your application for insurance and, if a contract is entered, to enable us to provide, administer, and manage your policy, and to investigate and handle any claims under your policy. We may disclose your information to third parties (who may be located overseas), such as the insurer, lawyers, claims adjusters, and others appointed by ProRisk or by the insurer to assist us and them in providing relevant products and services. We may also disclose your information to people listed as co-insured on your policy and to your agents. By providing your personal information to us, you consent to us making these disclosures.

If you do not provide all or part of the information required, we may not be able to provide you with our products and services, consider your application for insurance, administer your policy, assess or handle claims under your policy, or you may breach your Duty of Disclosure.

When you provide us with personal information about other individuals, we rely upon you to have made them aware of that disclosure, and of the terms of the ProRisk Privacy Statement, and to obtain their consent.

For a copy of the ProRisk Privacy Statement or to request access to or update the personal information, contact the Privacy Officer at ProRisk by email: enquiries@prorisk.com.au or by mail at the address shown on this policy.

GENERAL INSURANCE CODE OF PRACTICE

ProRisk and Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the Code can be obtained from www.codeofpractice.com.au.

This insurance is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia.

COMPLAINTS HANDLING

Any enquiry or complaint relating to this insurance should be referred to ProRisk in the first instance. We have a complaints handling and internal dispute resolution process to assist you, and information about our complaints handling procedures is available upon request. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21
Angel Place
123 Pitt Street
Sydney NSW 2000

Telephone Number: (02) 9233 1433
Facsimile Number: (02) 9233 1466

: who will refer your dispute to the Complaint's Department at Lloyd's.

Complaints that cannot be resolved by the Complaints Department may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

MEDICAL MALPRACTICE COMBINED LIABILITY INSURANCE

Section 1: Insuring Clause A

Medical liability

- 1.1 Underwriters will indemnify the Insured against all sums which the Insured becomes legally liable to pay for any Claim:
- (a) first made against the Insured and notified to Underwriters during the Period of Insurance; and
 - (b) arising from the provision of Health Care Services in the conduct of the Business; and
 - (c) for Personal Injury to any patient of the Insured caused by:
 - (i) a negligent act, error or omission committed or allegedly committed by or on behalf of the Insured; or
 - (ii) a Good Samaritan Act committed or allegedly committed by or on behalf of the Insured.
- 1.2 Underwriters will indemnify the Insured for Costs and Expenses incurred with the prior consent of Underwriters in the investigation, defence or settlement of any Claim indemnified by Insuring Clause A.

Section 2: Insuring Clause B

Public Liability and Goods Sold or Supplied

- 2.1 Underwriters will indemnify the Insured against all sums which the Insured becomes legally liable to pay for any Claim:
- (a) first made against the Insured and notified to Underwriters during the Period of Insurance; and
 - (b) for Personal Injury to any third party or loss or damage to the tangible Property of any third party; and
 - (c) as a result of an event or an occurrence happening in connection with the Business.
- 2.2 Underwriters will indemnify the Insured for Costs and Expenses incurred with the prior consent of Underwriters in the investigation, defence or settlement of any Claim indemnified by Insuring Clause B.

Section 3: Insuring Clause C

- 3.1 Underwriters will indemnify the Insured against all sums which the Insured becomes legally liable to pay for any Claim first made against the Insured and notified to Underwriters during the Period of Insurance arising in the conduct of the Insured's Business as a result of any of the following:

Confidentiality

- (a) Breach or alleged breach of Privacy and Health Records Legislation.

Defamation, libel and slander

- (b) Actual or alleged defamation, libel or slander but only where, upon the reasonable request of Underwriters, the Insured issues an apology or an expression of regret. If the Insured refuses to issue an apology or an expression

or regret, Underwriters will not be liable to defend or indemnify the Insured in respect of any Claim after the date of such refusal.

Dishonesty

- (c) Actual or alleged dishonest or fraudulent acts or omissions of a Principal or Employee provided that:
 - (i) Underwriters will not indemnify any person who commits or condones any such conduct;
 - (ii) there is no indemnity for any loss or damage sustained after the date of the Insured's discovery of any such conduct, or the date upon which the Insured had reasonable cause for suspicion of such conduct;
 - (iii) the Insured will, at Underwriters' request and expense take all reasonable steps to obtain reimbursement from any person committing or condoning such conduct;
 - (iv) the amount of indemnity available under this Policy will be reduced by any amount equal to the sum of any monies recoverable from any person committing or condoning such conduct, any monies owed by the Insured to any such person, any monies held by the Insured and belonging to any such person, and any monies recovered by Underwriters from exercising their rights of subrogation; and
 - (v) the Excess will apply to each and every individual dishonest or fraudulent act or omission.

Intellectual property

- (d) Infringement or alleged infringement of copyright, trademarks, registered designs or patents.

Trade Practices Act: misleading or deceptive conduct

- (e) Breach or alleged breach of section 52 or section 53 of the *Trade Practices Act 1974* (Cth) or the equivalent section(s) of the Fair Trading Legislation in any state and territory but only where the Claim was caused directly by such a breach.

3.2 Underwriters will indemnify the Insured for Costs and Expenses incurred with the prior consent of Underwriters in the investigation, defence or settlement of any Claim indemnified by Insuring Clause C.

Section 4: Automatic Extensions

The Automatic Extensions are each subject to the terms and conditions of this Policy unless expressly stated to be otherwise. The Excess and the Limit of Liability (including any sub-limits) stated in the Schedule apply to the Automatic Extensions and the Automatic Extensions do not increase the Limit of Liability nor the aggregate Limit of Liability.

Loss of Documents

- 4.1 Loss of or damage to Documents (including but not limited to Documents which have been destroyed, lost or mislaid after appropriate searches) which were in the Insured's physical custody or control, provided that:
 - (a) the loss of or damage is sustained and notified to Underwriters during the Period of Insurance; and
 - (b) the indemnity for this Automatic Extension is limited to the costs, charges and expenses in restoring or replacing the lost or damaged Documents; and

- (c) the costs, charges and expenses are supported by invoices and/or accounts submitted to Underwriters for their approval; and
- (d) any document kept in magnetic or electronic form is duplicated with the intention that the back up or duplicate document be used as the basis for restoring any lost or damaged Document to its original status; and
- (e) this Automatic Extension does not extend to indemnify the Insured for:
 - (i) the loss or damage to any Document the property of or entrusted to the Insured by a third party; or
 - (ii) damage to any Document caused by normal wear and tear; or
 - (iii) for corruption, theft, interference with, lack of access to electronically stored data caused or contributed to by a computer virus or a third party where such costs, charges and expenses relate to the replacement / restoration of such data after a period or more than 48 hours after the computer virus or act took place or effect.

Inquiries

- 4.2 Underwriters will pay all Costs and Expenses incurred with the prior consent of Underwriters for the attendance by the Insured at any Inquiry provided that:
- (a) Underwriters will have the right to appoint legal representatives to represent the Insured at the Inquiry if they consider it to be necessary and may appoint legal representatives of their choice for that purpose; and
 - (b) the Inquiry is commenced, ordered or commissioned during the Period of Insurance and is notified to Underwriters during the Period of Insurance; and
 - (c) where stated in the Schedule, Underwriters' limit for all Costs and Expenses incurred under this Automatic Extension and in the aggregate shall not exceed the sub-limit stated in the Schedule for Inquiries and such sub-limit forms part of the aggregate Limit of Liability under this Policy.

Run-off cover

- 4.3 If the Insured ceases to exist or operate, or is consolidated with, merged into, or acquired by any other entity, Underwriters will indemnify the Insured under the Insuring Clauses and the Extensions in respect of any Claim first made against the Insured and notified to Underwriters during the Period of Insurance but only in respect of a Claim arising from events or occurrences, acts, errors or omissions occurring prior to the date that the Insured ceased to exist or operate, or was consolidated with, merged into or acquired by another entity.
- 4.4 Underwriters will indemnify former Principals and Employees under the Insuring Clauses and the Extensions in respect of any Claim first made against the Insured, Principal or Employee and notified to Underwriters during the Period of Insurance but only in respect of a Claim arising from events or occurrences, acts, errors or omissions occurring while the Principal or Employee was employed by or part of the Insured.

Students

- 4.5 The definition of Employee in this Policy is extended to include any student who during or prior to the Period of Insurance obtains practical activities experience with the Insured as part of a University, College including the College of Advanced Education, TAFE, Association or government accredited training course, but only in respect of activities performed for and on the Insured's behalf in the Business and under the Insured's supervision.

Locums

- 4.6 Underwriters agree that the definition of Insured will include any appropriately qualified locums employed or engaged by the Insured named in the Schedule for any acts, errors or omissions occurring while they are acting in that capacity, however for not more than 30 working days in a year, other than maternity leave.

4.7 Mergers and Acquisitions

The cover provided by this Policy will extend to any entity that is acquired by the insured during the period of insurance and involved in the same Business as the insured;

Provided that the assets of the entity to be acquired does not exceed 50% of the insured's assets.

Vicarious Liability for employed doctors

- 4.8 For the avoidance of doubt, and subject to policy terms and conditions, including General Condition 8.20, Underwriters agree to indemnify the Insured named in the Schedule for its liability for any Claim arising as a consequence of the conduct of its employed registered Medical Practitioners but only in respect of Claims arising from activities undertaken on behalf of the Insured named in the Schedule and in the conduct of the Business.

Section 5: Optional Extensions

The Optional Extensions are each subject to the terms and conditions of this Policy unless expressly stated to be otherwise. The Excess and the Limit of Liability stated in the Schedule apply to the Optional Extensions and the Optional Extensions shall not increase the Limit of Liability nor the aggregate Limit of Liability.

Joint ventures

- 5.1 Underwriters will indemnify the Insured under the Insuring Clauses or the Extensions for any Claim in respect of the Insured's proportion of liability for its conduct in a joint venture, provided that the Claim is first made and notified to Underwriters during the Period of Insurance.

Principals' prior business

- 5.2 Underwriters will indemnify the Principals and each of them for any Claim made against them under the Insuring Clauses or the Extensions arising out of a Principal's conduct of a prior business, provided that the Claim is first made and notified to Underwriters during the Period of Insurance.

Section 6: Exclusions

Underwriters will not indemnify the Insured for:

Abuse

- 6.1 Any Claim arising, indirectly or directly, or in any way connected with any verbal or physical abuse, assault, battery or any violence committed or alleged to have been committed by the Insured.

Asbestos

- 6.2 Any Claim arising, indirectly or directly, or in any way connected with asbestos other than in respect to the provision of Health Care Services for an asbestos related illness.

Assumed and proportionate liability

6.3 Any Claim:

- (a) arising, indirectly or directly, or in any way connected with any liability assumed by the Insured under a contract, deed or agreement which goes beyond the duty to use such skill and care as is usual in the exercise of the Business; or
- (b) arising, indirectly or directly, or in any way connected with an assumed or contractual liability including a liability assumed by the Insured under a contractual term, condition or undertaking unless such liability would have existed or attached in the absence of such assumed or contractual liability; or
- (c) arising, indirectly or directly, or in any way connected with any liability assumed by an Insured under a guarantee or warranty; or
- (d) arising, indirectly or directly, or in any way connected with any liability for which the Insured has foregone, excluded or limited a right of recovery against any party; or
- (e) arising, indirectly or directly, or in any way connected with an indemnity given or undertaken or a liability assumed by the Insured on behalf of a concurrent or joint wrongdoer; or
- (f) or part of a Claim where the Insured is obligated to pay for or contribute to loss attributable to concurrent wrongdoers.

Directors and officers

- 6.4 Any Claim made against a Principal or Employee where such Claim is made solely by reason of the person holding the position, or having acted in the position, of director or officer (as these terms are defined in the *Corporations Act 2001 (Cth)*) of the Insured and having acted in that capacity.

Dishonest or wilful acts

- 6.5 Subject to Insuring Clause 3.1(c), any Claim or Inquiry directly or indirectly caused by, contributed to by, or arising out of or in connection with any actual or alleged:
- (a) dishonest, fraudulent or criminal acts, errors or omissions; or
 - (b) wilful breach of any statute, contract, agreement or duty; or
 - (c) any act, error or omission committed or omitted in reckless disregard; of or by the Insured.

Employment liability

6.6 Any Claim:

- (a) in relation to, or for, an actual or alleged Employment Practices Breach; or
- (b) for breach of any obligation owed by the Insured in its capacity as employer to any Employee or in respect of which compensation is available under any Workers' Compensation Scheme or any similar legislation.

Excess

- 6.7 The Excess.

Fines, penalties and damages

- 6.8 Any fines or penalties including but not limited to civil or criminal penalties and punitive, multiple, aggravated or exemplary damages.

Insolvency

- 6.9 Any Claim arising from the administration, receivership, insolvency or bankruptcy of the Insured.

Jurisdiction and territorial limits

- 6.10 Any:

- (a) Claim arising from any legal proceeding brought in any court of the United States of America or Canada, or their dominions and protectorates, or arising from any judgment registered or lodged in connection with such a legal proceeding or any Inquiry commenced, ordered, commissioned or conducted in the United States of America or Canada, or their dominions and protectorates; or
- (b) Claim arising from any activities, acts, errors or omissions by or on behalf of the Insured or events or occurrences in the United States of America or Canada, or their dominions and protectorates; or
- (c) loss of or damage to Documents occurring within the United States of America or Canada, or their dominions and protectorates.

Narcotics and Intoxicants

- 6.11 Any Claim directly or indirectly caused by, contributed to by, or arising out of or in connection with the Insured being under the influence of intoxicants or narcotics.

Other insurance

- 6.12 Any Claim or Inquiry for which assistance, coverage or indemnity may be available to the Insured by a Medical Defence Organisation or other insurer whether or not such assistance, coverage or indemnity is discretionary and not ultimately provided to the Insured by the Medical Defence Organisation or other insurer. In such a case this Policy will only contribute proportionally to such other Medical Defence Organisation or insurer.

Pollution

- 6.13 Any Claim or Inquiry arising, directly or indirectly, from or in connection with:

- (a) seepage, subsidence, pollution or contamination; or
- (b) the cost of removing, nullifying or cleaning up seeping, polluting, or contaminating substances.

Prior reported or Known Circumstances

- 6.14 Any:

- (a) Claim known by or received by an Insured prior to the Period of Insurance; or
- (b) Claim, Known Circumstance or Inquiry noted on the Proposal for the current Period of Insurance or any previous proposal; or
- (c) Claim or Inquiry reported, disclosed or notified, or which ought reasonably to have been reported, disclosed or notified, to Underwriters or any other insurer or Medical Defence Organisation prior to the Period of Insurance as being either:
 - (i) a Claim or an Inquiry; or
 - (ii) facts, matters or circumstances which may give rise to a Claim and/or an Inquiry; or
 - (iii) facts, matters or circumstances which may give rise to an allegation or a liability that is or may be the subject of a Claim or an Inquiry; or
- (d) Claim or Inquiry directly or indirectly caused by, contributed to by, or arising out of, or in connection with any Known Circumstance; or

- (e) Inquiry that was in progress, pending, commenced, ordered or commissioned prior to the Period of Insurance.

Product liability

- 6.15 Any Claim arising from the manufacture, construction, alteration, repair, repackaging, servicing, or treating of any Products or any Product recall.

Property damage

- 6.16 Any Claim arising from damage to Property owned, leased or hired or under hire purchase or on loan to the Insured or otherwise in the Insured's care, custody or control.

Radioactivity

- 6.17 Any Claim directly or indirectly caused by, contributed to by, in connection with or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof. But this exclusion does not apply to any Claim arising from the use of radium, radium compounds or radioisotopes when used away from the place where such are made or produced and used exclusively for the provision of Health Care Services and in the conduct of the Insured's Business.

Related Persons

- 6.18 Any Claim :
 - (a) made against the Insured by any Related Persons, unless originally emanating from an independent third party; or
 - (b) by any Employee for Personal Injury, unless the Personal Injury is caused by the negligent acts, errors or omissions of the Insured while the Employee is a patient of the Insured.

Retroactive Date

- 6.19 Any Claim or Inquiry directly or indirectly caused by, contributed to by, in connection with or arising from any:
 - (a) event or occurrence; or
 - (b) acts, errors or omissions committed or alleged to have been committed; prior to the Retroactive Date.

Terrorism

- 6.20 Any Claim arising directly or indirectly from, or in connection with any act of Terrorism, or any action taken in controlling, preventing, suppressing or in any way relating to an act of Terrorism.

Trading Debts

- 6.21 Any Claim arising from any liability to pay trading debts.

Vehicles

- 6.22 Any Claim:
 - (a) arising from the ownership, possession or use by or on behalf of the Insured of any motor vehicle or trailer for which compulsory insurance is required by law, other than Claims arising from damage to any motor vehicle or trailer temporarily in the Insured's custody or control for the purpose of parking; or
 - (b) arising from the ownership, possession or use by or on behalf of the Insured of any aircraft, watercraft or hovercraft, other than Claims under the Insuring

Clauses or the Extensions arising from the emergency transportation of any patient accompanied by the Insured.

War

- 6.23 Any Claim directly or indirectly caused by, contributed to by, in connection with or arising from war, invasion, acts of foreign enemies, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to Property by, or under the order of, any government or public or local authority.

Section 7: Claim Conditions

Notification

- 7.1 This Policy applies only to Claims first made against the Insured during the Period of Insurance and notified to Underwriters during the Period of Insurance.
- 7.2 A Claim is considered to be first made against the Insured when the Insured:
- (a) receives a demand for compensation or damages or any assertion of a financial right made by a third party in writing to the Insured; or
 - (b) receives any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the Insured and claiming compensation, damages or other civil rights or remedies against the Insured.
- 7.3 In the event of a Claim arising under this Policy the Insured must give immediate written notice or written notice as soon as practically possible to Underwriters, via the broker or agent named in the Schedule, but in any event within the Period of Insurance.

Management of Claims

- 7.4 The Insured or its legal representatives must not:
- (a) take any action which is prejudicial to Underwriters' interests; or
 - (b) admit liability for or settle any Claim or Potential Claim; or
 - (c) incur any Costs and Expenses without Underwriters' prior consent.
- 7.5 Underwriters will be entitled at any time, but not obligated, to take over and conduct:
- (a) in the name of the Insured the defence of any suit, legal proceeding or action the subject of a Claim;
 - (b) the investigation of any Claim or Potential Claim; or
 - (c) or handle any Inquiry; and may appoint legal representatives of their choice for these purposes.
- 7.6 Underwriters will have the discretion to negotiate the settlement of any Claim or Potential Claim. If Underwriters recommend the settlement of a Claim or Potential Claim for a certain amount, and the Claim or Potential Claim can be settled for that amount but the Insured refuses to agree to the settlement and decides to contest the Claim or Potential Claim, then Underwriters are only liable under this Policy:
- (a) for the recommended settlement amount; and
 - (b) Costs and Expenses up to the date of the Insured's refusal to settle.
- 7.7 Underwriters may allow the Insured to conduct the defence of any suit, legal proceeding or action the subject of a Claim or Potential Claim if Underwriters believe that the Claim or Potential Claim will not exceed the Excess. If Underwriters do this, the Insured is required to provide Underwriters with regular progress reports and Underwriters reserve

the right to take over conduct of the defence of the Claim or the investigation of the Potential Claim at any time.

7.8 Any:

- (a) Costs and Expenses incurred by or on behalf of the Insured in the investigation and conduct of a Potential Claim; or
- (b) payments made in accordance with Claim Condition 7.6 to settle a Potential Claim;

will be subject to the Excess and will be deemed to be Costs and Expenses incurred in respect of a Claim or a payment made to settle a Claim for the purposes of this Policy including for the purposes of calculating the Limit of Liability.

7.9 Legal representatives retained by Underwriters to act on the Insured's behalf are free to disclose to Underwriters any information obtained while acting for the Insured and the Insured agrees to waive any legal professional or client privilege to the extent that such privilege may have prevented such disclosure to Underwriters.

Section 8: General Conditions

Aggregation

8.1 Where more than one Claim or Potential Claim results from a single:

- (a) event or occurrence; or
- (b) act, error or omission;

those Claims or Potential Claims will be deemed by this Policy to be one Claim or Potential Claim and Underwriters will apply this General Condition when determining the Limit of Liability available (including any sub-limits), and the Excess applicable to any Claims or Potential Claims.

8.2 For the purposes of General Condition 8.1:

- (a) all causally connected acts, errors or omissions shall jointly constitute a single act, error or omission; and
- (b) a continuous or repeated exposure to substantially the same general conditions will constitute a single event or occurrence.

Cancellation

8.3 Underwriters may cancel this Policy at any time at Underwriters' discretion in accordance with the provisions of the *Insurance Contracts Act 1984* (Cth). If this Policy is cancelled Underwriters shall retain only the earned portion of the Premium computed from day to day.

Construction and Interpretation

8.4 The construction, interpretation and meaning of this Policy will be determined in accordance with the laws of the state or territory of Australia where the Insured's principal place of business is located. All disputes relating to this Policy must be submitted to the exclusive jurisdiction of the courts of that state or territory or a Federal Court of Australia.

8.5 Paragraph titles used in this Policy are included for descriptive purposes only and do not form part of this Policy for the purposes of its construction or interpretation.

8.6 Except where the context otherwise requires, words denoting the singular include the plural and vice versa.

Consideration

- 8.7 The indemnity provided by Underwriters under this Policy is in consideration of the payment of the Premium.
- 8.8 The Insured agrees to pay the Premium within the time specified in the Schedule.

Co-operation and mitigation

- 8.9 The Insured must give Underwriters such information and assistance as Underwriters consider necessary to:
- (a) determine an appropriate course of action in relation to any Claim, Potential Claim or Inquiry; and
 - (b) identify any parties that the Insured may have rights against in connection with any Claim or Potential Claim.

Compliance with this General Condition will be at the Insured's own expense.

- 8.10 The Insured must take all reasonable steps to avoid, minimise or mitigate any liability, loss or damage that is or may be the subject of a Claim or a Potential Claim and compliance with this General Condition will be at the Insured's own expense.

Excess

- 8.11 The Insured is liable to pay the Excess for each Claim, Inquiry and Loss of Documents stated in the Schedule.
- 8.12 The Excess is inclusive of Costs and Expenses and the Insured is liable to pay Costs and Expenses as they are incurred up to the amount of the Excess.
- 8.13 In calculating the Excess which is payable by the Insured for the acquisition of goods, services or other supply including Costs and Expenses, this is net of any input tax credit which the Insured is or may be entitled to receive or claim under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Limit of Liability

- 8.14 Underwriters' liability under this Policy for any one Claim, Inquiry or Loss of Documents, and in the aggregate for all Claims, Inquiries, and Loss of Documents during the Period of Insurance will not exceed the Limit of Liability stated in the Schedule.
- 8.15 Where a sub-limit is stated in the Schedule or this Policy that sub-limit shall form part of and erode the aggregate Limit of Liability under this Policy.
- 8.16 The Limit of Liability is inclusive of Costs and Expenses indemnified under this Policy.
- 8.17 Underwriters are not obliged to defend, or continue to defend any Claim or Potential Claim or to pay or continue to pay Costs and Expenses once the Limit of Liability has been eroded.

Maintenance of records

- 8.18 The Insured must at all times:
- (a) maintain accurate descriptive records of all professional services and equipment used in medical, clinical or therapeutic consultation, treatments or procedures, which records must be available for inspection and use by Underwriters in the investigation and/or defence of any Claim to which they relate; and
 - (b) retain all such records for at least seven (7) years from the date of consultation, treatment or procedure and, in the case of a minor, for a period of at least seven (7) years after that minor attains majority.

Material change

- 8.19 The Insured must notify Underwriters within thirty (30) days of any material change in the nature of the Business or any material change to the risk during the Period of Insurance.

Medical Practitioners

- 8.20 At all material times after the Retroactive Date, throughout the Period of Insurance and six (6) years after the expiry of the Period of Insurance:
- (a) all Medical Practitioners employed by or contracted to the Insured, or otherwise working in or in connection with the Business must be licensed and must maintain registration with the relevant state and/or territory Medical Registration Board; and
 - (b) all such Medical Practitioners must be otherwise fully insured under their own policy of insurance for their own malpractice, professional errors, omissions and negligence.

Professional instruments

- 8.21 Any instrument used or intended for use in the Business and which is intended to be used in contact with skin tissue, or to penetrate skin tissue (whether human or animal), or to be used in contact with bodily fluid (whether human or animal) must be:
- (a) handled, used and stored in accordance with the manufacturer's instructions; and
 - (b) where approved by the manufacturer(s) and by the Department of Health, or equivalent, to be used more than once, sterilised prior to such use using only sterilising apparatus specifically approved by the manufacturer and in accordance with the instructions, recommendations or guidelines of such manufacturer, and in accordance with Department of Health guidelines, or equivalent.

Proportionate liability

- 8.22 This Policy will only indemnify the Insured for its proportionate liability for any Claim.

Subrogation

- 8.23 Where Underwriters have paid a Claim or a Potential Claim under this Policy, Underwriters will become subrogated to all rights and remedies the Insured may have against any party in relation to that Claim or Potential Claim. At the request of Underwriters, and without charge, the Insured must assist Underwriters (including giving evidence at any civil hearing) and provide such information and documentation (including signed statements) as Underwriters reasonably require to exercise such rights.

Section 9: Definitions

- 9.1 **Business** means the Business as stated in the Schedule.
- 9.2 **Claim** means:
- (a) any demand for compensation or damages or any assertion of a financial right made by a third party in writing to the Insured; or
 - (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the Insured and claiming compensation, damages or other civil rights or remedy against the Insured.
- 9.3 **Costs and Expenses** means all reasonable legal fees, legal costs and other expenses incurred by or on behalf of the Insured, with the prior consent of Underwriters, in the

- investigation, defence or settlement of any Claim and/or for the representation or attendance at any Inquiry and/or in the investigation of Potential Claims .
- 9.4 **Document** means a deed, will, agreement, map, plan, book, letter, record, certificate, photograph or negative, project model or display, forms and documents of any nature, whether written, printed or reproduced by any method and includes computer software, computer records and electronically stored data but does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any similar instrument.
- 9.5 **Employee** means any natural person employed by the Insured under a contract of service, traineeship, or apprenticeship during or prior to the Period of Insurance, where that natural person is under the direct control or supervision of the Insured and acting in the course of conduct of his or her employment but does not include Medical Practitioners acting in such capacity nor independent contractors, consultants nor agents of the Insured.
- 9.6 **Employment Practices Breach** means:
- (a) wrongful termination of employment whether actual or constructive; or
 - (b) employment discrimination of any kind; or
 - (c) sexual or other harassment in the workplace; or
 - (d) wrongful deprivation of career opportunity, employment related misrepresentations, retaliatory treatment against an Employee or Principal of the Insured, failure to promote, demotion, wrongful discipline or evaluation, or refusal to hire.
- 9.7 **Excess** means the amount shown in the Schedule as the Excess.
- 9.8 **Fair Trading Legislation** means the *Fair Trading Act 1987 (NSW)*, or the *Fair Trading Act 1985 (Vic)* or similar legislation enacted by the other states or territories of Australia.
- 9.9 **Good Samaritan Act** means emergency first aid or medical assistance administered at the scene of a medical emergency, accident or disaster by the Insured who is present either by chance, or in response to an S.O.S call and for which the Insured has no expectation of payment or other reward.
- 9.10 **Health Care Services** means any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person.
- 9.11 **Inquiry** means an official investigation, examination, tribunal, inquiry or other official proceeding directly related to the provision of Health Care Services, and in connection with the Business, held or conducted by an overseeing professional body or industry association or any coronial inquiry.
- 9.12 **Insured** means:
- (a) the person or entity named as the Insured in the Schedule; or
 - (b) any person who is, has been or may become during the Period of Insurance, a Principal or Employee of the person or entity named as the Insured in the Schedule but only in respect of Claims arising from activities undertaken on behalf of the Insured and in the conduct of the Business and excluding Medical Practitioners acting in such capacity; or
 - (c) any person who is, has been or may become during the Period of Insurance, a Principal or Employee of the person or entity named as the Insured in the Schedule but only in respect of their attendance at an Inquiry; or
 - (d) any person who is, during the Period of Insurance, a volunteer or member at any fundraising, social or ethics committee of the person or entity named as the

Insured in the Schedule, but only in respect of Claims arising from activities undertaken on behalf of the Insured and in the conduct of the Business; or

(e) the estate or legal representatives of any person who would otherwise be indemnified under this Policy.

9.13 **Known Circumstance** means any act, error or omission, fact, matter or circumstance, event or occurrence, known or received by the Insured prior to the Period of Insurance:

(a) which the Insured knew; or

(b) which a reasonable person in the Insured's position ought to or would have known or been aware;

might give rise to a Claim and/or an Inquiry or an allegation or a liability that is or may be the subject of a Claim and/or an Inquiry.

9.14 **Limit of Liability** means the amount shown in the Schedule as the Limit of Liability.

9.15 **Medical Practitioner** means a person registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.

9.16 **Period of Insurance** means the period shown in the Schedule as the Period of Insurance, unless terminated earlier.

9.17 **Personal Injury** means physical injury, mental injury, illness, disease or death of any patient.

9.18 **Potential Claim** means any facts notified to Underwriters in accordance with section 40(3) of the *Insurance Contracts Act 1984* (Cth).

9.19 **Premium** means the amount stated as Premium in the Schedule.

9.20 **Principal** means where the Insured is an individual, that individual, where the Insured is a firm, a partner of that firm, or where the Insured is a company, a director of that company.

9.21 **Privacy and Health Records Legislation** means the *Privacy Act 2001* (Cth) and the: *Health Records & Information Privacy Act 2002* (NSW), *Health Records Act 2001* (Vic), *Health Records (Privacy & Access) Act 1997* (ACT) or similar legislation enacted by the other states or territories of Australia.

9.22 **Property** means the tangible personal property of third parties.

9.23 **Products** means any solid, liquid or gaseous substance or component part thereof.

9.24 **Related Persons** means any person or entity covered by this Policy, any Subsidiary, trustee or nominee of the Insured, or any spouse, domestic partner, parent, parent-in-law, domestic partner of parent, sibling, or child of the Insured or any spouse or domestic partner of the Insured's sibling or child.

9.25 **Retroactive Date** means the date shown in the Schedule as the Retroactive Date.

9.26 **Subsidiary** means any entity over which the Insured is in a position to exercise effective direction or control through ownership or control of more than fifty percent of the issued voting shares of that entity, or any subsidiary at law.

9.27 **Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

9.28 **Underwriters** means the underwriting members of participating Syndicates at Lloyd's.