



FAIRLIGHT
HEALTH & CARE INSURANCE

COMMUNITY CARE COMBINED LIABILITY
INSURANCE POLICY

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IMPORTANT INFORMATION

In consideration of the Insured having paid to the Insurer the premium in accordance with the premium payment condition, and in reliance upon all statements made in the Proposal and any information provided to the Insurer by or on behalf of the Insured, the Insurer agrees, subject to all Terms, Conditions and Exclusions of the Policy, to provide insurance in the matter and to the extent stated hereinafter. Provided that:

- 1) the liability of the Insurer shall not exceed the applicable Limit of Liability as set out in the Policy, except where otherwise agreed by the Insurer in writing and incorporated into this Policy;
- 2) the liability of each Insurer shall be several and not joint, and shall be limited to the proportion set against the Insurer's name in the Schedule of Insurers;
- 3) the Liability of the Insurer for any loss, Claim or coverage shall be determined by reference to the most specific Section, clause, cover, extension or exclusion that may be applicable to such head of loss or element of the Claim. For the purpose of this clause, any extension shall be considered the more specific clause where held against cover under its Section's general insuring clause; and
- 4) the Insured is liable to pay the Deductible specified in the Schedule.

About Fairlight Insurance

Fairlight Insurance is a Business Name of Market Lane Insurance Group Pty Ltd who is the Underwriter of this insurance Policy for and on behalf of Certain Underwriters at Lloyd's (Lloyd's) under a Delegated Binding Authority Agreement(s) which allows Us to enter into and arrange policies of insurance.

This means that those Underwriters at Lloyd's are the Insurer(s) under this Policy. The contract makes Market Lane Insurance Group Pty Ltd the agent of those Underwriters at Lloyd's who have subscribed to the contract and gives Market Lane Insurance Group Pty Ltd the authority to perform certain acts on their behalf, but does not affect Your rights to claim or

make a complaint.

The details of the contracts and the Lloyd's Lead Insurer(s) are shown in the Schedule.

In this Policy Fairlight Insurance Market Lane Insurance Group Pty Ltd and Lloyd's are collectively and/or interchangeably referred to as "We," "Us," "Our" or "Insurer."

Market Lane Insurance Group Pty Ltd's Australian Business Number is 15 625 224 642 and its Australian Financial Services Licence Number is 509709.

Your Duty of Disclosure

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

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

You do not need to tell Us anything that:

- reduces the risk We insure You for; or
- is common knowledge; or
- We know or should know as an insurer; or
- We waive Your duty to tell Us about.

If You do not tell Us anything You are required to, We may cancel Your contract or reduce the amount We will pay You if you make a claim, but only to the extent We have been prejudiced by your failure, or both. If Your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

General Insurance Code of Practice

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.

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.

Claims

In the event of a claim arising under this Insurance immediate notice should be given to:

Attention: The Barn Underwriting Agency

claims@marketlanegroup.com.au

1300 902 210

Complaints and disputes

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: The Complaints Officer

Fairlight Insurance

complaints@marketlanegroup.com.au

1300 902 210

PO Box, R298, Royal Exchange NSW 1225

We will acknowledge receipt of your complaint 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 determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited

Email: ldraustralia@lloyds.com

Telephone: (02) 8298 0783

Community Care Combined Liability Insurance Policy GL2025.5

Fairlight Insurance – Trading as a Business Name of Market Lane Insurance Group Pty Ltd

ABN 15 624 224 642 | AFSL 509709

Post: PO Box R1745, Royal Exchange, NSW, 1225

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

Post: GPO Box 3 Melbourne VIC 3001

Website: www.afca.org.au

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 can 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:

- i) 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;
- ii) any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia PO Box R1745, Royal Exchange, NSW, 1225

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

- iii) 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.

Lloyd's Australian Alternative Disputes Resolution Clause

In the event that a dispute arises between Underwriters and the Insured/Reinsured out of or otherwise in relation to this agreement then:

- a) Any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "Dispute Notice") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;
- b) If a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:
 1. a process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of The Lawyers Engaged in Alternative Dispute Resolution (or other appropriate professional body as agreed by the parties); or
 2. referral of the matters in dispute to an independent expert for an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:
 - a) will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);
 - b) will act as an expert and not as an arbitrator;
 - c) will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;

- d) will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and
- e) will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause (c) below) without first pursuing such informal resolution techniques in good faith;

In the event that the dispute is not resolved by such informal process within 35 days of the Dispute Notice (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

- c) Following either a mediation or an expert determination pursuant to clause (b) of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

Such proceedings may only be commenced on 14 days written notice to the other party and shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia Suite

PO Box R1745, Royal Exchange, NSW, 1225

who has authority to accept service and to appear on Underwriters' behalf.

If proceedings are instituted against any one of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

- d) Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the Policy while the dispute is being resolved, unless

and until such obligations are terminated or expire in accordance with this agreement.

- e) Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the Policy.
- f) Notwithstanding anything in this schedule, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the Policy where the party seeks urgent interlocutory relief.

LMA 5547

17 May 2021

Privacy

Fairlight Insurance collects personal information in order to provide its various services to its customers.

If the personal information We request from You is not provided, We or any involved third party may not be able to provide the appropriate services. We disclose personal information to third parties who are involved in the provision of our services. For example, in arranging and managing your insurance needs We may provide information to Insurers, reinsurers, other insurance intermediaries, it's advisors such as loss adjustors, lawyers and accountants, and other parties involved in the claims handling process.

By submitting your proposal and continuing to deal with Us, You confirm on your behalf and/or on behalf of those you represent consent to Us and these parties collecting, using and disclosing personal and sensitive information about You.

We have a duty to maintain the confidentiality of our Customers' affairs which includes their personal information.

Our duty of confidentiality applies except where disclosure of your personal information is with your consent or required by law. We may make use of your personal information to provide You with information about its products and services.

Simply contact Our Privacy Officer on the details below if You would like to:

- Access the personal information We hold about You.
- Update or correct the information We hold about You.
- Discuss your privacy concerns or be removed from the mailing list to receive information about Our products and services.

Privacy Officer

Fairlight Insurance

Po Box R298 Royal Exchange NSW 2000

Email: hello@marketlanegroup.com.au

Phone: 1300 902 210

Taxation

This insurance is subject to the Goods and Services Tax (GST). The GST amount will be specified in the Policy Schedule. If You are registered for GST purposes, You may be able to claim an input tax credit in respect of GST we collect from you. Where You are registered for GST purposes, You should calculate Your proposed sums insured with reference to the GST status of each item of property to be insured. Depending on the GST status of each property to be insured, the sums insured may or may not include a GST component. You should seek expert advice on the application of the GST to Your particular circumstances. Details about the GST in relation to a payment under this Policy are shown under "How the Goods and Services Tax affects Your claim" in the "Memoranda to All Sections" of this Policy.

Australian Terrorism Insurance Act 2003

Notice

The Underwriters have treated this insurance (or part of it) as an Insurance to which the Australia Terrorism Insurance Act 2003 (ATIA) applies. ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism exclusion to which this Insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATIA. Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident". All other terms, conditions, insured coverage and

exclusions of this Insurance including applicable limits and deductibles remain unchanged. If any or all of the Underwriters have reinsured this Insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Underwriter's liability for payment for "eligible terrorism losses".

(NMA 2984)

Service of Suit

The Insurer accepting this insurance agrees that:

- a) if a dispute arises under this Policy, this insurance will be subject to Australian law and practice and the Insurer(s) will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b) any summons notice or process to be served upon the Insurer's may be served upon:

Lloyd's Underwriters General Representative in Australia
[Grosvenor Place, Level 32, 225 George Street, Sydney New South Wales 2000](#)

who has authority to accept service and to appear on the Underwriters' behalf:

- c) if a suit is instituted against the Insurer, all participating Insurers will abide by the final decision of such Court or any competent Appellate Court.

Several Liability Notice (Insurance) LSW

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The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of 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.

Unfair Contract Terms

- a) it has reviewed the Policy Wording, Schedule and associated endorsements and is satisfied with not just the benefits of coverage but also the limitations and restrictions on coverage;
- b) it has had notice of the limitations and restrictions on coverage under the Policy, the Schedule and associated endorsements and note that those limitations and restrictions can include sub-limits on coverage, coverage being available subject to certain conditions being met, or in certain circumstances coverage not being available due to exclusions; and
- c) the limitations and restrictions on coverage are necessary for the purpose of protecting subscribing underwriters' legitimate interests.

The Insured acknowledges, warrants, and agrees that:

Community Care Insurance –

Section 1 and 2

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:

- a) involves violence against one or more persons;
- b) involves damage to property;
- c) endangers life other than that of the person committing the action;
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

1.2 Advertising Liability

Advertising Liability means:

- a) infringement of copyright of, or passing off of a title or slogan;
- b) unfair competition, piracy or idea misappropriation contrary to an implied contract;
- c) invasion of privacy; or
- d) 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 Agent

Agent means a natural person or company or other entity that has a contract with the Insured under which the Insured engages the natural person or company or other entity to act for or on behalf of the Insured in the provision of Professional Business Practice.

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 Business

Business means all Your activities and operations stated in the Schedule and;

- a) For the purpose of Section 1 only, the ownership and tenancy of premises, private work carried out with Your consent by Your Employees for any director or senior executive officer of Yours; and
- b) For the purpose of Section 2 only, the provision of Professional Business Practice.

1.6 Circumstances

Circumstances means any incident, occurrence, fact or matter which may give rise to a Claim.

1.7 Civil Liability

Civil Liability means liability of the Insured to any civil cause of action for Compensation, based solely on its provision to provide, the Professional Business Practice. It does not include any liability, of whatever nature and however arising, for aggravated, punitive or exemplary damages for civil or criminal penalties, fines or sanctions.

1.8 Claims

Claims 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.

1.9 Claims Expenses

Claims 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 Insured and any salary or remuneration of any Employee.

1.10 Compensation

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

- a) Personal Injury;
- b) Property Damage;
- c) Advertising Liability;
- d) Malpractice; or
- e) Civil Liability.

1.11 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.

1.12 Deductible

Deductible mean the amount the Insured first bear in relation to each Claim or Occurrence and is specified in the Schedule, in accordance with each Section of this Policy including the indemnity provided under any extensions of cover (unless otherwise stated therein).

1.13 Employee

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Employee means:

- a) any person under a contract of service or apprenticeship with the Insured;
- b) any labour master or person supplied, or any person supplied by a labour only Sub-contractor;
- c) any self-employed person working under contract with the Insured and under its direction;
- d) any person hired by the Insured from another employer subject to a written agreement under which the person deemed to be employed by the Insured;
- e) any student or person undertaking work for the Insured under a work experience or similar scheme; or
- f) any voluntary helper

whilst engaged in connection with the Business.

1.14 Employment Practices

Employment Practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination or in respect of employment by the Insured.

1.15 Family Member

Family Member means any spouse, former spouse, partner, parent, child, grandparent, aunt, uncle, niece, nephew, cousin or sibling of an Insured.

1.16 Good Samaritan Act

Good Samaritan Act means treatment administered at the scene of a medical emergency, accident or disaster, by an Employee of the Insured, who is present either by chance or in response to an S.O.S call following a disaster.

1.17 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.

1.18 Insolvency

Insolvency means in relation to any Insured:

- a) being under administration or insolvent, each as defined in the Corporations Act 2001 (Cth);
- b) having a controller (as defined in the Corporations Act 2001 (Cth)) appointed;
- c) 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;
- d) being otherwise unable to pay any debts as and when they fall due; or
- e) having anything with the same or similar effect happen under the laws of any jurisdiction.

1.19 Insured (You, Your)

Insured means the Insured named in the Schedule and includes:

- a) the legal entity, partnership, company or corporation specified in the Schedule as the Insured;
- b) the predecessors in business of the Insured as stated in a) above;
- c) any person who is, at inception of the Period of Insurance, a principal, partner or director of the Insured. It also includes cover in respect of work performed by such person prior to the person joining the Insured but only where that work was performed as a principal, partner or director of a prior professional practice providing the same professional business practice as the Insured's Professional Business Practice and only if such prior practice is declared in the proposal;
- d) any person who becomes, during the Period of Insurance, a principal, partner or director of the Insured in respect of the provision of the Insured's Professional Business Practice and, if We agree by endorsement to this Policy, in respect of work performed by such person as a principal, partner or director of any prior professional practice specified in the endorsement but only to the extent that the prior professional practice

- provided the same professional business practice as the Insured's Professional Business Practice;
- e) any former principal, partner or director of the Insured (in respect of work performed for and on behalf of the Insured in the provision of the Professional Business Practice);
- f) any past or present Employee of the Insured acting within the scope of their employment in the provision of the Insured's Professional Business Practice;
- g) any Subsidiary at inception of this Policy or as otherwise agreed by us to be covered under Extensions of Cover – Section 1 and 2, 2.10 'New created / acquired subsidiary';
- h) any social and/or sporting clubs, first aid, fire and ambulance services formed with the Insured's consent and includes any office bearer or member thereof in their respective capabilities as such;
- i) any person who is or becomes a volunteer of the Insured during the Period of Insurance acting within the scope of their given responsibilities;
- j) any person acting within their capacity as a hairdresser on the Insured's premises, subject to a sub-limit of \$100,000 any one Claim and in the aggregate during the Period of Insurance;
- k) any person acting within their capacity as a physiotherapist or podiatrist (cover is excess of any other Professional Indemnity coverage already available); or
- l) any person who arranges and carries out pampering days during the Period of Insurance.

1.20 Insurer (We, Us, Our)

Insurer means Fairlight Insurance trading as a Business Name of Market Lane Insurance Group Pty Ltd for and on behalf of Certain Underwriters at Lloyd's.

1.21 Internet Operations

Internet Operations means:

- a) transfer of computer data or programmes by use of electronic mail systems by the Insured or the Insured's Employees, including for the purpose of this definition only, part-time and temporary staff, contractors and others within the Insured'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;
- b) access through the Insured's network to the world wide web or a public internet site by the Insured or the Insured's Employees, including for the purposes of this definition only, part-time and temporary staff, contractors and others within the Insured's organisation;
- c) access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for the Insured's customers or others outside the Insured's organisation; and
- d) the operation and maintenance of the Insured's web site.

1.22 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 or Compensation being made against the Insured which may be covered under this Policy.

1.23 Inquiry Costs

Inquiry Costs means reasonable legal, assessors, adjusters and expert witness costs incurred with Our written consent but does not include any Insured or Employee's salaries, wages, travel or accommodation expenses.

1.24 Joint Venture Partner

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Joint Venture Partner means any person or entity with whom the Insured is engaged in a common adventure, including any jointly owned company or corporation incorporated or designated for the purpose.

1.25 Limit of Liability

Limit of Liability means, for Section 1 of this Policy, the Limit of Liability stated in the Schedule for this cover, and for Section 2 of this Policy, the Limit of Liability stated in the Schedule for this cover.

1.26 Loss

Loss means the following for which the Insured is legally liable;

- a) Compensation and/or claimant's costs pursuant to an award or judgment against the Insured;
- b) Settlements negotiated by Us and consented to by the Insured;
- c) Settlements negotiated by the Insured but only with Our prior written consent;
- d) Claim Expenses;
- e) Inquiry Costs.

But Loss does not include:

- a) wages, salary, commission, fees, charges and other form(s) of remuneration or profit to be repair, loss or foregone by the Insured, as a result of a Claim;
- b) 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;
- c) 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 the Insured.

1.27 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.

1.28 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.

1.29 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.

1.30 Molestation

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

1.31 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.

1.32 North America

North America means:

- a) the United States of America and Canada; and

- b) any state or territory incorporated in, or administered by, the United States of America or Canada.

1.33 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 the Insured'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.

1.34 Period of Insurance

Period of Insurance means the Period of Insurance stated in the Schedule.

1.35 Personal Injury

Personal Injury means:

- a) bodily injury, death, disease, illness, disability, nervous shock, mental anguish or mental injury or loss of consortium;
- b) false arrest, false detention, wrongful imprisonment, malicious prosecution or humiliation;
- c) wrongful entry or wrongful eviction or other invasion of privacy;
- d) defamation, libel or slander; and
- e) assault and/or battery committed by or at the direction of the Insured whilst engaged in the Business and for the purpose of preventing or eliminating danger to persons or property.

1.36 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.

1.37 Privacy costs and expenses

Privacy Costs and Expenses means legal costs and expenses reasonably and necessarily incurred by the Insured with Our written consent arising out of:

- a) the Insured'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
- b) the Insured'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 named Insured.

1.38 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 Insured (including packaging and containers) in connection with the Business in or from the Territorial Limits, and after it has ceased

to be the Insured's property, or in the Insured's custody or legal control.

1.39 Professional Business Practice

Professional Business Practice means the activities conducted by the Insured as specified in the Schedule. 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.

1.40 Property Damage

Property Damage means:

- a) physical damage to, or loss of or destruction of tangible property, including the subsequent loss of use of that property;
- b) 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
- c) trespass, nuisance or interference with right of way or right to light air or water, easement or quasieasement.

1.41 Retroactive Date

Retroactive Date means the Retroactive Date specified in the Schedule.

1.42 Schedule

Schedule means the Schedule attaching to and forming part of the Policy Wording, including any Schedule substituted for the original Schedule.

1.43 Sub-contractors

Sub-contractors means independent consultants or subcontractors who provide services to the Insured under a written contract. This definition does not include any Employee.

1.44 Subsidiary

Subsidiary means any company or other legal entity over which the Insured exercises effective governance or control or in respect of which the Insured directly or indirectly:

- a) controls the composition of the board of directors; and/or
- b) controls more than half of the voting power; and/or
- c) holds more than half of the issued share capital or other ownership of the entity,

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the Insured pursuant to the Corporations Act 2001 (Cth) or the applicable Australian Accounting Standard.

1.45 Territorial Limits

Territorial Limits means anywhere in the world, except North America, where the Policy will only apply in respect of:

- a) Products exported to North America; and
- b) 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. 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 Limit of Liability unless expressly stated otherwise.

2.1 Additional Payments

Notwithstanding the Limit of Liability as set out in Your Policy Schedule, 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 the subject of indemnity under the Insuring Clauses, except:

- a) 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;
- b) 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
- c) 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 an aggregate amount of \$100,000 (which is included within and not in addition to the Limit of Liability) in respect of all Claims covered by this Policy.

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 total aggregate liability during any one Period of Insurance for all court attendance shall not exceed \$100,000 and shall be part of and not in addition to the Limit of Liability as shown on the Policy Schedule.

2.4 Estate 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. It does not respond where the conduct is that of the Insured's estate, heir, legal representative, or assignee.

2.5 Fundraising

We agree to pay on behalf of any officially recognised individuals, auxiliaries, associations, foundations, trusts, or fund-raising committees which are attached to or represent the Insured in relation to charitable and fund-raising activities carried out for the benefit of and on behalf of the Insured.

2.6 Good Samaritan Acts

We agree to pay on behalf of any Employee of the 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 Employees who reside with him/her provided, however, that We shall not

be liable where the Employee was acting at the time under a contract of employment with any employer other than the Insured.

2.7 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 total aggregate liability for Inquiry Costs for all inquiries for all Insureds shall not exceed \$250,000, which is included within and not in addition to the Limit of Liability.

2.8 Joint Venture

We agree to indemnify the Insured in the event of any Claim caused by or arising out of any joint venture in which the Insured has an interest limited to the Limits of Liability stated in the Schedule.

Where the percentage of interest of the Insured in the joint venture is not set forth in writing, the percentage to be applied shall be that which is imposed by law at the inception of the joint venture and shall not be increased by the insolvency of the others interested in the joint venture.

The indemnity will not apply:

- a) to the Joint Venture Partners;
- b) to Claims of the partners in the joint venture against one another;
- c) Claims by the Joint Venture Partner against the Insured; or
- d) resulting from non-disclosure of a material fact.

2.9 Molestation by unknown offenders

Notwithstanding Exclusions – Section 1 and 2, 3.10 'Molestation', the Insuring Clauses of Section 1 and 2 are extended to cover molestation where the perpetrator of the molestation was:

- a) a director, executive officer, Employee or volunteer of the Insured; and
- b) the Insured had in place the necessary protocols required by legislation to limit or prevent such abuse.

However, We will not pay any Compensation where:

- i. the Molestation is committed with the Insured's consent or through deliberate neglect on the Insured's part;
- ii. Molestation is committed by the Insured against any director, executive officer, Employee or volunteer; or
- iii. the Insured knew or ought reasonably to have known that the perpetrator of the Molestation had previously:
 - a) committed Molestation; and/or
 - b) been convicted of Molestation; and/or
 - c) whilst being a director, executive officer, Employee or volunteer of the Insured, been the subject of a prior complaint in respect of a Molestation which had not been appropriately investigated by the Insured.

The coverage provided under this Extension of Cover is subject to the Limit of Liability and Deductible specified in the Schedule.

2.10 Newly created / acquired Subsidiary

We agree to indemnify in accordance with the Insuring Clauses any new Subsidiary created or acquired by the Insured during the Period of Insurance, provided that:

- a) their business complies with that outlined in the Schedule;
- b) the new company or companies are domiciled in Australia;
- c) the turnover of the new Subsidiary does not exceed 10% of the turnover which was the basis of the premium calculation;
- d) cover only applies to conduct of the new Subsidiary occurring within a period of 90 days from the date of the creation or acquisition of the Subsidiary;
- e) cover only applies to such Claims arising from conduct or Occurrences which occurred or is alleged

to have occurred subsequent to the date of acquisition or creation of the Subsidiary; and

- f) during the time in d) above, the Insured shall supply such additional information relating to the new Subsidiary as may be required by us and pay any additional premium as may be required to enable us to continue coverage to the expiry date of the Policy.

Unless the Insurer expressly confirms coverage, this contingent coverage will expire on the 90th day following the takeover or formation of the company or companies.

2.11 Past Subsidiary

Coverage in accordance with Insuring Clauses shall extend to those entities, which were once Subsidiary companies, but have since ceased to be Subsidiary. Coverage in this respect shall only apply to Claims which occurred or are alleged to have occurred between the date of acquisition or creation of the Subsidiary by the Insured and the date such Subsidiary company ceased to be a Subsidiary.

2.12 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:

- a) 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;
- b) We must have given prior written consent to retain the services of such public relations consultants; and
- c) Our total aggregate liability during any one Period of Insurance for all public relations expenses shall not exceed \$100,000 and shall be part of and not in addition to the Limit of Liability as shown on the Policy Schedule.

3 EXCLUSIONS APPLICABLE TO SECTIONS 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 arising out of or in any way connected with any claim or claims in respect of Bodily Injury, Property Damage, loss or losses arising directly or indirectly out of, or in any way connected with asbestos in whatever form or quantity.

3.3 Contractual Liability

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

- a) the liability or obligation would otherwise have been implied by law;
- b) 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 Insured to effect insurance or provide indemnity in respect of the subject matter of contract;
- c) the liability or obligation is assumed by the Insured under any warranty under the requirement of Federal or State legislation in respect to product safety;
- d) 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 Insured;

- e) 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 Insured's Products, including any such contracts relating to the operation of railway sidings; or
- f) the liability or obligation is assumed under those agreements specified in the Schedule.

3.4 Corona Virus Exclusion (LMA 5391)

this Policy shall not apply to any liability, arising out of or related to, or in any way involving, either directly or indirectly:

- a) any transmission of coronavirus disease (COVID-19);
- b) any transmission of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- c) any transmission of any mutant, derivative or variation of COVID-19 or SARS-CoV-2;
- d) any fear or threat, whether actual or perceived, of (a), (b) or (c) above;
- e) any rationing or withholding of medical care to control, to prevent, suppress, mitigate or in any way relating to any of (a), (b) or (c) above;
- f) the design, specification, formulation, manufacturing, or efficacy of any COVID-19 vaccine.

This exclusion shall not exclude:

- i) the diagnosis and/or treatment of patients infected with coronavirus disease (COVID-19).

3.5 Cyber and Data Total Exclusion Endorsement LMA 5468A

1. Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy does not apply to any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:

- 1.1 CYBER ACT or CYBER INCIDENT including, but not limited to, any action taken in controlling,

preventing, suppressing or remediating any CYBER ACT or CYBER INCIDENT; or

- 1.2 loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any DATA, including any amount pertaining to the value of such DATA,

regardless of any other cause or event contributing concurrently or in any other sequence thereto.

2. In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
3. If the Underwriters allege that by reason of this endorsement that loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

Definitions

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

CYBER ACT means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any COMPUTER SYSTEM.

CYBER INCIDENT means:

- a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any COMPUTER SYSTEM; or
- b) any partial or total unavailability or failure or series of related partial or total unavailability or failures

to access, process, use or operate any COMPUTER SYSTEM.

DATA means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a COMPUTER SYSTEM.

3.6 Deliberate Acts

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

- a) any deliberate act or omission of any Insured, Employee or its Agent and which could reasonably have been expected, having regard to the nature and circumstances of such an act or omission; or
- b) any wilful breach of any statute, contract or duty by any Insured or its Agent.

3.7 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).

3.8 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.

3.9 Injury to Employees

any liability to indemnify or pay Compensation arising out of:

- a) 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;

- b) any scheme created by legislation to provide compensation to persons who sustain Personal Injury;
- c) arising out of or in the course of their employment; or
- d) 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 Insured 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.

3.10 Liquidated or punitive damages

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

- a) fines, taxes, penalties, treble or other multiple compensatory damages, exemplary, punitive, liquidated or aggravated damages;
- b) the return, restitution, or offset of fees, expenses or costs paid to an Insured; or
- c) any other damages deemed uninsurable in law.

3.11 Molestation

any Claim arising from actual or alleged Molestation.

3.12 Radioactive Contamination

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

- a) ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

However, this exclusion shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when exclusively incidental to ordinary, industrial, educational, medical, scientific or research pursuits.

3.13 Sanctions Limitation Clause (LMA 3100A)

The (re)insurer shall not be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America

3.14 Terrorism

any injury, loss, damage, cost or expense of whatsoever 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.

This Exclusion also excludes injury, loss, damage, cost or expense of whatsoever 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.

If the Insurer alleges that, by reason of this Exclusion, any injury, loss, damage, cost or expense is not covered by this Policy the burden of proving the contrary shall be upon the Insured.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

3.15 War and Civil War Exclusion NMA 464

Notwithstanding anything to the contrary contained herein this Certificate 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 nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

4 CONDITIONS APPLICABLE TO SECTIONS 1 AND 2

The following Conditions apply to both Sections 1 and 2 of this Policy.

4.1 Action against the Insurer

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 the Insurer.

4.2 Assignment

This Policy and any rights thereunder shall not be assigned without Our prior written consent.

4.3 Cancellation / Termination

- a) The Insured may cancel this Policy by giving notice in writing to Us at any time.

- b) 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 Insured.
- c) After cancellation by the Insured a refund of premium will be allowed pro rata of 80 percent of the premium for the unexpired Period of Insurance.
- d) 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 Your notice or any of Your 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 either Your or Our 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 Our written consent. We 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 You have failed to comply with the duties of utmost good faith or disclosure or if You have 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, We owe no duty of any kind and has no liability of any kind to the Insured.

4.10 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.

4.11 Plurals and titles

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

- a) headings are descriptive only, not an aid to interpretation;
- b) singular includes the plural, and vice versa;
- c) the male includes the female and neuter; and

- d) references to positions, offices or titles shall include their equivalents in any jurisdiction in which a Claim is made.

4.12 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.

4.13 Sanctions regulation

Notwithstanding any other terms or conditions under this Policy, We shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any Insured or any other party to the extent that such cover, payment, service, benefit and/or any Business or activity of the Insured would violate any applicable trade or economic sanctions, law or regulation.

4.14 Valuation and foreign currency

All premiums, Limits of Liability, 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 purpose 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

Section 1 only forms part of Your Policy when the Combined General Liability Section is shown in the Schedule and is limited to the Period of Insurance indicated.

1.1 Insuring Clause

The Insurer, 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:

- a) Personal Injury;
- b) Property Damage; or
- c) Advertising Liability,

happening during Period of Insurance within the Territorial Limits as a result of an Occurrence in connection within the Business or Product.

1.2 Limits of Liability

Our liability, in respect of all Compensation for:

- a) Public Liability;
- b) Products Liability; and
- c) 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.

1.3 Extensions of Cover Applicable to Section 1

In addition to the 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.

1.3.1 Claims series clause

- a) 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.
- b) All such Occurrences shall be deemed to have occurred on the day of the first of such Occurrences.
- c) The Limits of Liability specified in the Schedule are non-cumulative.
- d) 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.

1.3.2 Motorised wheelchair and mobility scooters

Cover under this Section is extended to any resident at the Insured's premises, but only in respect of the resident's ownership or use of any motorised wheelchair or mobility scooter that is not required to be registered, on the Insured's premises.

1.3.3 Overseas personal liability

We 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.

1.4 Exclusions Applicable to Section 1

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

1.4.1 Advertising Liability

Advertising Liability directly or indirectly caused by, in connection with or contributed to by or arising from:

- a) 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;
- b) incorrect description of any article or commodity; or
- c) mistake in advertised price.

1.4.2 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 Insured's Products which, with the Insured's knowledge, are intended for incorporation into any critical part, the structure, machinery or controls of any Aircraft.

1.4.3 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).

1.4.4 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:

- a) guests', visitors', directors', officers', Employees' or partners' personal effects;
- b) Motor Vehicles in a car park, unless the car park is owned or operated by the Insured for reward;
- c) premises at which the Insured is undertaking work in connection with the Business;

- d) any building (including its fixtures and fittings) leased, hired or rented to the Insured provided Us 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
- e) other property in the Insured's charge or control (except while undergoing an process or being worked upon) for which the Insured has not assumed any responsibility to obtain insurance, subject to a limit of \$500,000 for any one Occurrence and in the aggregate during any one Period of Insurance.

1.4.5 Information technology hazards

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

- a) the Insured's Internet Operations; or
- b) 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:
 - i. the use of any computer hardware or software;
 - ii. the provision of computer or telecommunication services by the Insured or on the Insured's behalf; or
- e) the use of computer hardware or software belonging to any third party, whether authorized or unauthorized including damage caused by any Computer Virus.

However, this Exclusion does not apply to:

- a) 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
- b) liability which arises irrespective of the involvement of the Insured's Internet Operations.

1.4.6 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:

- a) a delay or lack of performance by or on behalf of any Insured in respect of any contract or agreement; or
- b) the failure of the Products to meet the level of performance, quality, fitness or durability, expressly or implied, warranted or represented by an Insured.

However exclusion 5.4.6 b) 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 organization other than the Insured.

1.4.7 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 the Insured:

- a) which is required by law to be registered; or
- b) in respect of which insurance is required by virtue of any legislation.

However, this Exclusion does not apply to:

- a) 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;
- b) 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 or during boarding or alighting from a Motor Vehicle, including a courtesy bus or an Employee's or volunteer's 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

- c) accidental or erroneous failure to maintain such statutory insurance.

1.4.8 North America

any liability in North America directly or indirectly caused by, in connection with or contributed to by or arising from:

- a) the manufacture in or supply to North America of:
 - i. any alcohol products;
 - ii. firearms;
 - iii. any product containing or made of latex;
 - iv. silica or any product containing silica; or
 - v. welding rod products.
- b) the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to existence of, or presence of any:
 - i. fungi or bacteria;
 - ii. substance, vapour or gas produced by or arising out of any fungi or bacteria.
- c) the costs or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, fungi or bacteria, by the Insured or by any other person or entity.

1.4.9 Pollution

any liability arising out of:

- a) 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);
- b) 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;

- c) the cost of removing, nullifying or cleaning up Pollutants; or
- d) the cost of preventing the escape of Pollutants.

1.4.10 Product Recall

Based on or arising out of any loss, cost or expense incurred by the Insured for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of any Product or of any property of which they form a part, if such Product or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

1.4.11 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 care services, professional advice or service by the Insured, or any error or omission in connection therewith.

1.4.12 Repair and replacement

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

- a) the cost of rectifying defective work carried out by or on behalf of the Insured;
- b) Property Damage to any of the Insured's Products causing Personal Injury *or* Property Damage; and
- c) the costs or expenses of recalling, removing, repairing, recovering, altering or replacing the Insured'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 Insured's Products or the unsuitability thereof for the use for which they are supplied.

1.4.13 Specific products and substances

any liability of whatsoever nature directly or indirectly caused by,

in connection with or contributed to by or arising from:

- a) urea formaldehyde;
- b) silicon based human implants;
- c) AIDS, HIV or HIV related illness;
- d) contraceptives and RU 486;
- e) human biological materials including extracts thereof (e.g. blood, plasma, plasmaproteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);
- f) genetically modified seeds or organisms;
- g) vaccines;
- h) application or use of polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;
- i) tobacco and tobacco related products;
- j) the manufacture or supply of all pharmaceutical active ingredients including medical implants; or
- k) DES and orally taken oxychinoline.

2 Claims Conditions Applicable to Section 1

The following Claims Conditions apply to Section 1 of Your Policy.

2.1 Claims assistance and cooperating

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

- a) supplying Us with all information and assistance We may reasonably require;
- b) allowing Us to negotiate, defend or settle the Claim:
 - i. in the Insured's name and on the Insured's behalf; or
 - ii. in the name of and on behalf of any other party covered by the Insured's Policy;
- c) 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
- d) as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until the Insurer has had an opportunity of inspection.

2.2 Control of Claims

- a) 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.
- b) 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.
- c) The Insured shall give all such information and assistance as We may require.

2.3 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 for Extensions of Cover – Section 1 and 2, 2.1 '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 Extensions of Cover – Section 1 and 2, 2.1 '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.

2.4 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:

- a) 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;
- b) advise of the clause and the amount of loss and any other proof or information with respect to the Claim that may be reasonably required;
- c) furnish to Us details of any other insurance covering or which may cover the same Loss;
- d) take reasonable steps to prevent further Loss; and
- e) at all reasonable times permit Us or Our Agents to inquire into, investigate and examine the circumstances of any Loss.

2.5 Subrogation

We waive all rights of subrogation under this Policy against:

- a) any corporation or organisation the majority of whose capital stock is owned or controlled by the Insured; or
- b) 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.

3 Additional Conditions Applicable to Section 1

3.1 Cross Liability

Subject to Additional Conditions apply to Section 1, 6.3 '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.

3.2 Inspection and Audit

We shall be permitted, but not obligated to, inspect the Insured's property and operations at any reasonable time and frequency. 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 (3) years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

3.3 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.

3.4 Joint Responsibility and Liability

Any and all Insured's and any persons deriving benefit under this insurance are jointly liable and responsible for any breach of any terms of this Policy and/or misrepresentation and/or non-disclosure and/or fraud. For the avoidance of doubt this clause survives avoidance of the Policy.

3.5 Premium

Unless otherwise stated, the premium is adjustable. The Insured shall, within 30 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.

3.6 Reasonable Precautions

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

- a) take, and cause to be taken, reasonable precautions to prevent Personal Injury, Property Damage and/or Advertising Liability;
- b) comply with all statutory or local authority law, obligations and requirements or equivalent;
- c) prevent the manufacture, sale or supply of defective Products; and
- d) 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.

POLICY SECTION 2 – PROFESSIONAL INDEMNITY

Policy Section 2 only forms part of Your Policy when Professional Indemnity 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 , in respect of:

- a) Malpractice committed or alleged to have been committed; and
- b) Civil Liability incurred,

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 Loss, directly or indirectly arising out of or in connection with:

- a) any single Claim;
- b) all Claims referable to the Period of Insurance; and
- c) 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 Extensions of Cover – Sections 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

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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 Committees and Boards of Management

We agree to pay on behalf of any individuals for whom the Insured is vicariously liable, being committee members, members of boards of management and individuals comprising examining bodies attached to the Insured, provided such liability arises from the Professional Business Practice.

However, We shall not pay on behalf of these individuals in respect of liability arising from or in connection with:

- a) advice, instructions, recommendations or treatment made or given by any such person; or
- b) the failure of any such person to give or render advice, instructions, recommendations or treatment, in circumstances where such person is entitled to render and retain in part or in full a fee or commission for those services to any other entity other than the Insured.

3.2 Compensatory Penalties

Notwithstanding Exclusions – Section 1 and 2, 3.8 'Liquidated or punitive damages', We cover Claims for compensatory civil penalties. Our total liability for the payment of compensatory civil penalties and all associated Claim Expenses under the Policy shall not exceed \$250,000 in the aggregate for all Claims, which is included within and not in addition to the Limit of Liability.

However, we will not be liable to cover the Insured for any compensatory civil penalty:

- a) for which we are legally prohibited at law from indemnifying the Insured;
- b) based upon, attributable to or in consequence of any:
 - i. wilful, intention or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or

- ii. gross negligence or recklessness; or
- iii. requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

3.3 Consultants, Subcontractors and Agents

We agree to indemnify the *insured* in respect of Loss resulting from any Civil Liability Claim as a result of the conduct of any consultants, Sub-contractors or Agents of the *insured* for which the Insured is legally liable in the provision of the Professional Business Practice. No indemnity is available to the consultants, Sub-contractors or Agents.

3.4 Continuous Cover

If the Insured has neglected, through error or oversight only, to avail themselves of the benefit of section 40(3) Insurance Contracts Act 1984 (Cth) in relation to an earlier Policy issued by Us of the same type as this one, then provided that the Insured has maintained uninterrupted insurance of the same type with Us since the expiry of that earlier Policy We will, notwithstanding Exclusion 4.12 'Prior and pending', permit the matter to be reported under this Policy and indemnify the Insured in respect of any Claim arising from the matter on the conditions that:

- a) the indemnity will be subject to the applicable Limit of Liability of the earlier Policy under which the matter should have been reported to Us;
- b) We may reduce the indemnity entitlement by the monetary equivalent of any prejudice which We have suffered as a result of the delayed notification;
- c) the indemnity will be subject to all of the terms, conditions, definitions and exclusions, other than the Limit of Liability, contained in this current Policy; and
- d) You hereby agree that You will not seek indemnity from Us in respect of any such Claim under both policies issued by Us.

3.5 Dishonesty

Notwithstanding Exclusions – Section 1 and 2, 3.7 'Fraud and dishonesty', We agree to indemnify the Insured for Loss resulting from a Claim alleging conduct of an Employee or any Agent in the provision of Professional Business Practice that falls or may fall within that exclusion. Provided that:

- a) no indemnity is available to the dishonest Employees or Agents themselves, or at all where You have knowingly engaged in or condoned such conduct; or
- b) no indemnity is available in respect of a Claim arising from or in any way connected with the loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes.

Our total liability for the payment of compensatory civil penalties and all associated Claim Expenses under the Policy shall not exceed \$500,000 in the aggregate for all Claims, which is included within and not in addition to the Limit of Liability.

3.6 Extended Notification Period

In the event that this insurance is not renewed or is cancelled for any reason other than non-payment of premium then the Insured has until such time that the Insured effects another professional indemnity insurance policy either with Us or any other Insurer or a period of 60 days commencing on the day immediately following expiry of this Policy, whichever is the lesser period, during which to notify Us of any Claim first made against the Insured in writing within such 60 day or lesser period (as the case may be). Provided always that it is understood and agreed that:

- a) We will treat that Claim as if it had been made against the Insured and notified to Us during the immediately preceding Period of Insurance;
- b) coverage afforded thereunder does not reinstate or increase the Limit of Liability or the Aggregate Limit of Liability or extend the Period of Insurance; and
- c) coverage afforded thereunder will only apply to acts, errors or omissions committed or alleged to have been committed by the Insured before the end of the

Period of Insurance or the cancellation date of this Policy where this Policy has been cancelled and not before the Retroactive Date.

3.7 Intellectual Property

We agree to indemnify the Insured in accordance with the Insuring Clause for any Civil Liability Claim resulting from any unintentional infringement of copyright, trade marks, service marks, registered designs, patents or any unintentional plagiarism or unintentional breach of confidentiality by the Insured.

Provided always that no indemnity shall be afforded to any Insured intentionally committing, assisting or condoning such conduct.

3.8 Libel, Slander and Defamation

We agree to indemnify the Insured in respect of any Civil Liability Claim for unintentional libel, unintentional slander or other unintentional defamation by an Insured in the provision of the Professional Business Practice.

3.9 Loss of Documents

Notwithstanding Exclusion 4.11 'Personal Injury / Property Damage', We agree to indemnify the Insured in respect of:

- a) any Civil Liability Claim made against the Insured for Loss, damage or destruction of any documents and/or computer records belonging to the Insured or for which the Insured is legally responsible, where the loss, damage or destruction occurs in the provision of the Professional Business Practice after the Retroactive Date; and
- b) all reasonable costs and expenses incurred by the Insured 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 Insured with Our prior written consent, such consent not to be unreasonably withheld;

- ii. We shall not be liable for any Claim in 3.9.a or costs and expenses in 3.9.b directly or indirectly arising out of or in connection with Computer Virus, operational wear and tear or gradual deterioration however caused; and
- iii. We shall not be liable for any Claim in 3.9.a or costs and expenses in 3.9.b 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 for this feature applies to all Claims covered under 3.9.a above, inclusive of Claim Expenses, and costs and expenses in 3.9.b above, in the aggregate.

Notwithstanding the Deductible specified in the Schedule this extension will be subject to an excess of \$2,000 or the Deductible shown in the Schedule whichever is the lesser.

3.10 Loss mitigation and fee recovery

We agree to meet payment of the Insured's fee (or balance of the outstanding fee at the time the Circumstances outlined within this clause arise and are submitted to Us for consideration) where a client has expressed dissatisfaction with the Professional Business Practice provided by the Insured and demonstrates reasonable grounds for such dissatisfaction and subsequent refusal to pay such fees (including amounts the Insured is legally obligated to pay Subcontractors at the time of the refusal to pay such fees) and threatens to bring a Claim for Civil Liability against the Insured for a sum greater than the outstanding fee but agrees not to pursue such Claim if the Insured agrees not to press for their outstanding fee. Our payment of the outstanding fee to the Insured shall only be made if We believe that this shall avoid such a Claim for a greater amount and approval to settle that Claim in these

circumstances has been received by the Insured from Us in writing.

The cover provided under this extension is sub-limited to \$100,000 any one incident and in the aggregate for all incidents, which is included within and not in addition to the Limit of Liability. A separate Deductible will apply to each incident under this extension. If all attempts to avoid such a Claim fail and a Claim is made, it is agreed that the total amount payable by Us (including any amount already paid) shall not exceed the Limit of Liability. The Insured shall pay Us any amount that is finally recovered from the client. We will only pay the part of any Claim for Civil Liability that is covered by this Policy.

3.11 Merger / takeover / sale / winding up of Insured – run-off coverage

If during the Period of Insurance the Insured is subject to a merger, takeover, sale or winding-up, then coverage in accordance with the Insuring Clause shall continue through to the expiry of this Policy, but shall apply only for Civil Liability Claims resulting from the Professional Business Practice provided or allegedly provided prior to the effective date of the merger, takeover, sale or winding-up.

Upon application by the Insured and subject to written agreement by Us prior to expiry of the Period of Insurance, and subject as well to payment of any additional premium required by Us (to be paid in full immediately upon expiry of this Period of Insurance) cover provided in accordance with this feature may be extended for an additional Period of Insurance, as may be determined by agreement between the Insured and the Insurer.

3.12 Outgoing Principal

We agree to pay on behalf of any former principal, partner, director or Employee of the Insured for any legal liability arising from Malpractice committed or alleged to have been committed in the conduct of the Professional Business Practice carried on by or on behalf of the Insured.

3.13 Online Medicare Benefit Fraud

We agree to indemnify the Insured in respect of any Civil Liability Claim for Compensation including Claim Expenses arising from any Claim made against the Insured based upon or attributable of the Commonwealth Health Insurance Commission having transferred or paid any benefit or funds to any person (other than the Insured) who had no legal entitlement to such benefit or funds as the direct result of the dishonest or fraudulent input, deletion or modification of data on HIC Online by an Employee.

The following terms apply to this coverage:

- a) the Claim is first made against the Insured during the Period of Insurance and notified to Us during the Period of Insurance; and
- b) We shall not be liable for any loss of money, negotiable instruments, bearer bonds, coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally liable; and
- c) We shall not be liable to indemnify any Insured who committed, participated in or condoned such dishonest or fraudulent conduct; and
- d) We shall not be liable for any liability, Loss, cost or expense sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable suspicion of, dishonest or fraudulent conduct on the part of the Employee concerned; and
- e) the Deductible shall not apply to each and every individual dishonest or fraudulent act or omission; and
- f) Our aggregate Limit of Liability of in respect of all Claims covered by this Extension of Cover, including all Claim Expenses shall not exceed:
 - i. the sub-limit shown in the Schedule for Online Medicare Benefit Fraud; or
 - ii. if no amount is shown, the sum of \$250,000.

3.14 Privacy Complaints and Claims

We agree to indemnify the Insured in respect of any Civil Liability Claim for Compensation for any Privacy Costs *and* Expenses arising from any Claim or written complaint made against the Insured for 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. The following terms apply to this coverage:

- a) the Claim or complaint is first made against the Insured during the Period of Insurance and notified to Us during the Period of Insurance;
- b) We shall not be liable for:
 - i. any civil or criminal fines or penalties;
 - ii. non-compensatory damages, including punitive or exemplary damages; or
 - iii. the costs of compliance with any regulatory, administrative, Court or Tribunal directives or with any injunctive or non-compensatory relief; or
 - iv. any liability, Loss, cost or expense that is uninsurable under the laws of Australia; and
- c) the Deductible shall apply to each and every Claim or complaint covered by this feature; and
- d) Our aggregate Limit of Liability in respect of all Claims and complaints covered by this Extension of Cover, including all Privacy Costs and Expenses, shall not exceed:
 - i. the sub-limit shown in the Schedule for Privacy Complaints and Claims; or
 - ii. if no amount is shown, the sum of \$250,000.

3.15 Reduction of Deductible

Notwithstanding the provisions of Additional Condition 6.1 'Deductible', where the Deductible for this Policy is \$20,000 or

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less, We agree to reduce it by 50% in respect of any Claim where such Claim is settled or disposed of in accordance with the Insured's obligations under this Policy without the involvement of any lawyer for any party, including but not limited to the Insured, any third party or Us.

3.16 Reinstatement

In the event that the Limit of Liability under this Policy has been entirely exhausted during the Period of Insurance, by Claims or Loss indemnified or for which We have agreed to indemnify, the Limit of Liability will be reinstated in the same amount, once only, conditional upon the following:

- a) the reinstated Limit of Liability shall only apply to Claims or Loss which do not arise out of and do not have any connection with the source or originating cause of any of the Claims or Loss already paid or payable out of the original Limit of Liability;
- b) all other terms, conditions, exclusions and limitations of the Policy shall continue to apply, in the same manner, in respect of Claims and Loss to which the reinstated Limit of Liability applies;
- c) the Insured has satisfied Us that they have no other valid and collectible excess or other insurance to call upon, after exhaustion of the original Limit of Liability, or that all such insurance (including any automatic reinstatement entitlement to which those policies may be subject) has also been exhausted by Claims or Losses indemnified or for which the Insurer in question have agreed to indemnify;
- d) the request for reinstatement must be made by the Insured, and all requirements relating to it be satisfied by it, before the expiry of the Period of Insurance; and
- e) there shall be no reinstatement at all of any sub-limit.

3.17 Students

We agree to pay on behalf of any student practitioner seconded to and under the supervision of the Insured from any University, College of Advanced Education, T.A.F.E College or similar educational body, for any legal liability arising from Malpractice

committed or alleged to have been committed on behalf of the Insured named in the Schedule in the course of Professional Business Practice.

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 and/or Sub-contractors 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 director, partner, administrator, supervisor, manager or proprietor of the Insured.

4.6 Licensing Inquiries

any prosecution, Inquiry, hearing, commission or other investigation in relation to the 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:

- a) 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;
- b) 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;
- c) any cost of or expense incurred in withdrawing a product or good from sale or recalling any product or good; or
- d) any element of any of the 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 the 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 the Insured.

4.11 Personal Injury / Property Damage

- a) any liability for personal Injury suffered or incurred by any entity or person; and/or
- b) 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 Insured prior to the commencement of the Period of Insurance or directly or indirectly arising from or attributable to:

- a) any facts or Circumstances of which 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 the Insured might arise;
- b) any facts or Circumstances reported to an Insurer under any insurance policy entered into before the commencement of the Period of Insurance; or
- c) any facts disclosed to any Insurer in any proposal for insurance prior to the commencement of the Period of Insurance.

4.13 Related Entities

any Claim made against the Insured by or on behalf of:

- a) any Insured, business venture or related entity of any insured which is owned, managed or operated directly or indirectly by any Insured;
- b) 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;

- c) any joint-venture partner of any Insured;
- d) any parent or controlling entity, successor or assign of any Insured;
- e) any other person or entity, including but not limited to a trustee:
 - i. who or which is controlled or operated by any Insured; or
 - ii. where any Insured has a direct or indirect financial interest, including but not limited to where any Insured is a beneficiary of a trust.

4.14 Retroactive Date

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.

4.15 Superannuation Trustee

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.

4.16 North America Exposure

- a) any Claim directly or indirectly arising out of or in connection with conduct of the Insured anywhere within North America;
- b) any legal proceedings which are brought before any court or tribunal having actual or purported jurisdiction within North America;
- c) 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; or
- d) 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.

5. CLAIMS CONDITIONS

The following Claims Conditions apply to Section 2 of Your 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:

- a) indemnity under this Policy is confirmed in writing by Us; or
- b) 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 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

The 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, the 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 Reporting and Notice

The Insured shall as a condition precedent to their right to be indemnified under this Policy, give to Us written notice as soon as practicable of any Claim made against the Insured or Loss for which indemnity is sought.

All notices under any provision of the Policy shall be put in writing and given by courier, certified mail or fax properly addressed to the appropriate party. Any notice under or in connection with this Policy that relates to a Claim or Loss shall be given to the Insurer, addressed as follows:

Market Lane Insurance Group Pty Ltd
 Attention: Claims Manager
 Level 11, 66 King Street
 Sydney NSW 2000

claims@marketlanegroup.com.au

Telephone: 1300 902 210

All other notices shall be given to the Underwriter or claims manager. Notice shall be deemed to be received and effective upon actual receipt thereof by the addressee.

5.8 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

The following Additional Conditions apply to Section 2 of Your 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 Insured to be indemnified under this Policy that the Insured shall ensure that, and record the basis of its assurance that, any and all Medical Personnel who provide services to, are employed by or utilise the premises or facilities of the Insured are members in good standing of a Medical Defence Organisation recognised by the Australian Health Practitioner Regulation Agency and regulated by the Australian Prudential Regulatory Authority, 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 Insured to be indemnified under this Policy that the Insured ensure that, and record the basis of its assurance that, any and all nursing staff who provide services at the Insured's premises, are employed by or utilise the facilities of the Insured are fully qualified, registered and licensed to perform all relevant activities as required by applicable legislation.

6.4 Records

The Insured shall at all times:

- a) 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;



- b) 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;
- c) give Us or Our duly appointed representatives such information, assistance, signed statements or depositions as We may require; and
- d) assist in the defence of any Claim without charge to Us.

Exclusion 4.16 'North America exposure'.

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 Insured. When determining whether coverage is available under this Policy:

- a) any failure by an Insured 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
- b) 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 / jurisdiction limits

Subject to the terms and conditions of the Policy (including but not limited to Exclusion 4.6 'North America exposure') and anything specified to the contrary in the Schedule, this Policy shall apply to:

- a) conduct committed, attempted or alleged to have been committed or attempted, anywhere in the world; or
- b) Claims made and actions brought anywhere in the world.

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