
Australian Primary Health Care Nurses Association Inc “APNA”

Policy Wording



CERTIFICATE OF INSURANCE

Effected through

Professional Risk Underwriting Pty Ltd

ABN 80 103 953 073 AFSL 308076

(hereinafter called the Coverholder)

THIS CERTIFICATE OF INSURANCE confirms that in return for payment of the Premium shown in the Schedule, the Underwriters have agreed to insure You, in accordance with the wording attached to this Certificate.

You or your representative can obtain further details of the Underwriters by requesting them from ProRisk.

In accepting this Insurance, the Underwriters have relied on the information and statements that you have provided on the Proposal Form (or Declaration) the date of which is stated in the Schedule. You should read this Certificate carefully and if it is not correct contact ProRisk. It is an important document and you should keep it in a safe place with all other papers relating to this Insurance.

APNA MEMBER NURSES COMBINED LIABILITY INSURANCE

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|--|--|
| Attaching to and forming part of Policy No: | APNA/PCLP/2023 |
| Insured: | Australian Primary Health Care Nurses Association Inc (“APNA”) |
| Insured Member: | <Insert Nurses Name> Warranted Insured Member is suitably qualified to the generally accepted standards of the Business providing you are suitably qualified and are working in accordance with the Nursing and Midwifery Board of Australia (NMBA) registration standards, professional codes and guidelines. |
| Business: | Registered Nurse, Enrolled Nurse, Nurse Practitioner |
| Period of Insurance: | From: 31 March 2023 at 4.00pm Local Standard Time To: 31 March, 2024 at 4.00pm Local Standard Time |
| Limit of Liability: | Medical Malpractice \$10,000,000 any one Claim, Inquiry or Loss of Documents inclusive of Costs and Expenses per Insured Member Public Liability \$10,000,000 any one Claim inclusive of Costs and Expenses per Insured Member |
| Aggregate Limit of Indemnity for Medical Malpractice Insurance: | \$30,000,000 in the aggregate inclusive of Costs and Expenses per Insured Member |
| Aggregate Limit of Indemnity for Public Liability Insurance: | \$30,000,000 in the aggregate inclusive of Costs and Expenses per Insured Member |

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| Maximum Aggregate Limit of Indemnity for the Policy: | \$30,000,000 in the aggregate inclusive of Costs and Expenses per Insured Member |
| Sub Limits of Liability Inquiries: | Policy Limit |
| Compensation for Court Attendance: | Up to \$250 per person per day up to \$10,000 per Claim |
| Public Relations Expenses: | \$50,000 |
| Statutory Liability: | \$50,000 |
| Excess: | Nil |
| IMPORTANT NOTICE: | This Policy is written on a Claims made and notified basis |

COVERAGE:

| | |
|---|----------|
| Insuring Clause A: Medical Liability | Included |
| Insuring Clause B: Public Liability and Goods Sold or Supplied | Included |
| Insuring Clause C: Confidentiality | Included |
| Defamation, Libel and Slander | Included |
| Dishonesty | Included |
| Intellectual Property | Included |
| Competition and Consumer Act | Included |

AUTOMATIC EXTENSIONS:

Loss of Documents Included

| | |
|--|----------|
| Inquiries | Included |
| Run-off Cover | Included |
| Unlimited Run-off Cover | Included |
| Students | Included |
| Mergers and Acquisitions | Included |
| Vicarious Liability for Employed or Contracted Doctors | Included |
| Liability for Contractors and Locums | Included |
| Compensation for Court Attendance | Included |
| Public Relations Expenses | Included |
| Sixty Day Reporting Period | Included |
| Continuous Cover | Included |
| Spousal Liability | Included |
| Statutory Liability | Included |
| Reinstatement of Limit of Liability | Included |
| Free Legal Consultation | Included |

OPTIONAL EXTENSIONS:

| | |
|-----------------------------------|--|
| Joint Ventures | Included |
| Principals' Prior Business | Included |
| Retroactive Date: | Unlimited excluding known Claims and circumstances |
| Agreement Number: | SR2023MM |
| Territorial Limits: | Worldwide excluding USA and Canada |
| Jurisdiction: | Worldwide excluding USA and Canada |
| Governing Law: | Australia |
| Premium: | As agreed |
| Policy: | ProRisk Medical Malpractice Combined Liability Insurance Policy Wording v04.21 |
| Security | Swiss Re International SE Australia Branch (AFSL 355088 - ABN 38 138 873 211) |

ENDORSEMENTS:

Product Liability & Workmanship Amendment

Midwifery Exclusion

Unlimited Run Off Cover

Civil Liability Endorsement

Continuous Cover Endorsement

Cyber Liability Endorsement

Free Legal Consultation

Insured Member Definition Amendment

Students Endorsement

Supervision Requirement

This Certificate is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

Several Liability Notice

The subscribing Underwriters 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 Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

This Certificate is issued by Professional Risk Underwriting Pty Ltd in accordance with the authority granted to them by Swiss Re International SE Australia Branch (ABN 38 138 873 211).

IN WITNESS WHEREOF this Certificate has been signed at Melbourne this **16th of December 2022**



Authorised Signatory

Endorsements attaching to and forming part of the Australian Primary Health Care Nurses Association (APNA) Policy Number APNA/PCLP/2023

The following is inserted into the Policy:

Product Liability and Workmanship – Nurses Amendment

Section 6: Exclusions. Point 6.19 is deleted in its entirety and replaced with the following:

6.19 For the avoidance of doubt this exclusion does not apply to:

- the relabelling of any **Product**; or
- or any book, brochure, CD, DVD or downloadable item which is produced by **You**;
- any goods sold, supplied, delivered or distributed by **You** as a registered Nurse

In all other respects the **Policy** remains unaltered.

Midwifery Exclusion

We will not cover **You** for any **Claim** arising directly or indirectly out of or in connection with the provision of midwifery services by **You** or on **Your** behalf.

For the purpose of this endorsement, 'midwifery services' do not include antenatal or post-natal nursing services, for which 'midwife' qualifications are not required.

In all other respects the **Policy** remains unaltered.

Unlimited Run Off Cover

The following is inserted into the Policy:

Section 4: Automatic Extensions. Clause 4.8 is deleted in its entirety and replaced with the following:

Unlimited Run Off Cover

4.8 **We** agree to continue the cover under this **Policy** beyond the current expiry of the **Period of Insurance** to any person Insured by this **Policy** if:

- a) such person ceases to provide **Health Care Services** in connection with the **Business**; and
- b) such person has been **Insured** with **Us** immediately prior to them ceasing to provide **Health Care Services** in connection with the **Business**; and
- c) such person has confirmed the above in writing to **Us** prior to the **Policy** expiry date and such person has received confirmation that the run-off cover has been activated.

Provided that this extension only applies in relation to the conduct of the **Business** by reason of any act, error or omission occurring prior to the date that any such person ceases to provide **Health Care Services** in connection with the **Business**.

In all other respects the **Policy** remains unaltered.

Civil Liability

The following is inserted into the **Policy**:

Section 1: Insuring Clause A – Medical Liability. Clause 1.1 is deleted in its entirety and replaced with the following:

We will indemnify **You** against all sums which **You** become legally liable to pay for any **Claim**:

- a) first made against **You** and notified to **Us** during the **Period of Insurance**; and
- b) arising from the provision of **Health Care Services** in the conduct of the **Business**; and
- c) for civil liability from Personal Injury to any of **Your** patients or clients caused by:
 - i. an act, error or omission committed or allegedly committed by **You** or on **Your** behalf; or
 - ii. a Good Samaritan Act committed or allegedly committed by **You** or on **Your** behalf.

In all other respects the **Policy** remains unaltered.

Continuous Cover

The following is inserted into the **Policy**:

Section 4: Automatic Extensions. Clause 4.21 is deleted in its entirety and replaced with the following:

4.21 Notwithstanding exclusion clause 6.15, **We** will indemnify **You** under insuring clauses A, B and C for any **Claim** first made against **You** during the **Period of Insurance** arising from circumstances of which **You** were aware prior to the **Period of Insurance** provided that:

- a) **We** or Guild Insurance Limited (ABN 55 004 538 863) were **Your** medical malpractice insurer at the time that **You** first became aware of the circumstance and **We** have continued to be **Your** medical malpractice insurer; and
- b) The Limit of Liability under this extension shall be the lesser available under the terms of the **Policy** in force at the time that **You** first became aware of the circumstance and this **Policy**. The terms of this Policy will otherwise apply.

In all other respects the **Policy** remains unaltered.

Cyber Liability

The following definitions are applicable to this Endorsement only:

1. Computer System means **Your** own computer network, including any third party software programs and portable media/computer devices.
2. Hacker means anyone who specifically targets **You** and gains access to the **Your** website via the internet or other external electronic link, solely by electronically circumventing the security systems in place to protect against such access.
3. Programme means a set of instructions written in a computer language that tells a computer how to process data or interact with ancillary equipment.
4. Virus means Programmes that are secretly introduced without **Your** permission or knowledge including but not limited to malware, worms, trojans, rootkits, spyware, dishonest adware, crimeware and other malicious unwanted software.
5. Website means any website(s) where **You** have full control over the content and which **You** operate for the promotion of the **Your** own **Business**.

It is hereby understood and agreed that **We** will indemnify **You** for amounts **You** become liable to pay as

compensation if during the Period of Insurance and as a result of **Your** Business, any party brings a Claim against the **You** arising from:

1. the content of the **Your** email, intranet, or website including alterations or additions made by a Hacker due to:
 - a) **Your** unintentional infringement of any intellectual property rights, including any copyright, trademark, passing off;
 - b) any defamatory statement on **Your** website or in the **Your** email, concerning **Your** client or **Business** competitor;
 - c) **Your** unintentional breach of confidence or infringement of any right to privacy;
2. **Your** negligent transmission of a computer Virus, worm, logic bomb or trojan horse to anyone with whom **You** transact **Business** with, or who uses **Your** website in the course of their **Business**;
3. **Your** unauthorised collection or misuse of any data concerning any customer or **Potential** customer of **Yours** which is either confidential or subject to statutory restrictions on its use and which **You** obtained through the internet or website and hold electronically.

First Party Hacker Damage

We will pay the reasonable and necessary **Costs and Expenses** that **You** incur with **Our** prior written consent if, during the **Period of Insurance**, a Hacker damages, destroys or alters the **Your** website or Computer System. Such **Costs and Expenses** are to be payable to repair or replace the affected part of the website or Computer System to the same or equivalent standard and with the same contents or as near as reasonably possible as immediately before such website or Computer System was damaged, destroyed or altered.

Continuous Cover

Automatic Extension 4.21 Continuous Cover shall not be available under this Endorsement.

Exclusions

We will not cover **You** for any **Claim** arising directly or indirectly out of or in connection with:

1. any Virus, worm, logic bomb or trojan horse written or created by any failure by any equipment

- including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date;
2. any self replicating or malicious code that was not specifically targeted to any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date system;
 3. the infringement of any patent;
 4. the use or provision of any games, or any gaming, gambling, lottery or auctioneering facilities or services;
 5. the failure or interruption of the service provider by an internet service provider or any telecommunications or other utility provider;
 6. any pornographic, sexually explicit or obscene material unless arising directly from the activities of a Hacker;
 7. **Your** liability under any contract which is greater than the liability that **You** would have at law without the contract;
 8. **Your** supply, manufacture, sale, installation or maintenance of any product;
 9. any statement that **You** knew or ought reasonably to have known was defamatory at the time of publication;
 10. any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date;
 11. any trading loss or trading liability including those arising from the loss of any client, account or **Business**;
 12. any liability arising from any user generated content;
 13. any **Claim**, including arbitration, brought outside Australia or New Zealand. This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts;
 14. fines and contractual penalties, punitive or exemplary damages;
 15. any act, breach, omission or infringement that **You** deliberately, dishonestly or recklessly committed, condoned or ignored;

16. any prior pending litigation, known **Claims** or Known Circumstances.

We will not make any payment under this Endorsement if **You** have failed to:

1. take reasonable steps to use, maintain and upgrade any program which protects against computer viruses or any unauthorised use of or access to **Your** Computer System, electronic link or website; and/or
2. make backup copies of any data, file or program at reasonably frequent intervals of no less than weekly basis; and/or
3. cancel any user name, password or other security protection after **You** knew or had reasonable grounds to suspect that it had been made available to any unauthorised person or parties.

Limit of Liability

The cover provided under this Endorsement is limited to \$25,000 any one **Claim** and in the aggregate inclusive of defence costs which shall be part of and not in addition to the Limit of Liability stated in the **Schedule**.

In all other respects the **Policy** remains unaltered.

Free Legal Consultation

The following is inserted into the **Policy**:

During the **Period of Insurance** **You** are entitled to up to 30 minutes of free legal advice from **Our** appointed legal firm on any matter relating to **Your Health Care Services** subject always to the following:

1. The **Schedule** must be presented to the appointed legal firm when requesting legal advice under this Endorsement. If the **Schedule** is not presented then no legal advice can be sought under this section;
2. Entitlement to legal advice is limited to a maximum of 30 minutes per year and any unused hours or part thereof cannot be aggregated from one **Period of Insurance** to another;
3. **We** reserve the right to change the appointed legal firm at any time. Changes to the appointed firms will be notified to **You** on request;
4. **You** may not seek legal advice on this **Policy** or other indemnity issues concerning insurance policies issued by **Us**;

5. If cover under this **Policy** is sought by **You** in respect of any matter on which **You** have sought legal advice under this Endorsement from the appointed legal firm, **You** authorise **Us** (at Our discretion) to engage the appointed legal firm to represent **You** and authorise the appointed firm when engaged to disclose to **Us** any information obtained in the course of tendering advice to **You**. To the extent necessary, **You** waive all **Claims** to legal professional privilege with **Us**;
6. Contacting the appointed legal firm for free legal advice does not constitute a **Claim** notification under Clause 7 of the **Policy**. **You** must still comply with the **Policy** terms and conditions in relation to a **Claim** and give immediate written notice or written notice as soon as practically possible to **Us** within the **Period of Insurance**.

In all other respects the **Policy** remains unaltered.

Insured Member Definition Amendment

The following is inserted into the **Policy**:

Section 9: Definitions. Clause 9.14 is deleted in its entirety and replaced with the following:

- 9.14 **Insured, You and Your** means:
- a) the person or entity named as the Insured in the **Schedule**; or
 - b) any person who is, has been or may become during the **Period of Insurance**, a **Principal** or **Employee** of the person or entity named as the **Insured** in the **Schedule** but only in respect of **Claims** arising from activities undertaken on behalf of the Insured and in the conduct of the **Business** and excluding **Medical Practitioners** acting in such capacity; or
 - c) any person who is, has been or may become during the **Period of Insurance**, a **Principal** or **Employee** of the person or entity named as the **Insured** in the **Schedule** but only in respect of their attendance at an Inquiry; or
 - d) any person who is, during the **Period of Insurance**, a volunteer or member at any fundraising, social or ethics committee of the person or entity named as the Insured in the **Schedule**, but only in respect of **Claims** arising from activities undertaken on behalf of the **Insured** and in the conduct of the **Business**; or

- e) the estate or legal representatives of any person who would otherwise be indemnified under this **Policy**; or
- f) Each **Insured** Member.

The following additional definition is inserted into the **Policy**:

9.36 **Insured** Member means a legal entity or natural person who is at all times during the **Period of Insurance** a current member of the Australian Primary Health Care Nurses Association Inc "APNA" and who has opted into, paid and been accepted to be covered under the **Policy** for the Australian Primary Health Care Nurses Association Inc "APNA".

In all other respects the **Policy** remains unaltered.

Supervision Requirement

It is a condition of cover under this **Policy** that at all times **Your** work must be supervised within a student program approved by APNA, If **You** are practicing nursing and / or any other health profession that **You** hold a qualification for this **Policy** will not respond.

In all other respects the **Policy** remains unaltered.

Students Endorsement

The following is inserted into the **Policy**:

Automatic Extension 4.9 Students is deleted in its entirety and replaced with the following:

Students

4.9 The definition of **Employee** in this **Policy** is extended to include any student of APNA however cover ceases once the student is qualified unless agreed by **Us**.

In all other respects the **Policy** remains unaltered.

MEDICAL MALPRACTICE COMBINED LIABILITY INSURANCE POLICY

Policy Wording Contents

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IMPORTANT INFORMATION

This Policy

This **Policy** is an important Document. The **Policy** wording and **Schedule** together set out the cover provided, the amount **Insured** and the terms and conditions of **Your** insurance. Please read it carefully and keep it in a safe place.

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

ProRisk

ProRisk, Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076, has the authority to bind this Policy on behalf of the Underwriters Claims Made Policy

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

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

Your Duty of Disclosure

Section 21 of the Insurance Contracts Act 1984 provides that before **You** enter into a contract of general insurance with an insurer, **You** have a duty to disclose to the insurer every matter that **You** know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the

insurance and, if so, upon what terms. **You** have the same duty to disclose those matters to the insurer before **You** renew, extend, vary or reinstate a contract of general insurance.

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

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

Non-Disclosure

If **You** fail to comply with **Your** duty of disclosure, **We** may be entitled to reduce **Our** liability under the contract in respect of a **Claim** or **We** may cancel the contract. If **Your** non-disclosure is fraudulent, **We** may also have the option of avoiding the contract from its beginning.

Retroactive Liability

The **Policy** is limited by a **Retroactive Date**. The **Policy** does not cover any civil liability arising from Your conduct of the **Professional Business** prior to the **Retroactive Date**.

Alteration to Risk and Deregistration

The **Policy** requires **You** to notify **Us** within thirty days of any material change in the nature of the **Professional Business**, or any act of insolvency or bankruptcy of the **Insured**. The **Policy** requires **You** to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of the **Insured's** statutory registration. **Claims** arising from conduct which occurs subsequent to the cancellation, suspension or termination of the **Insured's** statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing **Your** profession are excluded from indemnity under the **Policy**.

Limited Liability For Costs

The **Policy** provides that if a payment greater than the **Limit of Indemnity** is required to dispose of a **Claim**, **Our** liability for **Costs and Expenses** will be limited to the proportion that the **Limit of Indemnity** bears to the payment required to dispose of the **Claim**.

Policy Cancellation

In the event of **Policy** cancellation by the **Insured**, **ProRisk's** cancellation rates will apply.

Waiver of Rights of Subrogation

The **Policy** provides that **You** must not, without **Our** prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which **You** may have in respect of any **Claim** covered under this **Policy**. Further, **You** must not do anything or fail to do anything which excludes, limits or prejudices **Our** rights of subrogation.

Privacy Statement

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

We collect personal information about **You** to enable **Us** to provide **You** with relevant **Products** and services, to assess **Your** application for insurance and, if a contract is entered, to enable **Us** to provide, administer, and manage **Your Policy**, and to investigate and handle any **Claims** under **Your Policy**. **We** may disclose **Your** information to third parties (who may be located overseas), such as **Underwriters**, lawyers, **Claims** adjusters, and others appointed by **ProRisk** or by **Underwriters** to assist **Us** in providing relevant **Products** and services. **We** may also disclose **Your** information to people listed as co-Insured on **Your Policy** and to **Your** agents. By providing **Your** personal information to **Us**, **You** consent to **Us** making these disclosures.

If **You** do not provide all or part of the information required, **We** may not be able to provide **You** with **Our Products** and services, consider **Your** application for insurance, administer **Your Policy**, assess or handle

Claims under **Your Policy**, or **You** may breach **Your** duty of disclosure.

When **You** provide **Us** with personal information about other individuals, **We** rely upon **You** to have made them aware of that disclosure, and of the terms of the **ProRisk** Privacy Statement, and to obtain their consent. For a copy of the **ProRisk** Privacy Statement or to request access to or update **Your** personal information, contact the Privacy Officer at **ProRisk** by email: enquiries@prorisk.com.au or by mail at the address shown on this **Policy**.

General Insurance Code of Practice

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

This **Policy** and the Schedule are Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any **Claims** adjusted outside Australia.

Complaints Handling

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

The Complaints Manager
Swiss Re International SE, Australia Branch
Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Telephone: (02) 8295 9500
Email: complaints_anz@swissre.com

Complaints that cannot be resolved by the Complaints Department of the **Underwriters** may be referred to the:

Australian Financial Complaints Authority
 GPO Box 3
Melbourne VIC 3001
Email: info@afca.org.au
Telephone: 1800 931 678

Further details will be provided at the appropriate stage of the complaints process.

Definitions

Apart from in the various headings, words appearing in bold type in the **Policy** have specific meanings attached to them, such as “**You**” and “**Us**”. When reading the **Policy** please make sure that **You** refer to the various definitions to ensure that **You** understand what is being said.

MEDICAL MALPRACTICE COMBINED LIABILITY INSURANCE

In consideration of the payment of the Premium and in reliance on the contents of the Proposal and any other information submitted by or on Your behalf, We will indemnify You in accordance with the terms of this Policy.

1. INSURING CLAUSE A - MEDICAL LIABILITY

1.1 We will indemnify You against all sums which You become legally liable to pay for any Claim:

- (a) first made against You and notified to Us during the Period of Insurance; and
- (b) arising from the provision of Health Care Services in the conduct of the Business; and
- (c) for Personal Injury to any of Your patients or clients caused by:
 - (i) a negligent act, error or failure to act committed or allegedly committed by You or on Your behalf; or
 - (ii) a Good Samaritan Act committed or allegedly committed by You or on Your behalf.

1.2 We will indemnify You for reasonable Costs and Expenses incurred with Our prior consent which will not be unreasonably withheld, for the investigation, defence or settlement of any Claim indemnified by insuring clause A.

2. INSURING CLAUSE B - PUBLIC LIABILITY AND GOODS SOLD OR SUPPLIED

2.1 We will indemnify You against all sums which You become legally liable to pay for any Claim:

- (a) first made against You and notified to Us during the Period of Insurance; and
- (b) for Personal Injury to any third party or loss or damage to the tangible Property of any third party; and
- (c) as a result of an event or an occurrence happening in connection with the Business.

2.2 We will indemnify You for reasonable Costs and Expenses incurred with Our prior consent, which will not be unreasonably withheld, for the investigation, defence or settlement of any Claim indemnified by insuring clause B.

3. INSURING CLAUSE C

3.1 We will indemnify You against all sums which You become legally liable to pay for any Claim first made against You and notified to Us during the Period of Insurance arising in the conduct of Your Business as a result of any of the following:

Confidentiality

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

Defamation, libel and slander

- (b) Actual or alleged defamation, libel or slander but only where, upon Our reasonable request, You issue an apology or an expression of regret. If You refuse to issue an apology or an expression of regret, We will not be liable to defend or

indemnify You in respect of any Claim after the date of such refusal.

Dishonesty

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

Intellectual property

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

Competition and Consumer Act: misleading or deceptive conduct

- (e) Breach or alleged breach of any provision of the Fair Trading Acts of the States and Territories, the Competition and Consumer Act 2010 (Cth) and any similar law of any State or Territory and any amendment, consolidation or re-enactment of any of those Acts, including obligations in relation to restrictive trade practices (such as cartel conduct), misleading and deceptive or unconscionable conduct, unfair contract terms, consumer guarantees and safety of goods and services, but only where the Claim was caused directly by such a breach.

- 3.2 We will indemnify You for reasonable Costs and Expenses incurred with Our prior consent, which will not be unreasonably withheld, for the investigation, defence or settlement of any Claim indemnified by insuring clause C.

4. AUTOMATIC EXTENSIONS

- 4.1 The automatic extensions are all subject to the terms and conditions of this Policy unless expressly stated otherwise. The Excess and the Limit of Indemnity (including any sub-limits) stated in the Schedule apply to the automatic extensions and the automatic extensions do not increase the Limit of Indemnity nor the Aggregate Limit of Indemnity.

Loss of Documents

- 4.2 Loss of or damage to Documents (including but not limited to Documents which have been destroyed, lost or mislaid after appropriate searches) which were in Your physical custody or control, provided that:

- (a) the loss of or damage is sustained and notified to Us during the Period of Insurance; and
 - (b) the indemnity for this automatic extension is limited to the costs, charges and expenses in restoring or replacing the lost or damaged Documents; and
 - (c) the costs, charges and expenses are supported by invoices and/or accounts submitted to Us for Our approval; and
 - (d) any document kept in magnetic or electronic form is duplicated with the intention that the back up or duplicate document be used as the basis for restoring any lost or damaged Document to its original status; and
 - (e) this automatic extension does not extend to indemnify You for:
 - (i) the loss or damage to any Document the property of or entrusted to You by a third party; or
 - (ii) damage to any Document caused by normal wear and tear; or
 - (iii) corruption, theft, interference with, lack of access to electronically stored data caused or contributed to by a computer virus or a third party where such costs, charges and expenses relate to the replacement / restoration of such data after a period or more than 48 hours after the computer virus or act took place or effect.
- (a) We will appoint legal representatives to represent You at the Inquiry if We consider it to be necessary and may appoint legal representatives of Our choice for that purpose; and
 - (b) the Inquiry is commenced, ordered or commissioned during the Period of Insurance and is notified to Us during the Period of Insurance; and
 - (c) where stated in the Schedule, Our limit for all Costs and Expenses incurred under this automatic extension and in the aggregate shall not exceed the sub-limit stated in the Schedule for Inquiries and such sub-limit forms part of the Aggregate Limit of Indemnity under this Policy.
- 4.4 We will not, however, cover any legal costs associated with an appeal of a decision made as a result of an Inquiry.
- 4.5 The Excess shall apply to each and every Inquiry.

Run-off cover

Inquiries

- 4.3 We will pay all reasonable Costs and Expenses incurred with Our prior consent, which will not be unreasonably withheld, for the attendance by You at any Inquiry provided that:
- 4.4 We will indemnify Your former Principals and Employees under the insuring clauses and the extensions in respect of any Claim first made against Your former Principal or

Employee and notified to Us during the Period of Insurance but only in respect of a Claim arising from events or occurrences, acts, errors or failures to act occurring while the Principal or Employee was employed by or part of Your organisation.

cease to write Medical Malpractice Combined Liability Insurance, this Policy will not provide cover for any Claims made after We cease to write Medical Malpractice Combined Liability Insurance.

Extended Run off cover

4.8 We agree to continue the cover under this Policy beyond the Period of Insurance to any person insured by this Policy if:

- (a) such person ceases to provide Health Care Services in connection with the Business; and
- (b) such person has been insured with Us immediately prior to them ceasing to provide Health Care Services in connection with the Business; and
- (c) such person has confirmed the above in writing to Us prior to the Policy expiry date and such person has received confirmation that the run-off cover has been activated.

Provided that:

- (i) this extension only applies in relation to the conduct of the Business by reason of any act, error or failure to act occurring prior to the date that any such person ceases to provide Health Care Services in connection with the Business; and
- (ii) the cover under this Policy is only in respect of Claims that are first made whilst We continue to write Medical Malpractice Combined Liability Insurance. Should We

Students

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

Mergers and Acquisitions

4.10 The cover provided by this Policy will extend to any entity that is acquired by You during the Period of Insurance and involved in the same Business as You;

4.11 Provided that the assets of the entity to be acquired do not exceed 50% of Your assets.

Vicarious Liability for employed or contracted doctors

4.12 For the avoidance of doubt, and subject to the Policy terms and conditions, including General Condition 8.23, We agree to indemnify You for Your liability for any Claim arising as a consequence of the conduct of Your employed or contracted registered Medical Practitioners but only in respect of Claims arising from activities

undertaken on Your behalf and in the conduct of the Business. Such employed or contracted registered Medical Practitioners, are not indemnified under this Policy for any individual liability arising from activities undertaken on Your behalf.

Liability for Contractors and Locums

4.13 We agree to indemnify You for Your liability for any Claim arising as a consequence of the conduct of Your contractors or locums but excluding Medical Practitioners, in respect of Claims arising from activities undertaken in the conduct of the Business.

Compensation for Court Attendance

4.14 We will pay You reasonable compensation if legal advisers, acting on Your behalf with Our consent, which will not be unreasonably withheld, require any Principal or Employee to attend court as a witness in connection with a Claim covered under this Policy first made and notified to Us during the Period of Insurance, but only in circumstances where You actually pay the Principal or Employee for their time.

4.15 Such compensation by Us will be at the rate equivalent to such Principal's or Employee's daily take home salary or wage up to the maximum indicated in the Schedule per person for each day on which attendance is required subject to the maximum indicated in the Schedule for all persons for any one Claim. All payments under this extension will be part of and not in addition to the Limit of Indemnity.

Public Relations Expenses

4.16 We will indemnify You for Public Relations Expenses incurred by You in respect of an Adverse Publicity Event that first occurs

and is notified to Us during the Period of Insurance.

4.17 Our total liability under this extension will not exceed the amount indicated in the Schedule during the Period of Insurance and all payments will be part of and not in addition to the Limit of Indemnity.

4.18 You must pay the Excess indicated in the Schedule for Public Relations Expenses, for any one Adverse Publicity Event. The Excess is deducted from Public Relations Expenses before the application of the limit stated in the Schedule. We have no liability for the amount of Public Relations Expenses that is less than the Excess for each Adverse Publicity Event. You agree that the Excess must be borne by You and is to remain uninsured.

Sixty Day Reporting Period

4.19 You may continue to notify Us of Claims up to sixty days after the expiry of the Period of Insurance, but only for Claims first made against You during the Period of Insurance and based on any act, error or failure to act committed or alleged to have been committed prior to the expiry of the Period of Insurance.

4.20 Any notification to Us during this sixty day reporting period will be deemed to have been first notified to Us during the Period of Insurance.

Continuous Cover

4.21 Notwithstanding exclusion clause 6.16, We will indemnify You under insuring clauses A, B and C for any Claim first made against You during the Period of Insurance arising from circumstances of which You were aware prior to the Period of Insurance provided that:

- (a) We were Your medical malpractice insurer at the time that You first became aware of the circumstance and We have continued to be Your medical malpractice insurer; and
- (b) The Limit of Indemnity under this extension shall be the lesser available under the terms of the Policy in force at the time that You first became aware of the circumstance and this Policy. The terms of this Policy will otherwise apply.

Spousal Liability

4.22 If a Claim against You includes a Claim against Your Spouse solely by reason of:

- (a) such Spouse's legal status as Your Spouse; or
- (b) such Spouse's ownership or interest in property that the claimant seeks to recover as a result of a Claim made against You,

4.23 Then the Spouse's legal liability for compensation resulting from such Claim will be treated for the purposes of this Policy as Your liability.

4.24 This extension does not apply to the extent that the Claim alleges any act, error or failure to act by Your Spouse.

Statutory Liability

4.25 Notwithstanding exclusion 6.10, We will indemnify You:

- (a) for reasonable Costs and Expenses incurred with Our prior consent which will not be unreasonably withheld in relation to proceedings under occupational health and

safety law or environmental law first brought against You and notified to Us during the Period of Insurance resulting from the conduct of the Business;

- (b) to the extent permitted by law, for any pecuniary penalties imposed upon You based on any breach of occupational health and safety law or environmental law as a result of proceedings under occupational health and safety law or environmental law first brought against You and notified to Us during the Period of Insurance resulting from the conduct of the Business, except for any pecuniary penalties:

- (i) resulting from any act, error or failure to act occurring or committed prior to the Retroactive Date; or
- (ii) imposed where You knew, or where a reasonable person in the circumstances ought reasonably to have known, prior to the Period of Insurance that You had contravened such law and committed an offence pursuant to that law; or
- (iii) imposed as a result of further breaches committed after You first knew, or where a reasonable person in the circumstances ought reasonably to have known, that You had contravened such law and committed an offence pursuant to that law, and which led to the imposition of

increased or additional pecuniary penalties;

- (c) to the extent permitted by law, for any compensatory civil penalty first brought against You and notified to Us during the Period of Insurance, resulting from the conduct of the Business.

- 4.26 The cover provided under this extension will only apply to such pecuniary penalties imposed in the jurisdiction of Australia and pursuant to the laws of Australia.
- 4.27 Our total liability under this extension will not exceed the amount indicated in the Schedule. All payments under this extension will be part of and not in addition to the Limit of Indemnity.

Reinstatement of the Limit of Indemnity

- 4.28 While the Limit of Indemnity for any one Claim remains unchanged, if the Limit of Indemnity for either Medical Malpractice Insurance or Public Liability Insurance is exhausted during the Period of Insurance, We agree to reinstate the Limit of Indemnity for the exhausted insurance up to the Aggregate Limit of Indemnity stated in the Schedule. At all times the Maximum Aggregate Limit of Indemnity for the Policy applies.

5. OPTIONAL EXTENSIONS

- 5.1 The optional extensions are all subject to the terms and conditions of this Policy unless expressly stated otherwise. The Excess and the Limit of Indemnity stated in the Schedule apply to the optional extensions and the optional extensions shall not increase the Limit of Indemnity nor the Aggregate Limit of Indemnity.

Joint Ventures

- 5.2 Underwriters will indemnify You under the insuring clauses or the extensions for any Claim in respect of Your proportion of liability for Your conduct in a joint venture, provided that the Claim is first made and notified to Underwriters during the Period of Insurance.

Principals' Prior Business

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

6. EXCLUSIONS

- 6.1 We will not indemnify You for:

Abuse

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

Asbestos

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

Assumed and proportionate liability

- 6.4 Any Claim:
- (a) arising, indirectly or directly, or in any way connected with any liability assumed by You under a contract, deed or agreement

which goes beyond the duty to use such skill and care as is usual in the exercise of the Business; or

- (b) arising, indirectly or directly, or in any way connected with an assumed or contractual liability including a liability assumed by You under a contractual term, condition or undertaking unless such liability would have existed or attached in the absence of such assumed or contractual liability; or
- (c) arising, indirectly or directly, or in any way connected with any liability assumed by You under a guarantee or warranty; or
- (d) arising, indirectly or directly, or in any way connected with any liability for which You have foregone, excluded or limited a right of recovery against any party; or
- (e) arising, indirectly or directly, or in any way connected with an indemnity given or undertaken or a liability assumed by You on behalf of a concurrent or joint wrongdoer; or
- (f) or part of a Claim where You are obligated to pay for or contribute to loss attributable to concurrent wrongdoers that are Medical Practitioners, however pursuant to clause 8.28, this Policy will only indemnify You for Your proportionate liability for any Claim.

Directors and officers

6.5 Any Claim made against a Principal or Employee where such Claim is made solely by reason of the person holding the

position, or having acted in the position, of:

- (a) director - defined in the Corporations Act 2001 (Cth) to mean (in summary) a person who is appointed to the position of director or alternate director (regardless of the name given to that position), and unless the contrary intention appears, a person who is not validly appointed as a director if they act in the position of a director or the directors are accustomed to act in accordance with that person's instructions or wishes; or
- (b) officer – defined in the Corporations Act 2001 (Cth) to mean (in summary) a director or secretary, or a person who makes or participates in making decisions affecting the whole or substantial part of the Business, or who has the capacity to affect financial standing, or in accordance with whose instructions or wishes the directors are accustomed to act, or a receiver, administrator, restructuring practitioner, liquidator or trustee,

of Your organisation or having acted in that capacity.

Dishonest or willful acts

6.6 Subject to Insuring Clause 3.1(c), any Claim or Inquiry directly or indirectly caused by, contributed to by, or arising out of or in connection with any actual or alleged:

- (a) dishonest, fraudulent or criminal acts, errors or failures to act; or
- (b) wilful breach of any statute, contract, agreement or duty; or

- (c) any act, error or failure to act committed or omitted in reckless disregard; of or by You.

Employment liability

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

Employers and contractors must be registered

- 6.8 Any Claim which arose out of Health Care Services provided by You or a person contracted by You to provide Health Care Services where You or the person contracted:
- (a) did not hold the requisite qualifications, authorisations or licenses to carry out such Health Care Services; or
 - (b) were required to be but were not registered in accordance with the laws of the Commonwealth or of any state or territory in which the Health Care Services were provided.

Excess

- 6.9 The Excess.

Fines, penalties and damages

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

Insolvency

- 6.11 Any Claim arising from the administration, receivership, insolvency or bankruptcy of You.

Jurisdiction and territorial limits

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

Alcohol, Narcotics and Intoxicants

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

Other insurance

- 6.14 Any Claim or Inquiry for which assistance, coverage or indemnity may be available to You by a Medical Defence Organisation or

other insurer whether or not such assistance, coverage or indemnity is discretionary and not ultimately provided to You by the Medical Defence Organisation or other insurer. In such a case this Policy will only contribute proportionally to such other Medical Defence Organisation or insurer.

give rise to an allegation or a liability that is or may be the subject of a Claim or an Inquiry; or

Pollution

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

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

Prior reported or Known Circumstances

6.16 Any:

- (a) Claim known by or received by You prior to the Period of Insurance; or
- (b) Claim, Known Circumstance or Inquiry noted on the Proposal for the current Period of Insurance or any previous Proposal; or
- (c) Claim or Inquiry reported, disclosed or notified, or which ought reasonably to have been reported, disclosed or notified, to Us or any other insurer or Medical Defence Organisation prior to the Period of Insurance as being either:
 - (i) a Claim or an Inquiry; or
 - (ii) facts, matters or circumstances which may give rise to a Claim and/or an Inquiry; or
 - (iii) facts, matters or circumstances which may

(d) Claim or Inquiry directly or indirectly caused by, contributed to by, or arising out of, or in connection with any Known Circumstance; or

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

Product Liability and Workmanship

6.17 Any Claim arising from the manufacture, construction, installation, assembly, processing, alteration, repair, repackaging, servicing, or importing of any Products by You or on Your behalf or any Product recall.

6.18 Any Claim directly or indirectly arising from workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by You or on Your behalf; or from supervision of such workmanship by You.

6.19 For the avoidance of doubt this exclusion does not apply to:

- (a) the relabeling of any Product; or
- (b) any book, brochure, CD, DVD or downloadable item which is produced by You.

Property damage

- 6.20 Any Claim arising from damage to Property owned, leased or hired or under hire purchase or on loan to You or otherwise in Your care, custody or control.

Radioactivity

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

Related Persons

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

Retroactive Date

- 6.23 Any Claim or Inquiry directly or indirectly caused by, contributed to by, in connection with or arising from any:
- (a) event or occurrence; or

- (b) acts, errors or failures to act committed or alleged to have been committed prior to the Retroactive Date.

Terrorism

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

Refund of Professional Fees and Trading Debts

- 6.25 Any Claim for refund of professional fees or charges (by way of damages or otherwise); or
- 6.26 Any Claim for the Costs and Expenses incurred by You or on Your behalf in complying with any contractual obligations or making good any faulty Product; or
- 6.27 Any Claim arising directly or indirectly from the provision of any guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or
- 6.28 Any Claim arising from a liability to pay trading debts, trade debts or the repayment of any loan.

Vehicles

- 6.29 Any Claim:
- (a) arising from the ownership, possession or use by or on Your behalf of any motor vehicle or trailer for which compulsory insurance is required by law, other than Claims arising from damage to any motor vehicle or trailer temporarily in Your custody or control for the purpose of parking; or

- (b) arising from the ownership, possession or use by or on Your behalf of any aircraft, watercraft or hovercraft, other than Claims under the insuring clauses or the extensions, arising from the emergency transportation of any patient accompanied by the Insured.

War

- 6.30 Any Claim directly or indirectly caused by, contributed to by, in connection with or arising from war, invasion, acts of foreign enemies, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection, military or usurped power.

7. CLAIM CONDITIONS

Notification

- 7.1. This Policy applies only to Claims first made against You during the Period of Insurance and notified to Us during the Period of Insurance.
- 7.2. A Claim is considered to be first made against You when You:
- (a) receive a demand for compensation or damages or any assertion of a financial right made by a third party in writing to You; or
 - (b) receive any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon You and claiming compensation, damages or other civil rights or remedies against You.
- 7.3. You will notify Us in writing as soon as practicable after You first become aware of such Claim and within the Period of

Insurance. Such written notice to be sent to ProRisk at Level 2, 115 Bridge Road, Richmond, Victoria, 3121.

Management of Claims

- 7.4. You or Your legal representatives must not:
- (a) take any action which is prejudicial to Our interests; or
 - (b) admit liability for or settle any Claim or Potential Claim; or
 - (c) incur any Costs and Expenses without Our prior consent, which will not be unreasonably withheld. We accept no liability for any Costs and Expenses incurred without Our prior consent.
- 7.5. We will be entitled at any time, but not obligated, to take over and conduct in Your name:
- (a) the defence of any suit, legal proceeding or action the subject of a Claim;
 - (b) the investigation of any Claim or Potential Claim; or
 - (c) the handling of any Inquiry;
- and may appoint legal representatives of Our choice for these purposes.
- 7.6. Legal advisers retained by Us to act on Your behalf for any Claim are at liberty to disclose to Us any information they receive in that capacity, wherever they obtain it from, including from You. By claiming under this Policy, You authorise such legal advisers to disclose this information to Us and waive all claim to legal professional privilege which might otherwise prevent those legal advisers from disclosing this information to Us.
- 7.7. The legal advisers retained by Us to conduct the investigation, defence or

settlement of any Claim, may provide advice to Us on any issue regarding Our liability to indemnify You and, whilst doing so, may continue to act in the investigation, defence or settlement of the Claim on behalf of both Us and You.

7.8. You agree that all communications between Us and the legal advisers retained by Us to act in the conduct of the investigation, defence or settlement of any Claim in relation to Your entitlement to indemnity from Us are privileged between Us and the legal advisers.

7.9. If any actual or apparent conflict arises between the interests of Us and You, the legal advisers retained by Us to conduct the investigation, defence or settlement of any Claim may cease acting on Your behalf and may continue to act on Our behalf in relation to any dispute between Us and You with respect to Your entitlement to indemnity from Us.

7.10. We will not agree to the settlement of any Claim or Potential Claim without consultation with You, however, if We recommend the settlement of a Claim or Potential Claim for a certain amount, and the Claim or Potential Claim can be settled for that amount but You refuse to agree to the settlement and decide to contest the Claim or Potential Claim, then We are only liable under this Policy:

- (a) for the recommended settlement amount; and
- (b) Costs and Expenses up to the date of Your refusal to settle.

7.11. We may allow You to conduct the defence of any suit, legal proceeding or action the subject of a Claim or Potential Claim if We believe that the Claim or Potential Claim will not exceed the Excess. If We do this, You are required to provide Us with reasonable progress reports and We reserve the right to take over conduct of

the defence of the Claim or the investigation of the Potential Claim at any time should We consider it reasonable to do so.

7.12. Any:

- (a) Costs and Expenses incurred by or on Your behalf in the investigation and conduct of a Potential Claim; or
- (b) payments made in accordance with Claim Condition 7.10 to settle a Potential Claim;

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

8. GENERAL CONDITIONS

Aggregation

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

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

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

8.2 For the purposes of general condition 8.1:

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

Cancellation

- 8.3 We will only cancel this Policy as permitted by law.
- 8.4 The Policy may otherwise be cancelled in writing following mutual agreement between Us and You.
- 8.5 You may cancel this Policy at any time in writing to Us. In the event of cancellation, We will retain the earned proportion of the premium calculated pro rata as at the date of cancellation, provided we will always retain a minimum of 25% of the premium.

Construction and Interpretation

- 8.6 The construction, interpretation and meaning of this Policy will be determined in accordance with the laws of the state or territory of Australia where Your principal place of business is located. All disputes relating to this Policy must be submitted to the exclusive jurisdiction of the courts of that state or territory or a Federal Court of Australia.
- 8.7 Paragraph titles used in this Policy are included for descriptive purposes only and do not form part of this Policy for the purposes of its construction or interpretation.
- 8.8 Except where the context otherwise requires, words denoting the singular include the plural and vice versa.

Consideration

- 8.9 The indemnity provided by Us under this Policy is in consideration of the payment of the Premium.
- 8.10 You agree to pay the Premium within the time specified in the Schedule.

Co-operation and mitigation

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

Compliance with this general condition will be at Your own expense.

- 8.12 You must take all reasonable steps to avoid, minimise or mitigate any liability, loss or damage that is or may be the subject of a Claim or a Potential Claim and compliance with this general condition will be at Your own expense.

Excess

- 8.13 You are liable to pay the Excess for each Claim, Inquiry and loss of Documents stated in the Schedule.
- 8.14 We are liable to pay a Claim above the Excess.
- 8.15 In calculating the Excess which is payable by You for the acquisition of goods, services or other supply including Costs and Expenses, this is net of any input tax credit which You are or may be entitled to receive or claim under A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 8.16 In the event of a Claim by You under this Policy, You will pay Us), the Excess within seven (7) working days or such other reasonable period agreed between Us and You. Any delay, failure or refusal by You to pay the Excess will entitle Us, acting reasonably, to deduct such amount from

any amount(s) required to settle any Claim or judgment, order or any other payment to be made by Us under this Policy.

Where a delay, failure or refusal by You to pay the Excess results in a failure of settlement or an increase in Costs and Expenses, We will not be liable to the extent that this prejudices Our interests.

- 8.17 Where We have elected to pay all or part of the Excess in respect of any Claim or Potential Claim, You will, within seven (7) working days of receipt of Our written request or such other reasonable period agreed between Us and You, reimburse Us for such payment, unless as otherwise agreed.

Limit of Indemnity

- 8.18 Our liability under this Policy for any one Claim, Inquiry or loss of Documents, and in the aggregate for all Claims, Inquiries, and loss of Documents during the Period of Insurance will not exceed the Maximum Aggregate Limit of Indemnity for the Policy stated in the Schedule.
- 8.19 Where a sub-limit is stated in the Schedule, or this Policy, that sub-limit shall form part of and erode the Maximum Aggregate Limit of Indemnity for the Policy under this Policy.
- 8.20 The Limit of Indemnity is inclusive of Costs and Expenses indemnified under this Policy.
- 8.21 We are not obliged to defend, or continue to defend any Claim or Potential Claim or to pay or continue to pay Costs and Expenses after the Aggregate Limit of Indemnity for either Medical Malpractice Insurance or Public Liability Insurance or the Maximum Aggregate Limit of Indemnity for the Policy has been eroded.

Maintenance of records

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

Material Change

- 8.23 This Policy requires You to notify Us within thirty (30) days of any material change in the nature of the Business or any material change to the risk during the Period of Insurance.
- 8.24 If you notify Us of any material change in the nature of the Business or any material change to the risk, We will assess and evaluate any increase in risk and, We may then, acting reasonably:
- (a) agree to continue cover, in return for the payment of additional premium and any amendments to the terms of this Policy; or
 - (b) cancel the Policy.

Medical Practitioners

- 8.25 At all material times after the Retroactive Date, throughout the Period of Insurance and six (6) years after the expiry of the Period of Insurance You must take all reasonable steps to ensure that:
- (a) all Medical Practitioners employed by or contracted to You, or otherwise working in or in connection with the Business are licensed and registered with the relevant state and/or territory Medical Registration Board; and
 - (b) all such Medical Practitioners are fully insured under their own policy of insurance for their own malpractice, professional errors, failures to act and negligence.
- 8.26 Reasonable steps includes obtaining a copy of their license, registration and certificate of insurance at the commencement of their role and annually thereafter.

Professional instruments

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

manufacturer and in accordance with the instructions, recommendations or guidelines of such manufacturer, and in accordance with Department of Health guidelines, or equivalent.

Proportionate liability

- 8.28 Notwithstanding exclusion 6.4(f), this Policy will only indemnify You for Your proportionate liability for any Claim.

Subrogation

Where We have paid a Claim or a Potential Claim under this Policy, We will retain the right to be subrogated to all rights or recovery in respect of such payments You may have against any party in relation to that Claim or Potential Claim. In addition, all reasonable assistance, including the provision of documentation, will be rendered to Us in the prosecution of such rights by You. Any recovery received will be applied first against any loss insofar as it exceeds the Limit of Liability, then against any payment made by Us, and finally against the Excess.

Sanctions Limitation

- 8.29 We will not be liable under this Policy to provide any cover nor make any claim or pay any other benefit to the extent that the provision of such cover, payment of such claim or provision of such other benefit would expose Us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction applicable to Us.

9. DEFINITIONS

- 9.1 Adverse Publicity Event means an event which, in the reasonable opinion of a Principal of the Insured, might cause the reputation of the Insured to be seriously affected by adverse or negative publicity.
- 9.2 Aggregate Limit of Indemnity means the amount shown in the Schedule as the Aggregate Limit of Indemnity for either Medical Malpractice Insurance or Public Liability Insurance.
- 9.3 Business means the Business as stated in the Schedule.
- 9.4 Claim means:
- (a) any demand for compensation or damages or any assertion of a financial right made by a third party in writing to You; or
 - (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon You and claiming compensation, damages or other civil rights or remedy against You.
- 9.5 Costs and Expenses means all reasonable legal fees, legal costs and other expenses incurred by or on Your behalf, with Our prior consent, in the investigation, defence or settlement of any Claim and/or for the representation or attendance at any Inquiry and/or in the investigation of Potential Claims.
- 9.6 Document means a deed, will, agreement, map, plan, book, letter, record, certificate, photograph or negative, project model or display, forms and documents of any nature, whether written, printed or reproduced by any method and includes computer software, computer records and electronically stored data but does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any similar instrument.
- 9.7 Employee means any natural person employed by You under a contract of service, traineeship, or apprenticeship during or prior to the Period of Insurance, where that natural person is under Your direct control or supervision and acting in the course of conduct of his or her employment but does not include Medical Practitioners acting in such capacity nor Your independent contractors, consultants or agents.
- 9.8 Employment Practices Breach means:
- (a) wrongful termination of employment whether actual or constructive; or
 - (b) employment discrimination of any kind; or
 - (c) sexual or other harassment in the workplace; or
 - (d) wrongful deprivation of career opportunity, employment related misrepresentations, retaliatory treatment against Your Employee or Principal, failure to promote, demotion, wrongful discipline or evaluation or refusal to hire.
- 9.9 Excess means the amount(s) shown in the Schedule as the Excess.
- 9.10 Good Samaritan Act means emergency first aid or medical assistance administered at the scene of a medical emergency, accident or disaster by You who are present either by chance, or in response to an S.O.S call and for which You have no expectation of payment or other reward.

- 9.11 Health Care Services means any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person.
- 9.12 Inquiry means an official investigation, examination, tribunal, inquiry or other official proceeding directly related to the provision of Health Care Services, and in connection with the Business, held or conducted by an overseeing professional body or industry association or any coronial inquiry.
- 9.13 Insured, You and Your means:
- (a) the person or entity named as the Insured in the Schedule; or
 - (b) any person who is, has been or may become during the Period of Insurance, a Principal or Employee of the person or entity named as the Insured in the Schedule but only in respect of Claims arising from activities undertaken on behalf of the Insured and in the conduct of the Business and excluding Medical Practitioners acting in such capacity; or
 - (c) any person who is, has been or may become during the Period of Insurance, a Principal or Employee of the person or entity named as the Insured in the Schedule but only in respect of their attendance at an Inquiry; or
 - (d) any person who is, during the Period of Insurance, a volunteer or member at any fundraising, social or ethics committee of the person or entity named as the Insured in the Schedule, but only in respect of Claims arising from activities undertaken on behalf of the Insured and in the conduct of the Business; or
 - (e) the estate or legal representatives of any person who would otherwise be indemnified under this Policy.
- 9.14 Known Circumstance means any act, error or failure to act, fact, matter or circumstance, event or occurrence, known or received by You prior to the Period of Insurance:
- (a) which You knew; or
 - (b) which a reasonable person in Your position ought to or would have known or been aware;
- might give rise to a Claim and/or an Inquiry or an allegation or a liability that is or may be the subject of a Claim and/or an Inquiry.
- 9.15 Limit of Indemnity means the amount shown in the Schedule as the Limit of Indemnity.
- 9.16 Maximum Aggregate Limit of Indemnity for the Policy means the amount shown in the Schedule as the Maximum Aggregate Limit of Indemnity.
- 9.17 Medical Practitioner means a person registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.
- 9.18 Period of Insurance means the period shown in the Schedule as the Period of Insurance, unless terminated earlier.
- 9.19 Personal Injury means physical injury, mental injury, illness, disease or death of any person.
- 9.20 Potential Claim means any facts notified to Us in accordance with section 40(3) of the Insurance Contracts Act 1984 (Cth), which provides that where an insured gives notice in writing of facts that might give rise to a claim against them as soon as reasonably practicable after they became aware of those facts, but before the policy

- expires, the insurer is not relieved of liability under the policy because the claim is made after the expiration of policy.
- 9.21 Premium means the amount stated as premium in the Schedule.
- 9.22 Principal means where the Insured is an individual, that individual, where the Insured is a firm, a partner of that firm, or where the Insured is a company, a director of that company.
- 9.23 Privacy and Health Records Legislation means the Privacy Act 1988 (Cth) and the Health Records & Information Privacy Act 2002 (NSW), Health Records Act 2001 (Vic), Health Records (Privacy & Access) Act 1997 (ACT) or similar legislation, which regulate the collection and handling of personal information and health information.
- 9.24 Products mean any solid, liquid or gaseous substance or component part thereof.
- 9.25 Property means the tangible personal property of third parties.
- 9.26 ProRisk means Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076.
- 9.27 Public Relations Expenses means the reasonable costs, charges, fees and expenses of a public relations firm or consultant engaged to prevent or limit the adverse effects of or negative publicity from an Adverse Publicity Event, which You may engage with Our prior written consent, but only during the first thirty days immediately following the Adverse Publicity Event.
- 9.28 Related Persons means any person or entity covered by this Policy, any Subsidiary, trustee or nominee of the Insured, or any spouse, domestic partner, parent, parent-in-law, domestic partner of parent, sibling, or child of the Insured or any spouse or domestic partner of the Insured's sibling or child.
- 9.29 Retroactive Date means the date shown in the Schedule as the Retroactive Date.
- 9.30 Spouse means a lawful spouse, domestic partner (including without limitation same sex partner) or any person deriving similar status by reason of the common law or statute.
- 9.31 Subsidiary means any entity over which the Insured is in a position to exercise effective direction or control through ownership or control of more than fifty percent of the issued voting shares of that entity, or any subsidiary at law.
- 9.32 Terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.
- 9.33 Underwriters means Swiss Re International SE Australia Branch (ABN 38 138 873 211).
- 9.34 We, Our and Us means ProRisk acting on behalf of Underwriters.