

**Professional Indemnity Insurance Master Policy  
for Financial Members of the NSW Nurses and  
Midwives' Association and the Australian Nursing and  
Midwifery Federation New South Wales Branch**

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## Introduction

Please read this policy carefully to ensure that it meets your requirements. It is written on a claims made and notified basis, which means that, subject to the 'Continuous Cover' clause, it will only respond to claims first made against the Insured and notified to the Insurer during the Policy Period (or notified in accordance with the terms of any applicable additional or extended reporting period).

Any word or expression to which a specific meaning has been attached shall bear that specific meaning wherever it may appear.

You received important notices about your duty of disclosure, unusual terms in professional indemnity insurance policies and our privacy statement prior to purchasing this policy. The notices are replicated below for your reference. A reference to "you" or "your" in the notices section below includes the Insured.

## Notices

These notices do not form part of the policy.

### Master policy notice

#### Shared limit amongst insureds

This policy is a Master Policy. The Limit of Indemnity, Employment Practices Limit of Indemnity and Maximum Aggregate Limit of Indemnity are shared by all Insureds during the Policy Period. This means that if the Limit of Indemnity, Employment Practices Limit of Indemnity and Maximum Aggregate Limit of Indemnity are exhausted by Claims against or losses in respect of some of the Insureds then there will be no cover remaining.

Any limit specified in a policy clause or on the Schedule that applies in respect of specific coverage only ("sub-limit") is shared by all Insureds during the Policy Period unless clearly specified otherwise. This means that if a shared sub-limit is exhausted by Claims against or losses in respect of some of the Insureds then there will be no cover remaining under that sub-limit.

#### Inclusion of new insureds

The Policy will be extended to include additional Insureds during the Policy Period.

Any extension of the Policy to include additional Insureds during the Policy Period does not increase the Limit of Indemnity, Employment Practices Limit of Indemnity, Maximum Aggregate Limit of Indemnity or any of the sub-limits.

The Insurer does not need to obtain the consent of the Insured prior to extending the policy to include additional Insureds during the Policy Period.

#### NSW Nurses and Midwives' Association acting as agent for renewal notices

The New South Wales Nurses and Midwives' Association is not an Insured under this Policy but acts as agent of all of the Insureds for the receipt of the Insureds' renewal notices.

## Your duty of disclosure

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

You have this duty until we agree to insure you.

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

You do not need to tell us anything that:

- ▼ reduces the risk we insure you for; or
- ▼ is common knowledge; or
- ▼ we know or should know as an insurer; or
- ▼ we waive your duty to tell us about.

### **If you do not tell us something**

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

### **Claims made and notified basis of cover and retroactive date**

This policy is issued on a 'claims made and notified' basis. This means that the policy covers claims:

1. first made against you during the policy period; and
2. that you tell us about during the policy period.

Where your policy has an additional or extended reporting period, subject to the terms of the policy, you may have:

- (i) an additional period to tell us about claims first made against you during the policy period; and/or
- (ii) cover for claims first made against you during the extended reporting period and which you tell us about during the extended reporting period – provided the claims are based on an act, error, or omission alleged to have been committed prior to the expiry of the policy period.

Pursuant to section 54 of the Insurance Contracts Act 1984 (Cth), if you tell us about claims first made against you during the policy period (or additional or extended reporting period, if applicable), after the policy period and any applicable additional or extended reporting period expires, we may be able to reduce our liability by an amount that fairly represents the extent to which our interests were prejudiced as a result of your delay in notifying us of the claim.

Written notification of facts pursuant to section 40(3) of the Insurance Contracts Act 1984 (Cth): If during the policy period, you learn about facts that might lead to a claim and you tell us in writing about these facts as soon as reasonably practicable after you became aware of those facts but before the end of the policy period, we will treat any subsequent claim arising from those facts as though it was made against you during the policy period.

The policy doesn't cover claims or potential claims that you knew about prior to the policy period which would have put a reasonable person in your position on notice that a claim may be made against you. (There are some exceptions to this rule if a 'Continuous Cover' extension applies).

If a retroactive date is applied or shown on the policy schedule, the policy doesn't cover claims resulting from an act or failure to do something before that date.

### **Average provision**

If your policy provides for 'Costs in Addition' to the limit of indemnity and if a payment in excess of the limit of indemnity available under your policy has to be made to dispose of a claim, the Insurer shall only be liable for the percentage of the costs and expenses incurred with the Insurer's prior consent that is a proportionate ratio to the amount of indemnity available under this policy.

### **Preservation of rights of recovery/subrogation waiver**

This policy contains provisions that have the effect of excluding the Insurer's liability for a loss or liability due to the Insured entering into:

- (a) any agreement whereby the Insured releases, agrees not to sue or waives or prejudices any rights of recovery;
- (b) any deed or agreement excluding, limiting or delaying the legal rights of recovery against another party; or
- (c) any agreement or compromise whereby any rights or remedies to which the Insurer would be subrogated are or may be prejudiced.

## **Overseas or worldwide activities**

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

## **Privacy statement**

AAI Limited trading as Vero Insurance is the insurer and issuer of your commercial insurance product, and is a member of the Suncorp Group, which we'll refer to simply as "the Group".

### **Why do we collect personal information?**

Personal information is information or an opinion about an identified individual or an individual who is reasonably identifiable. We collect personal information so that we can:

- ▼ identify you and conduct appropriate checks;
- ▼ understand your requirements and provide you with a product or service;
- ▼ set up, administer and manage our products and services and systems, including the management and administration of underwriting and claims;
- ▼ assess and investigate any claims you make under one or more of our products;
- ▼ manage, train and develop our employees and representatives;
- ▼ manage complaints and disputes, and report to dispute resolution bodies; and
- ▼ get a better understanding of you, your needs, your behaviours and how you interact with us, so we can engage in product and service research, development and business strategy including managing the delivery of our services and products via the ways we communicate with you.

### **What happens if you don't give us your personal information?**

If we ask for your personal information and you don't give it to us, we may not be able to provide you with any, some, or all of the features of our products or services.

### **How we handle your personal information**

We collect your personal information directly from you and, in some cases, from other people or organisations. We also provide your personal information to other related companies in the Group, and they may disclose or use your personal information for the purposes described in 'Why do we collect personal information?' in relation to products and services they may provide to you. They may also use your personal information to help them provide products and services to other customers, but they'll never disclose your personal information to another customer without your consent.

Under various laws we will be (or may be) authorised or required to collect your personal information. These laws include the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), Personal Property Securities Act 2009 (Cth), Corporations Act 2001 (Cth), Autonomous Sanctions Act 2011 (Cth), Income Tax Assessment Act 1997 (Cth), Income Tax Assessment Act 1936 (Cth), Taxation Administration Act 1953 (Cth), A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the Australian Securities and Investments Commission Act 2001 (Cth), as those laws are amended and includes any associated regulations.

We will use and disclose your personal information for the purposes we collected it as well as purposes that are related, where you would reasonably expect us to. We may disclose your personal information to and/or collect your personal information from:

- ▼ other companies within the Group and other trading divisions or departments within the same company (please see our Group Privacy Policy for a list of brands/companies);
- ▼ any of our Group joint ventures where authorised or required;
- ▼ customer, product, business or strategic research and development organisations;
- ▼ data warehouse, strategic learning organisations, data partners, analytic consultants;

- ▼ social media and other virtual communities and networks where people create, share or exchange information;
- ▼ publicly available sources of information;
- ▼ clubs, associations, member loyalty or rewards programs and other industry relevant organisations;
- ▼ a third party that we've contracted to provide financial services, financial products or administrative services – for example:
  - ▼ information technology providers,
  - ▼ administration or business management services, consultancy firms, auditors and business management consultants,
  - ▼ marketing agencies and other marketing service providers,
  - ▼ claims management service providers,
  - ▼ print/mail/digital service providers, and
  - ▼ imaging and document management services;
- ▼ any intermediaries, including your agent, adviser, a broker, representative or person acting on your behalf, other Australian Financial Services Licensee or our authorised representatives, advisers and our agents;
- ▼ a third party claimant or witnesses in a claim;
- ▼ accounting or finance professionals and advisers;
- ▼ government, statutory or regulatory bodies and enforcement bodies;
- ▼ policy or product holders or others who are authorised or noted on the policy as having a legal interest, including where you are an insured person but not the policy or product holder;
- ▼ in the case of a relationship with a corporate partner such as a bank or a credit union, the corporate partner and any new incoming insurer;
- ▼ the Australian Financial Complaints Authority or any other external dispute resolution body;
- ▼ credit reporting agencies;
- ▼ other insurers, reinsurers, insurance investigators and claims or insurance reference services, loss assessors, financiers;
- ▼ legal and any other professional advisers or consultants;
- ▼ hospitals and, medical, health or wellbeing professionals;
- ▼ debt collection agencies;
- ▼ any other organisation or person, where you've asked them to provide your personal information to us or asked us to obtain personal information from them, eg your mother.

We'll use a variety of methods to collect your personal information from, and disclose your personal information to, these persons or organisations, including written forms, telephone calls and via electronic delivery. We may collect and disclose your personal information to these persons and organisations during the information life cycle, regularly, or on an ad hoc basis, depending on the purpose of collection.

### **Overseas disclosure**

Sometimes, we need to provide your personal information to – or get personal information about you from – persons or organisations located overseas, for the same purposes as in 'Why do we collect personal information?'

The complete list of countries is contained in our Group Privacy Policy, which can be accessed at [www.vero.com.au/privacy](http://www.vero.com.au/privacy), or you can call us for a copy.

From time to time, we may need to disclose your personal information to, and collect your personal information from, other countries not on this list. Nevertheless, we will always disclose and collect your personal information in accordance with privacy laws.

## **How to access and correct your personal information or make a complaint**

You have the right to access and correct your personal information held by us and you can find information about how to do this in the Suncorp Group Privacy Policy.

The Policy also includes information about how you can complain about a breach of the Australian Privacy Principles and how we'll deal with such a complaint.

You can get a copy of the Suncorp Group Privacy Policy.

Please use the contact details in **Contact us**.

### **Contact us**

For more information about our privacy practices including accessing or correcting your personal information, making a complaint, obtaining a list of overseas countries or giving us your marketing preferences you can:

- ▼ Visit [www.vero.com.au/privacy](http://www.vero.com.au/privacy)
- ▼ Speak to us directly by phoning us on: 1300 888 073; or
- ▼ Email us at [privacyaccessrequests@vero.com.au](mailto:privacyaccessrequests@vero.com.au)

### **General Insurance Code of Practice**

We support the General Insurance Code of Practice (the Code). A copy of the Code can be obtained from the Insurance Council of Australia by:

- Telephone (02) 9253 5100 or 1300 728 228
- Website [www.insurancecouncil.com.au](http://www.insurancecouncil.com.au)

### **Our complaints handling procedures**

We are committed to:

- listening to what you tell us;
- being accurate and honest in telling you about our products and services;
- communicating with you clearly; and
- resolving any complaints or concerns you have in a fair, transparent and timely manner.

### **How to contact us with a complaint**

#### **Let us know**

If you experience a problem, are not satisfied with our products or services or a decision we have made, let us know so that we can help.

Contact us:

- By phone: 1800 888 073
- By email: [claims@vero.com.au](mailto:claims@vero.com.au)

Complaints can usually be resolved on the spot within 5 business days.

#### **Review by our Customer Relations Team**

If we are not able to resolve your complaint or you would prefer not to contact the people who provided your initial service, our Customer Relations team can assist:

- By phone: 1300 264 470
- By email: [idr@vero.com.au](mailto:idr@vero.com.au)
- In writing: Vero Customer Relations Team, PO Box 14180, Melbourne City Mail Centre VIC 8001

Customer Relations will contact you if they require additional information or they have reached a decision.

When responding to your complaint you will be informed of the progress of and the timeframe for responding to your complaint.

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Members of the NSW Nurses and Midwives' Association and the Australian Nursing and Midwifery Federation New South Wales Branch

### **Seek review by an external service**

We expect our procedures will deal fairly and promptly with your complaint. However, if you remain dissatisfied, there are external dispute remedies such as mediation, arbitration or legal action you may pursue.



## Policy wording

### A. Agreement between named union and the insurer

The **Named Union** and the **Insurer** agree that the **Insurer** will provide insurance in accordance with the terms of this **Policy** as set out below.

### B. Where 'prior consent' is required from the insurer

There are some covers under the **Policy** where the **Insured** will need to obtain the **Insurer's** prior consent, for example, before incurring costs. Where prior consent is required, consent must be obtained from the **Insurer**, unless otherwise specified in the **Policy**. The **Insurer's** consent will not be unreasonably withheld or delayed.

Where prior consent has not been obtained as required, it does not mean the **Insured** cannot make a claim. However, the **Insurer** may be able to reduce the claim payable by an amount that fairly represents the extent to which the **Insurer's** interests were prejudiced by the failure to obtain prior consent.

### C. Payment of reasonable amounts of any costs, charges, expenses and fees under this policy

A range of different costs, charges, expenses and fees are covered under this **Policy**. Unless otherwise specified in the **Policy**, the **Policy** provides cover for the 'reasonable' amount of such cost, charge, expense or fee. Reasonable amount means an amount that is not excessive and where the **Insured** has given reasonable consideration in the circumstances to the different courses of action available prior to incurring the amount and the course of action taken was prudent in that context.

Where consent is required before incurring such costs, when the **Insured** contacts the **Insurer** to seek the **Insurer's** consent, the **Insured** can let the **Insurer** know the steps it has taken to consider the courses of action available and discuss the circumstances with the **Insurer**. If the amounts which are to be incurred are reasonable in the circumstances, the **Insurer** will provide consent for the costs to be incurred.

## D. Policy terms

### 1. Insuring clauses

#### 1.1. Professional indemnity for insured persons arising out of their employment

The **Insurer** will indemnify the **Insured Person** against civil liability for compensation and **Claimant's Costs** in respect of any **Claim** first made against the **Insured Person** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** resulting from the **Insured Person's** conduct of the **Healthcare Services**:

- (a) in their capacity as an **Employee** of an **Establishment**; or
- (b) when undertaking **Supervised Practice** at or for an **Establishment**,

where such **Establishment** does not indemnify the **Insured Person** for such **Claim** and:

- (i) it is legally required to do so but has refused or neglected to do so;
- (ii) it is legally required to do so, but is unable do so because it is **Insolvent** and does not have any valid insurance in place that would provide such indemnity; or
- (iii) it is legally permitted but not legally required to do so, and has refused or neglected to do so.

## 1.2. Professional indemnity for insured persons' side businesses

The **Insurer** will indemnify the **Insured Side Business** against civil liability for compensation and **Claimant's Costs** in respect of any **Claim** first made against the **Insured Side Business** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** resulting from the **Insured Side Business'** conduct of the **Healthcare Services**.

Provided that, and notwithstanding the 'Healthcare Services' described in the **Schedule**, the **Insurer** will not indemnify the **Insured Side Business** in respect of any **Claim** resulting from **Birth Services**.

## 1.3. Employment practices liability

The **Insurer** will pay on behalf of the **Insured** any **Employment Practices Loss** arising out of any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** arising from an **Employment Practices Breach** occurring:

- (a) in their capacity as an **Employee** of an **Establishment**;
- (b) when undertaking **Supervised Practice** at or for an **Establishment**; or
- (c) in their capacity as a **Principal** of an **Insured Side Business**.

Provided that cover under (a) and (b) above only applies if such **Establishment** does not indemnify the **Insured** for such **Employment Practices Loss** and:

- (i) it is legally required to do so but has refused or neglected to do so;
- (ii) it is legally required to do so, but is unable to do so because it is **Insolvent** and does not have any valid insurance in place that would provide such indemnity; or
- (iii) it is legally permitted but not legally required to do so, and has refused or neglected to do so.

## 2. Limit of indemnity and maximum aggregate limit of indemnity

The liability of the **Insurer** for compensation and **Claimant's Costs** under insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment' and 1.2 'Professional indemnity for insured persons' side businesses' and extensions to insuring clauses 1.1 and 1.2 for any one **Claim** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** shall not exceed the **Limit of Indemnity**, irrespective of the number of **Insured** involved in the **Claim**.

The aggregate liability of the **Insurer** for **Employment Practices Loss** under insuring clause 1.3 'Employment practices liability' and extensions to insuring clause 1.3 for all **Claims** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** will not exceed the **Employment Practices Limit of Indemnity**, irrespective of the number of **Insureds** involved in each **Claim**. The **Employment Practices Limit of Indemnity** is shared between all **Insureds**. The **Employment Practices Limit of Indemnity** forms part of and is not in addition to, the **Maximum Aggregate Limit of Indemnity**.

The aggregate liability of the **Insurer** under this **Policy** will not exceed the **Maximum Aggregate Limit of Indemnity** for all **Claims** first made against the **Insured** and notified to the **Insurer** during the **Policy Period**, irrespective of the number of **Insureds** involved in each **Claim**. The **Maximum Aggregate Limit of Indemnity** is shared between all the **Insureds**.

## 3. Insured costs

3.1 In respect of insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment' and 1.2 'Professional indemnity for insured persons' side businesses':

- (a) subject to point 3.1(b), the **Insurer** will, in addition to the **Limit of Indemnity**, pay reasonable **Insured Costs** incurred with the **Insurer's** prior consent in connection with a **Claim** under this **Policy**; and
- (b) if the total amount of compensation and **Claimant's Costs** required to dispose of any one **Claim** ("Total Claim Amount") exceeds the **Limit of Indemnity**, the **Insurer** shall only be liable for the percentage of reasonable **Insured Costs** that is a proportionate ratio to the Total Claim Amount that is indemnified by the **Limit of Indemnity**.

3.2 In respect of insuring clause 1.3 'Employment practices liability':

- (a) subject to point 3.2(b), the liability of the **Insurer** for **Employment Practices Loss** and reasonable **Insured Costs** in respect of all **Claims** shall not exceed the **Employment Practices Limit of Liability**; and
- (b) if the total amount of **Employment Practices Loss** and **Insured's Costs** required to dispose of any one **Claim** ("Total Claim Amount") exceeds the **Limit of Indemnity**, the **Insurer** shall only be liable for the percentage of reasonable **Insured Costs** that is a proportionate ratio to the Total Claim Amount that is indemnified by the **Employment Practices Limit of Indemnity**.

#### 4. Excess

The **Excess** is 'Costs Exclusive' which means that the **Excess** does not apply to **Insured Costs**.

The **Insured** must pay the amount of:

- (a) in respect of insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment' and 1.2 'Professional indemnity for insured persons' side businesses', any compensation and **Claimant's Costs**; and
- (b) in respect of insuring clause 1.3 'Employment practices liability', any **Employment Practices Loss**,

that are collectively equal to or less than the **Excess** for any one **Claim**. The **Insurer** has no liability for the amount of compensation, **Claimant's Costs** or **Employment Practices Loss** that is equal to or less than the **Excess** for any one **Claim**.

The **Excess** is deducted from compensation, **Claimant's Costs** or **Employment Practices Loss** payable before the application of the **Limit of Indemnity**.

The **Named Union** must pay the amount of any reasonable **Inquiry Costs** that is equal to or less than \$20,000 ('Inquiry Costs Excess') for any one **Inquiry Notice**. The Inquiry Costs Excess is deducted from **Inquiry Costs** payable before the application of any sub-limits. The **Insurer** has no liability for the amount of **Inquiry Costs** that is equal to or less than the Inquiry Costs Excess for any one **Inquiry Notice**.

The **Insured** agrees that the **Excess** must be borne by the **Insured** and is to remain uninsured.

The **Named Union** agrees to pay the **Excess** on behalf of the **Insured** if the **Insured** is unable to pay the **Excess**.

The method for payment of the **Excess** will depend on the particular circumstances of the **Claim**, for example:

- (i) the **Insurer** may pay the amount of compensation, **Claimant's Costs**, **Employment Practices Loss** or **Insured Costs** that is equal to or less than the **Excess**, and then require repayment of this amount from the **Insured**;
- (ii) the **Insurer** may deduct the amount of the **Excess** from the amount payable by the **Insurer** to the **Insured**; or
- (iii) the **Insurer** may require the **Insured** to pay the **Excess** directly to a third party.

#### 5. Aggregation of claims and notices

All **Claims** arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be one **Claim** and shall attract one **Limit of Indemnity** and one **Excess**.

For the purposes of insuring clause 1.3 'Employment practices liability' and extensions to insuring clause 1.3, all **Claims** arising from the same **Employment Practices Breach** or interrelated **Employment Practices Breaches** shall be considered to be one **Claim** and shall attract one **Excess**.

For the purposes of extension 7.8 'Lost documents', all loss or damage arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be one occurrence of loss or damage and shall attract one **Excess**.

For the purposes of extension 7.10 'Privacy breach costs', any **Privacy Breach** arising out of, based upon, attributable to or in respect of any one failure or series of failures consequent upon or attributable to one source or original cause shall be considered to be one **Privacy Breach** and shall attract one **Excess**.

## 6. Insurance clarifications

### 6.1 Insurance clarifications applying to insuring clauses 1.1 and 1.2

For the purposes of clarifying the scope of cover under insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment' and 1.2 'Professional indemnity for insured persons' side businesses', civil liability includes, but is not limited to:

#### 6.1.1 Consumer protection legislation

**Claims** for civil liability for compensation resulting from breach of a statutory duty under the Competition and Consumer Act 2010 (Cth), Corporations Act 2001 (Cth), National Consumer Credit Protection Act 2009 (Cth) or similar legislation enacted for the protection of consumers, within any Australian jurisdiction including any amendment, consolidation or re-enactment of such legislation, to the extent that such **Claims** are not otherwise excluded under this **Policy**.

#### 6.1.2 Contractual liability

Notwithstanding exclusion 8.2.3 'Assumption of liability', contractual liability, provided that:

1. the **Insurer** will not be liable for any liability assumed by the **Insured** under a deed or agreement (for example, under any express warranty, guarantee, hold harmless agreement or indemnity clause) unless such liability would have attached to the **Insured** in the absence of such deed or agreement; and
2. where a **Claim** includes an alleged breach of contract the **Insurer** will not reduce their liability by the mere fact that contributory negligence is not available as a defence.

#### 6.1.3 Defamation

**Claims** arising from or in respect of defamation, provided that:

1. the defamation arises from conduct of the **Insured's Healthcare Services**; and
2. the defamation is not made by the **Insured** with wilful and premeditated determination to bring about harm to another.

#### 6.1.4 Intellectual property

Infringement of rights of intellectual property, provided that such infringement is unintentional and is committed in the conduct of the **Healthcare Services**.

#### 6.1.5 Privacy and confidentiality

Unintentional breach of any duty of privacy or confidentiality at law.

### 6.2 Insurance clarifications applying to insuring clause 1.2

For the purposes of clarifying the scope of cover under insuring clause 1.2 'Professional indemnity for insured persons' side businesses' only, civil liability includes, but is not limited to:

#### 6.2.1 Liability of the insured side business for acts, errors or omissions of contractors and consultants

Acts, errors, omissions or conduct of contractors and consultants of an **Insured Side Business**, provided that the **Insurer** will only indemnify the **Insured Side Business** for its civil liability for the **Healthcare Services** provided by the contractor and/or consultant.

The indemnity under insuring clause 1.2 'Professional indemnity for insured persons' side businesses' will not extend to the contractor and/or consultant themselves who committed the act, error, omission or conduct.

### 6.2.2 Liquidated damages

Liquidated damages imposed upon an **Insured Side Business**, provided that the **Insurer** will not be liable for any liquidated damages imposed upon the **Insured Side Business** by contract or agreement, except to the extent that the **Insured Side Business** would have been liable for that damage in the absence of any such contract or agreement.

## 7 Extensions

Where these 'Extensions' are noted as 'Included' in the **Schedule**, only then is the **Policy** extended to include the following extensions.

The extensions are only applicable to the stated insuring clause(s).

All extensions are subject to all the terms of the **Policy**, unless otherwise stated.

The total of all payments made under the extensions will be part of and not in addition to the **Limit of Indemnity, Employment Practices Limit of Indemnity** and the **Maximum Aggregate Limit of Indemnity**, unless otherwise stated.

### 7.1 Advancement of costs

Insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment', 1.2 'Professional indemnity for insured persons' side businesses' and 1.3 'Employment practices liability' are extended as follows:

The **Insurer** will advance:

- A. reasonable **Insured Costs** incurred by the **Insurer** or the **Insured** with the **Insurer's** prior written consent, as they are incurred and prior to final adjudication of a **Claim**; and
- B. reasonable **Inquiry Costs** incurred by the **Insurer** or the **Insured** with the **Insurer's** prior written consent, as they are incurred.

If and to the extent that the **Insured** is not entitled to coverage under the terms and conditions of this **Policy**, then the **Insurer** will cease to advance such costs and any amounts previously advanced shall be repaid to the **Insurer**.

The **Insurer** may not refuse to advance reasonable **Insured Costs** or reasonable **Inquiry Costs** by reason only that the **Insurer** considers that:

- (a) the conduct referred to in exclusion 8.2.6 'Dishonest, fraudulent or criminal acts' has occurred, until such conduct is established; or
- (b) any services as referred to in exclusion 8.2.10 'Intoxicants and drugs' were not rendered competently or at all, by any person under the influence of intoxicants or drugs, until it is established that they were under such influence,

by a formal written admission by the relevant **Insured** or final, non-appealable adjudication of a judicial or arbitral tribunal (other than in a proceeding brought by the **Insurer**).

### 7.2 Compensation for court attendance

7.2.1 Insuring clause 1.1 'Professional indemnity for insured persons arising out of their employment' is extended as follows:

The **Insurer** will pay the **Insured Person** compensation if legal advisers, acting on behalf of the **Insured** with the consent of the **Insurer**, require the **Insured Person** to attend court in connection with a **Claim** under this **Policy** first made and notified to the **Insurer** during the **Policy Period**, but only in circumstances where the **Insured Person's** employer does not actually pay the **Insured Person** for their time to attend court. Such compensation by the **Insurer** will be at the rate equivalent to such **Insured Person's** daily take home salary or wage up to a maximum of \$500 per person for each day on which attendance is required subject to a maximum of \$20,000 for all persons for any one **Claim**.

If and to the extent that the **Insured Person** is not entitled to coverage under the terms and conditions of this **Policy**, then all amounts paid to the **Insured Person** under this clause shall be repaid to the **Insurer** by the **Insured Person**.

7.2.2 Insuring clauses 1.2 'Professional indemnity for insured persons' side businesses' and 1.3 'Employment practices liability' are extended as follows:

The **Insurer** will pay the **Insured Entity** compensation if legal advisers, acting on behalf of the **Insured** with the consent of the **Insurer**, require any **Principal** or **Employee** of the **Insured Entity** to attend court in connection with a **Claim** under this **Policy** first made and notified to the **Insurer** during the **Policy Period**, but only in circumstances where the **Insured Entity** actually pays the **Principal** or **Employee** for their time. Such compensation by the **Insurer** will be at the rate equivalent to such **Principal's** or **Employee's** daily take home salary or wage up to a maximum of \$500 per person for each day on which attendance is required subject to a maximum of \$20,000 for all persons for any one **Claim**.

If and to the extent that the **Insured Entity** is not entitled to coverage under the terms and conditions of this **Policy**, then all amounts paid to the **Insured Entity** under this clause shall be repaid to the **Insurer** by the **Insured Entity**.

7.2.3 No **Excess** is applicable to the extensions under 7.2.1 or 7.2.2 above.

### 7.3 Continuous cover

Insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment', 1.2 'Professional indemnity for insured persons' side businesses' and 1.3 'Employment practices liability' are extended as follows:

Where the **Insured**:

1. first became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Policy Period**; and
2. had not notified the **Insurer** of such facts or circumstances prior to the **Policy Period**,

then exclusion 8.1.1 'Prior claims or known circumstances' will not apply to any notification during the **Policy Period** of any **Claim** resulting from such facts or circumstances, provided that:

- (a) there is an absence of fraudulent noncompliance with the **Insured's** duty of disclosure and an absence of fraudulent misrepresentation by the **Insured** in respect of such facts or circumstances;
- (b) the **Insured** has been continuously insured, without interruption, at the time of the notification of the **Claim** to the **Insurer**, under a professional indemnity policy issued by the **Insurer** at the time when the **Insured** first became aware of such facts or circumstances ; and
- (c) the **Insurer** may reduce its liability under the **Policy** to the extent of any prejudice the **Insurer** may suffer in connection with the **Insured's** failure to notify the facts or circumstances giving rise to a **Claim** prior to the **Policy Period**.

### 7.4 Extended reporting period

#### 7.4.1 Purchasing an extended reporting period

In the event that this **Policy** is neither renewed nor replaced at the end of the **Policy Period** with insurance that covers substantially the same risk exposure as this **Policy**, the **Named Union** will be entitled to purchase an extended reporting period as detailed in 7.4.2 below.

The **Named Union** will not be entitled to purchase an extended reporting period if the **Named Union** is **Insolvent** during the **Policy Period**.

The entitlement to purchase the extended reporting period lapses upon expiry of the **Policy Period**.

The application to purchase the extended reporting period must be received by the **Insurer** prior to the expiry of the **Policy Period**, and payment of the additional premium must be made to the **Insurer** within thirty days of the same date.

The additional premium for the extended reporting period will be 100% of the **Full Annual Premium**. If the extended reporting period ends because the **Named Union** cancels the **Policy** or obtains insurance that covers substantially the same risk exposure as this **Policy** then the **Insurer** will retain a short term premium calculated at the pro rata proportion of the additional premium and



the **Named Union** will receive a refund of any balance of the premium, unless there have been any notifications during the **Policy Period** or the extended reporting period, in which case no refund shall be given.

#### 7.4.2 Details of the extended reporting period

Where the **Named Union** has purchased an extended reporting period, the period begins immediately following the expiry of the **Policy Period** and ends on the earlier of 4.p.m. **L.S.T.** on the three hundred and sixty fifth day thereafter, or at the time on the effective date on which the **Named Union** obtains insurance that covers substantially the same risk exposure as this **Policy**.

During the extended reporting period, the **Insured** may continue to notify the **Insurer** of **Claims**:

1. where the **Claim** is first made against the **Insured** during the **Policy Period** or extended reporting period; and
2. provided the **Claims** result from the conduct of the **Healthcare Services** prior to expiry of the **Policy Period**.

Any notification to the **Insurer** during this extended reporting period will be deemed to have been first notified to the **Insurer** during the **Policy Period**.

#### 7.5 Good Samaritan acts

Insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment' and 1.2 'Professional indemnity for insured persons' side businesses' are extended as follows:

The **Insurer** will indemnify the **Insured** against civil liability for compensation and **Claimant's Costs** in respect of **Claims** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** resulting from the rendering of or failure to render first aid and assistance in an emergency situation or accident, except when such **Insured** is engaged in a professional capacity under a contract of employment or other contract by another person or entity.

In the event of a conflict between this extension and exclusion 8.2.12 'Homebirths' or exclusion 8.2.14 'Private practice birthing services', this extension shall apply.

#### 7.6 Inquiry costs

Insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment' and 1.2 'Professional indemnity for insured persons' side businesses' are extended as follows:

The **Insurer** will indemnify the **Insured** for reasonable **Inquiry Costs** incurred with the **Insurer's** prior consent.

Provided that:

- (a) the **Inquiry Notice** is first received by the **Insured** and notified to the **Insurer** during the **Policy Period**;
- (b) such **Inquiry Notice** arises directly from conduct allegedly committed by the **Insured** in conducting the **Healthcare Services**; and
- (c) regular or overtime wages, salaries or fees of the **Insured** are excluded from this indemnity.

The total liability of the **Insurer** for all **Inquiry Costs** under this extension will not exceed:

- (i) \$100,000 per **Insured Person** during the **Policy Period**;
- (ii) \$100,000 per **Insured Side Business** during the **Policy Period**; and
- (iii) \$2,000,000 in the aggregate, during the **Policy Period**.

The **Named Union** must pay the amount of any **Inquiry Costs** that is equal to or less than \$20,000 ('Inquiry Costs Excess') for any one **Inquiry Notice**. The Inquiry Costs Excess is deducted from **Inquiry Costs** payable before the application of the sub-limits specified in (i) and (ii) above. The **Insurer** has no liability for the amount of **Inquiry Costs** that is less than the Inquiry Costs Excess for any one **Inquiry Notice**.

This extension does not apply to an investigation, inquiry or hearing arising from or in respect of a **Privacy Breach** for which the **Insured** has an obligation under the Privacy Act 1988 (Cth) (including any amendment, consolidation, re-enactment, replacement or successor of such legislation) to notify the Office of the Australian Information Commissioner (OAIC) (or other

responsible agency or person as set out in the Privacy Act 1988 (Cth) or any amendment, consolidation, re-enactment, replacement or successor of such legislation) and affected individuals to whom the information relates.

### 7.7 Joint venture liability

Insuring clause 1.2 'Professional indemnity for insured persons' side businesses' are extended as follows:

The **Insurer** will indemnify the **Insured** against civil liability for compensation and **Claimant's Costs** in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** resulting from the **Insured Side Business'** participation in any joint venture in connection with the **Healthcare Services** provided that the indemnity given:

- (a) shall only relate to the **Insured Side Business'** proportion of any liability incurred by such joint venture; and
- (b) shall only be in respect of acts or omissions of an **Insured Person**.

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

### 7.8 Lost documents

Insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment' and 1.2 'Professional indemnity for insured persons' side businesses' are extended as follows:

The **Insurer** will, in the event of loss of or damage to **Documents** occurring in connection with the **Healthcare Services**, indemnify the **Insured** against:

1. civil liability and **Claimant's Costs** in respect of any **Claim** resulting from such loss or damage; and
2. reasonable costs and expenses incurred by the **Insured** in replacing such **Documents**, provided that:
  - (a) such loss or damage is sustained during the **Policy Period** while the **Documents** are either in transit or in the custody of either:
    - (i) the **Insured**; or
    - (ii) any third party to whom a reasonable person in the **Insured's** professional position would entrust the **Documents** with the expectation that the **Documents** would be protected from loss or damage;
  - (b) where the **Documents** are in electronic format, the **Insured** has:
    - (i) ensured the following information technology ("IT") security measures are in place or has undertaken reasonable enquiries to verify whether a third party that the **Insured** has entrusted the **Documents** with, has the following IT security measures in place:
      - (1) procedures in place to back up such **Documents** at least once a week;
      - (2) active and up-to-date IT security that, at a minimum, has the ability to:
        - I. identify and remove software viruses and other types of harmful and malicious software ("Viruses");
        - II. automatically scan files, documents, emails, email attachments, folders and other means of storing, transmitting and using digital information, for Viruses;
        - III. provide firewall protection; and
        - IV. automatically receive updates from the relevant provider of such Virus and firewall protection; and
    - (ii) done everything that a reasonable person in the **Insured's** position would do to ensure that the abilities listed in (b)(i)(1) and (2) above are enabled and fully utilised on an ongoing basis by either the **Insured** or the third party;

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- (c) the amount of any claim for reasonable costs and expenses under clause 2. of this extension shall be supported by proof of loss or damage (for example, bills and accounts) which shall be subject to approval by an appropriately qualified and experienced professional or advisor to be nominated by the **Insurer** with the consent of the **Insured** or if such consent is withheld, by the President of the Law Society of whatever State or Territory where the Policy was issued;
- (d) the **Insurer** will not be liable for loss or damage caused by or arising directly or indirectly from, in connection with or in respect of any **Cyber Act**;
- (e) the **Insurer** will not be liable in respect of loss or damage caused by riot or civil commotion;
- (f) the **Insurer** will not be liable in respect of loss or damage caused by:
  - (i) mould;
  - (ii) vermin or pest infestation; or
  - (iii) wear, tear or any other gradually operating cause.

The total liability of the **Insurer** for all reasonable costs and expenses under clause 2 of this extension will not exceed:

- (i) \$500,000 per **Insured Person** during the **Policy Period**;
- (ii) \$1,000,000 per **Insured Side Business** during the **Policy Period**; and
- (iii) \$20,000,000 in the aggregate, during the **Policy Period**.

#### 7.9 **Ninety day reporting period**

Insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment' and 1.2 'Professional indemnity for insured persons' side businesses' are extended as follows:

The **Insured** may continue to notify the **Insurer** of **Claims** up to ninety days after the expiry of the **Policy Period**, but only **Claims** first made against the **Insured** during the **Policy Period** and based on any act, error omission or conduct committed or alleged to have been committed prior to expiry of the **Policy Period**.

Any notification to the **Insurer** during this ninety day reporting period will be deemed to have been first notified to the **Insurer** during the **Policy Period**.

For a late notification after this period of time (unless otherwise provided for under this **Policy**), the **Insurer** may be able to refuse to pay a claim or reduce its liability by an amount that fairly represents the extent to which the **Insurer** has been prejudiced by the **Insured's** delay to notify the **Insurer** of a **Claim**.

#### 7.10 **Privacy breach costs**

The **Insurer** will indemnify the **Insured Person** and the **Insured Side Business** for the reasonable costs of notifying individuals or corporations of a **Privacy Breach** resulting from the provision of the **Healthcare Services**.

Provided that:

- (a) the **Insured** first discovers the **Privacy Breach** during the **Policy Period** and notifies the **Insurer** during the **Policy Period**; and
- (b) the **Insured** obtains from the **Insurer** consent (which shall not be unreasonably withheld or delayed) prior to incurring such costs.

The total liability of the **Insurer** for all costs under this extension arising from one **Privacy Breach** will not exceed \$10,000 for the **Policy Period**.

The total liability of the **Insurer** for all costs incurred under this extension will not exceed \$100,000 in the aggregate for the **Policy Period**.

The **Excess** applies to this extension.

For the purposes of this extension, exclusions 8.1.2 'Retroactive date' and 8.1.3 'Services whilst not a member' are amended to read 'any costs resulting from any incident occurring prior to the

**Retroactive Date** and 'any costs resulting from any incident occurring prior to the **Membership Date**' respectively.

#### 7.11 Spousal liability

Insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment', 1.2 'Professional indemnity for insured persons' side businesses' and 1.3 'Employment practices liability' are extended as follows:

If a **Claim** against an **Insured** includes a claim against such **Insured's Spouse** solely by reason of:

- (a) such **Spouse's** legal status as a **Spouse** of such **Insured**; or
- (b) such **Spouse's** ownership interest in property which the claimant seeks as recovery for **Claims** made against such **Insured**,

then the **Spouse's** legal liability for compensation resulting from such **Claim** will be treated for the purposes of this **Policy** as the liability of the **Insured**.

This extension does not apply to the extent the **Claim** alleges any act, error, omission or conduct by such **Insured's Spouse**.

## 8 Exclusions

These exclusions apply to all the insuring clauses and extensions of the **Policy** unless otherwise stated.

Where an exclusion applies to a particular insuring clause then it also applies to the extensions to that insuring clause.

8.1 The **Insurer** shall not be liable in respect of:

#### 8.1.1 Prior claims or known circumstances

- (a) any **Claim** first made against the **Insured** prior to the inception of the **Policy Period** or disclosed in the **Proposal**;
- (b) any **Claim** first made against an **Insured Person** or **Insured Side Business** prior to the **Membership Date**; or
- (c) any **Claim**, liability, compensation, **Employment Practices Loss**, **Inquiry Costs**, **Claimant's Costs** or **Insured Costs** directly or indirectly arising from or in respect of any facts, events or circumstances:
  - (i) which the **Insured** knew, prior to the inception of the **Policy Period**, might give rise to a **Claim**, liability, compensation, **Employment Practices Loss**, **Inquiry Costs**, **Claimant's Costs** or **Insured Costs** which might be covered under this **Policy**;
  - (ii) which a reasonable person in the **Insured's** position would have thought, prior to the inception of the **Policy Period**, might give rise to a **Claim**, liability, compensation, **Employment Practices Loss**, **Inquiry Costs**, **Claimant's Costs** or **Insured Costs** which might be covered under this **Policy**;
  - (iii) which were disclosed in the **Proposal** or were or could be notified under any insurance that was in force prior to the inception of the **Policy Period**;
  - (iv) which were alleged in or discovered in any **Claim** made against the **Insured** prior to the inception of the **Policy Period**; or
  - (v) relating to or underlying any **Claim** made against the **Insured** prior to the inception of the **Policy Period**; or
  - (vi) which were known to an **Insured Person** prior to their **Membership Date**.

#### 8.1.2 Retroactive date

any **Claim** resulting from any act, error, omission or conduct occurring or committed prior to the **Retroactive Date**.

### 8.1.3 Services whilst not a member

- (a) any **Claim** resulting from the conduct of the **Healthcare Services**, or an **Employment Practices Breach**, by an **Insured Person**:
  - (i) while that **Insured Person** was not an **Employee** of an **Establishment**;
  - (ii) prior to the **Membership Date**; or
  - (iii) while that **Insured Person** was not a financial member of the **Named Union**.
- (b) any **Claim** resulting from the conduct of the **Healthcare Services**, or an **Employment Practices Breach**, by an **Insured Side Business** that is a natural person sole trader:
  - (i) while that natural person was not an **Employee** of an **Establishment**;
  - (ii) prior to the **Membership Date**; or
  - (iii) while that natural person was not a financial member of the **Named Union**.
- (c) any **Claim** resulting from the conduct of the **Healthcare Services**, or an **Employment Practices Breach**, by an **Insured Side Business** that is a legal entity:
  - (i) while any of that legal entity's **Principals** were not **Employees** of an **Establishment**;
  - (ii) prior to the **Membership Date**; or
  - (iii) while any of that legal entity's **Principals** were not financial members of the **Named Union**.

### 8.1.4 Professional fees

- (a) any **Claim** for indemnity by the **Insured** for;
- (b) any **Claim** solely for; or
- (c) that part of any **Claim** that is in respect of,

professional fees or charges or the refund of professional fees or charges (by way of set off or damages or otherwise).

- 8.2 The **Insurer** shall not be liable in respect of any **Healthcare Services, Claim, liability, compensation, Employment Practices Loss, Inquiry Costs, Claimant's Costs, Insured Costs, compensation for court attendance or loss or damage to Documents**:

#### 8.2.1 Abuse

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

- (a) actual or alleged abuse;
- (b) any redress scheme or other arrangement established for victims of abuse; or
- (c) any actual or alleged failure to detect, act upon or prevent abuse.

The **Insurer** will not defend any action, suit or proceedings, nor advance **Insured Costs** or **Inquiry Costs** in relation to any matter listed above.

Notwithstanding the above, the **Insurer** will advance:

1. **Insured Costs** arising from; and
2. **Inquiry Costs** in respect of,

allegations of conduct referred to above, until the alleged conduct is established by a verbal or written admission by the relevant **Insured**, or adjudication of a judicial or arbitral tribunal (other than in a proceeding brought by the **Insurer**).

Provided that:

- (i) the total liability of the **Insurer** for all such **Insured Costs** and **Inquiry Costs** will not exceed \$100,000 per **Insured Person** and \$2,000,000 in the aggregate during the **Policy Period**; and

- (ii) if and to the extent that the alleged conduct is established, then the **Insurer** will cease to advance such costs and any amounts previously advanced shall be repaid to the **Insurer**.

For the purposes of clarification, under this exclusion, 'abuse' includes, but is not limited to:

- (i) any verbal, non-verbal, mental or emotional abuse of any person;
- (ii) sexual abuse, sexual assault, acts of indecency, sexual harassment or molestation;
- (iii) neglect, deprivation, bullying, physical interference with any person or assault of any kind;
- (iv) any verbal or non-verbal communication, behaviour or conduct intended to harass, abuse or humiliate, including but not limited to hazing.

For the purposes of insuring clause 1.3 'Employment practices liability', an **Employment Practices Breach** is deemed not to be abuse where such **Employment Practices Breach** is not in respect of a person under the age of 18 or a vulnerable person (as defined by the Department of Social Services).

#### 8.2.2 **Asbestos**

arising directly or indirectly from, in connection with or in respect of asbestos, asbestos fibres or derivatives of asbestos, provided that this exclusion shall not apply to the provision of the **Healthcare Services** for any asbestos related disease.

#### 8.2.3 **Assumption of liability**

arising directly or indirectly from, in connection with or in respect of any liability that would not be assumed in the ordinary course of, and as a necessary part of the **Healthcare Services**, as would be customary for a prudent operator carrying on business of the same nature as the **Insured**.

In the event of any conflict between this exclusion and insurance clarification 6.1.2 'Contractual liability', insurance clarification 6.1.2 shall prevail.

#### 8.2.4 **Benefits**

arising directly or indirectly from, in connection with or in respect of an actual or alleged violation of the responsibilities, obligations or duties imposed by any law relating to workers compensation, unemployment insurance, retirement benefits, social security or disability benefits.

This exclusion will only apply to insuring clause 1.3 'Employment practices liability'.

#### 8.2.5 **Directors' and officers' liability**

arising directly or indirectly from, in connection with or in respect of the **Insured's** functions and duties as a director and/or officer of the **Insured** or any legal entity, corporation or other incorporated body.

#### 8.2.6 **Dishonest, fraudulent or criminal acts**

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

- (a) dishonest, fraudulent, reckless or malicious act or omission by the **Insured**; or
- (b) criminal act or omission or breach of any statute committed by the **Insured** with reckless or wilful intent.

#### 8.2.7 **Employer's liability**

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

- (a) the death, bodily injury, disease or illness of any **Insured** arising out of or in the course of or in respect of his/her employment; or
- (b) a breach of any obligation owed by the **Insured** as an employer, to an **Employee**.

This exclusion shall not apply to insuring clause 1.3 'Employment practices liability'

#### 8.2.8 **Failure to comply with infectious or contagious disease controls**

arising directly or indirectly from, in connection with or in respect of any failure by the **Insured** to comply with any:

- (a) Federal, State, Territory or Local Government legislation or regulation; or
- (b) order or direction of a competent authority or regulatory body,

relating to the prevention, control or suppression of the transmission of:

- (i) highly pathogenic avian influenza in humans; or
- (ii) any Listed Human Disease as defined in or declared under the Biosecurity Act 2015 (Cth).

Provided that this exclusion shall not apply to exclude cover for an **Insured Person** or **Insured Side Business** whose failure to comply was neither intentional nor reckless, and was not a pattern of behaviour.

A reference to the Biosecurity Act 2015 (Cth) includes any amendment, consolidation, replacement, re-enactment or successor legislation. Listed Human Disease shall have the meaning found in the Biosecurity Act 2015 (Cth) or the replacement definition in any amendment, consolidation, replacement, re-enactment or successor legislation, or where there is no replacement definition the term shall have the meaning of a term which is substantially similar in meaning as defined in or declared in any amendment, consolidation, replacement, re-enactment or successor legislation.

#### 8.2.9 **Fines, penalties, punitive or aggravated damages**

arising directly or indirectly from, in connection with or in respect of fines or penalties including civil penalties, punitive or aggravated.

#### 8.2.10 **Intoxicants and drugs**

arising directly or indirectly from, in connection with or in respect of any services rendered by an **Insured** while that **Insured** is under the influence of intoxicants or drugs that results in any failure to render services competently or at all because of such influence. Provided that this exclusion shall only apply to exclude cover for:

- (a) the person who is under the influence of intoxicants or drugs;
- (b) any **Principal** if such services were performed with the knowledge or connivance of that **Principal**;
- (c) in the case of an **Insured Side Business** with only one **Principal** or **Employee**, the **Insured Entity**.

For the purpose of this exclusion the term "drug" does not include pharmaceutical drugs prescribed by a **Medical Practitioner** to such person, unless the rendering of services whilst under the influence of such drugs was against the advice or recommendation of that **Medical Practitioner** or the manufacturer of the drugs.

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

#### 8.2.11 **Mental or psychological injury arising from a privacy or data breach**

for any mental or psychological injury, mental anguish, shock, fright or loss of consortium, arising directly or indirectly from, in connection with or in respect of:

- (a) any **Privacy Breach**;
- (b) total or partial destruction, distortion, erasure, corruption, theft, misappropriation, misuse or alteration of **Data**;
- (c) total or partial inability or failure to receive, send, access, manipulate or use **Data** for any time or at all; or
- (d) any inability to obtain the intended benefit, reduction in functionality or restriction of access of any **Data** or inability to manipulate, repair, replace, restore or reproduce any **Data**.

Provided that this exclusion shall not apply to the extent a person sustains mental or psychological injury, mental anguish, shock, fright or loss of consortium arising from bodily injury sustained as a result of their treatment by a health practitioner being impacted by an event described in paragraphs (a) to (d) above.

For the purposes of this exclusion, bodily injury means death, bodily injury, sickness or disease sustained by a person. Bodily injury does not include mental or psychological injury, mental anguish, shock, fright or loss of consortium.

This exclusion shall not apply to insuring clause 1.3 'Employment practices liability'.

#### 8.2.12 Homebirths

arising directly or indirectly from, in connection with or in respect of homebirths.

#### 8.2.13 Medical and dental practitioners

arising directly or indirectly from, in connection with or in respect of any services rendered or failure to render services by a **Medical Practitioner** or **Dental Practitioner** including but not limited to care, analysis, reporting, diagnosis, treatment, medical advice, the provision of service or goods, or the administering, prescribing or supplying of medication in respect of the physical or mental health of a person, or a breach of any Commonwealth, State or Territory health or medical laws or regulations in force in Australia and its external territories.

#### 8.2.14 Private practice birthing services

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

- (a) any **Private Practice Birthing Services** provided by a midwife for a fee; or
- (b) the rendering of or failure to render **Private Practice Birthing Services**.

#### 8.2.15 Goods sold, stored, supplied or distributed

arising directly or indirectly from, in connection with or in respect of the sale, storage, supply or distribution of any good or product other than any **Claim** which arises directly from a breach of professional duty during the actual provision of the **Healthcare Services**.

#### 8.2.16 Radioactivity

arising directly or indirectly from, in connection with or in respect of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear device or assembly, or a nuclear component thereof, provided that this exclusion shall not apply to ionising radiation sourced from radioisotopes or x-rays when used by qualified medical staff in any medical procedure or diagnosis.

#### 8.2.17 Related parties

arising directly or indirectly from, in connection with or in respect of any **Claim** brought by:

- (a) any **Insured**;
- (b) any company or trust which is operated or controlled by the **Insured** or its nominees or trustees and in which an **Insured** has a direct or indirect financial interest;
- (c) any trustee of a trust of which an **Insured** or a **Relative** of an **Insured** is a beneficiary;
- (d) any company in which an **Insured** has or has held at least a 20% financial interest and has had or has board representation on that company;
- (e) any **Relative** or any company owned or controlled by a **Relative**, unless the **Healthcare Services** that gave rise to the **Claim** were signed off by a **Principal** of the **Insured's** employer who is a person not related to the **Relative**; or

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

This exclusion shall not apply to:

- (i) a **Claim** brought by an **Insured** against another **Insured** for the purposes of contribution or indemnity where a claim is brought by a third party;
- (ii) a **Claim** brought against an **Insured Side Business** by or on behalf of an **Employee** of such **Insured Side Business** directly in relation to **Healthcare Services** provided by the **Insured Side Business** to that **Employee**;
- (iii) a **Claim** brought against an **Insured Person** by or on behalf of another **Insured Person** directly in relation to **Healthcare Services** provided by the first **Insured Person** to the second **Insured Person**; or
- (iv) in respect of insuring clause 1.3 'Employment practices liability', a **Claim** brought against an **Insured Side Business** by or on behalf of an **Employee** or **Principal** of such **Insured Side Business**.

#### 8.2.18 Subrogation waiver

arising directly or indirectly from, in connection with or in respect of any liability which is incurred or affected by reason of the **Insured** at any time entering into a deed or agreement excluding, limiting or delaying the **Insured's** legal rights of recovery against any other person, firm or entity, other than a deed or agreement the **Insured** has entered into at the direction of or with the prior consent of the **Insurer**.

#### 8.2.19 Terrorism

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

- (a) any **Act of Terrorism**; or
- (b) any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

#### 8.2.20 Trade debts

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

#### 8.3 Sanctions exclusion

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

### 9 Claims conditions

In the event of a failure by the **Insured** to comply with a provision requiring the **Insured's** compliance under this section, the **Insurer** may be able to:

- (a) refuse a **Claim** but only to the extent that such failure caused or contributed to the loss which gives rise to the **Claim**;
- (b) reduce its liability to pay a **Claim** by an amount that fairly represents the extent to which the **Insurer's** interests are prejudiced by the failure to comply; or
- (c) cancel that **Insured's** interest in the **Policy**.

#### 9.1 Claims notifications

The **Insured** must give the **Insurer** a notification of any **Claim** made against the **Insured** and any **Inquiry Notice** received by the **Insured**, as soon as reasonably possible within the **Policy Period** (or any additional or extended reporting period applicable under the **Policy**).



Every legal document or other communication the **Insured** receives (including letters, demands, writs, summons and legal processes) relating to such **Claim** or **Inquiry Notice** shall be forwarded to the **Insurer** as soon as possible after receipt.

All notifications to the **Insurer**, including but not limited to **Claims** and any legal documents and other communications specified above, must be sent to 'Claims Notification' address specified in the **Schedule**.

## 9.2 **Claims co-operation**

The **Insurer** may make any investigation as is reasonably required in relation to the **Claim** or **Inquiry Notice**

The **Insured** must:

- (a) cooperate and provide the **Insurer** with reasonable assistance in connection with any investigation, negotiation, recovery, defence and legal proceeding or settlement of a **Claim** or **Inquiry Notice**. This assistance may include:
  - (i) lodging a police report;
  - (ii) providing a more detailed version of facts, including signing statements and affidavits;
  - (iii) providing further information, evidence and documentation;
  - (iv) attending court or meetings with appointed legal or other experts;
  - (v) making available **Employees** and **Principals** and other personnel for interviews, meetings and court attendance;
  - (vi) providing contact details of individuals (if available) who may have information that is relevant to the **Claim** (to the extent that the provision of such details would not breach any legally enforceable privacy or confidentiality requirement); or
  - (vii) providing access to systems and records (to the extent that doing so would not breach any legally enforceable privacy or confidentiality requirement); and
- (b) where reasonably possible, take steps to avoid or diminish further loss, for example:
  - (i) stopping use of processes or documentation which the **Insured** suspects may have contributed to the loss claimed by the third party;
  - (ii) where applicable to the **Insured's Healthcare Services**, checking the functionality of any standard measures, processes or procedures (for example, risk control processes) in place to prevent loss;
  - (iii) avoiding confrontational engagement with an aggravated claimant;
  - (iv) maintaining a detailed record of all communications with any party about the loss; or
  - (v) where the **Insured** is a **Principal**, taking steps which a reasonable person in the **Insured's** professional position would take (for example, suspending an employee) where the **Insured** has confirmed or suspects dishonesty or a fraudulent or malicious act or omission has contributed to the loss claimed by the third party.

Any costs of the **Insured** to comply with the above requirements shall be borne by the **Insured**, unless otherwise covered under the **Policy**.



### 9.3 Claims conduct

#### 9.3.1 Conducting defence and settlement of the claim

The **Insurer** has the right and full discretion, but is not obligated to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** or investigation relating to an **Inquiry Notice** (including in relation to insured, underinsured and uninsured losses). The **Insurer** may engage legal or other representatives to assist in the conduct of the **Claim** or **Inquiry Notice**.

The **Insurer** reserves entirely its rights under this **Policy**, including its right to agree or deny cover while it assesses a **Claim** or **Inquiry Notice** or conducts the defence. The **Insurer's** rights under this **Policy** are not affected if it does not conduct the defence.

#### 9.3.2 Where the insured disputes the approach to defending the claim

If the **Insured** disputes the **Insurer's** approach to defending the **Claim** or **Inquiry Notice**, the **Insured** and **Insurer** shall endeavour to settle this dispute by mediation administered by the Australian Disputes Centre (ADC) before having recourse to arbitration or litigation.

The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to the ADC (the Guidelines).

The terms of the Guidelines are hereby deemed incorporated into this **Policy**.

### 9.4 Claims settlement

The **Insured** must not settle or offer to settle any **Claim**, incur any **Insured Costs**, incur any **Inquiry Costs** or otherwise assume any contractual obligation or admit any liability in respect of any **Claim** or **Inquiry Notice** without the **Insurer's** prior written consent.

If the **Insured** objects to a proposal by the **Insurer** to settle or compromise any **Claim** payable under this **Policy** and wishes to contest or litigate the matter, then the **Insured** may so elect, but the **Insurer's** liability in respect of any such **Claim** so contested or litigated will not exceed the amount for which, but for such election, it could have been settled or compromised by the **Insurer**, together with **Insured Costs** payable in accordance with the terms of this **Policy** and incurred up to the time of such election, subject to the **Excess** and to the **Limit of Indemnity**.

If the **Insured** objects to a proposal by the **Insurer** to resolve any **Inquiry Notice** covered under this **Policy** and wishes to contest the matter, then the **Insured** may so elect, but the **Insurer's** liability for **Inquiry Costs** in respect of any such **Inquiry Notice** so contested will not exceed the amount which, but for such election, would have been incurred by the **Insurer** to resolve the matter, subject to the 'Inquiry Costs Excess' and the 'Inquiry Costs Sub-limit' specified in the **Schedule**.

### 9.5 Allocation of loss

#### 9.5.1 When this clause applies

This clause applies to any civil liability for compensation and **Claimant's Costs, Employment Practices Loss, Insured Costs** and compensation for court attendance in respect of any **Claim**, and **Inquiry Costs** (referred to collectively as "Loss" under this clause), which is either or both:

- (a) in respect of more than one person or entity (at least one of whom is an **Insured**), whether jointly or severally; or
- (b) partly covered and partly not covered under this **Policy**,

(together 'Loss to be Allocated').

The **Insurer** must decide a fair and reasonable allocation of the covered part of the Loss to be Allocated among the relevant **Insureds** and the **Insurer** having regard to the extent of each **Insured's** comparative responsibility for the Loss to be Allocated.

### 9.5.2 What the insurer must take into account when deciding loss to be allocated

The **Insurer's** consideration of what is fair and reasonable shall include without limitation, the following factors:

- (a) the nature of the **Claim** or **Inquiry Notice** against each **Insured**;
- (b) the issues of fact and law in relation to each **Insured**;
- (c) the content and the manner of the conduct of any defence of the **Claim** or **Inquiry Notice**;
- (d) the relative degree of personal responsibility for the Loss;
- (e) the extent to which the **Insured's** responsibility for the Loss is joint, several or shared;
- (f) the extent to which any person or entity, other than that **Insured**, would obtain a benefit from the payment by the **Insurer**;
- (g) the extent to which the Loss is solely of that **Insured**;
- (h) the extent to which the issues in the **Claim** or **Inquiry Notice** against that **Insured** are in common with the issues in the **Claim** or **Inquiry Notice** against any other person or entity;
- (i) the extent to which the Loss is partly covered and partly not covered under this **Policy**; and
- (j) in the event of a settlement, the likely comparative responsibility had the settlement not occurred.

### 9.5.3 If the insured does not agree with the insurer's decision relating to the allocation of loss

If the **Insured** wishes to dispute the **Insurer's** decision in respect of allocation, each party agrees that the dispute must be referred for expert determination in accordance with the Australian Disputes Centre's ("ADC") Rules for Expert Determination ("Rules") available on the ADC's website, to an expert agreed by the parties, or if the parties do not agree on an expert, an expert appointed by the ADC in accordance with the Rules.

Each party agrees to sign an agreement with the expert that confirms the following matters, unless contrary to the Rules or the requirements of the ADC:

- (a) the payment of fees for the appointed expert (Note: refer to 'Cost of the expert determination' below for more information);
- (b) the expert may:
  - (i) consider relevant industry practice;
  - (ii) consider all information presented to the expert by either party;
  - (iii) request more information from either party; or
  - (iv) request a meeting with the parties (to which they may bring their legal representatives or other persons with information or knowledge relevant to the determination (Note: in accordance with the Rules, the meeting is not a hearing));
- (c) the expert must provide a determination, subject to receiving all information required, within thirty days after the agreement is signed, unless:
  - (i) another time is agreed between the parties, in which case the agreement will provide for this timeframe; or
  - (ii) the expert must comply with a timeframe as set by the ADC, in which case the agreement will provide for this timeframe;
- (d) the expert must provide written reasons for the determination;

- (e) the expert's decision will be binding on the parties and final; and
- (f) the liability of the expert to either party (including liability for negligence) will be excluded to the full extent permitted by law.

This allocation applies for all purposes under this **Policy** including extension 7.1 'Advancement of costs'.

Any allocation of Loss will not apply to or create a presumption with respect to the allocation of other Loss on account of such **Claim**.

#### 9.5.4 **Cost of the expert determination**

The **Insurer** will pay for the cost of the expert determination above, including the **Insured's** share of the costs.

The ADC may require each party to bear the cost of the expert determination in equal proportions and require each party to individually pay their share of any cost required directly (including any fee, deposit or other amount charged). Where this is required, the **Insured** must pay the costs accordingly and the **Insurer** will separately reimburse the **Insured** for the cost of the expert determination.

### 9.6 **Recovery rights**

#### 9.6.1 **Preservation of rights of recovery**

The **Insured** must not, without the **Insurer's** prior consent, enter into:

- (a) any agreement whereby the **Insured** releases, agrees not to sue on, waives or prejudices, any rights to recover from a person or organisation who is or could have been liable to compensate the **Insured** for any loss, damage or legal liability;
- (b) any deed or agreement excluding, limiting or delaying the legal rights of recovery against another party; or
- (c) any arrangement or compromise or do any act whereby any rights or remedies to which the **Insurer** would be subrogated in respect to such loss, damage or legal liability are or may be prejudiced.

Where the **Insured** does not comply with the above, the **Insurer** may not cover the **Insured** under this **Policy** for any such loss, damage or legal liability.

#### 9.6.2 **Rights of recovery**

In the event of any payment under this **Policy**, the **Insurer** will be subrogated to all the **Insured's** rights of recovery against any person or organisation.

The **Insurer** has the right and full discretion but is not obligated to take over and conduct in the name of the **Insured** any recovery action (including in relation to insured, uninsured and underinsured losses). The **Insurer** may engage legal or other representatives to assist in the conduct of any recovery action.

The **Insurer** shall not exercise its rights of subrogation against an **Insured** in connection with a **Claim**, unless it can establish that exclusion 8.2.6 'Dishonest, fraudulent or criminal acts' applies to that **Claim** and to that **Insured**.

### 9.7 **Application of recoveries**

All recoveries obtained from other parties will be allocated, after the settlement of any **Claim** under this **Policy**, as follows:

- (a) firstly, to the benefit of the **Insured** to reduce or extinguish the amount of compensation, **Claimant's Costs, Employment Practices Loss** or **Insured Costs** to the extent that such

amounts would have been paid under this **Policy** but for the fact that such amounts exceed the sum of:

- (i) the **Limit of Indemnity**, or the amount of any specified limit applicable to a specific clause where applicable; and
- (ii) the **Excess** where applicable;
- (b) secondly, to the benefit of the **Insurer** for all sums paid in settlement, defence or investigation of any **Claim** under this **Policy**; and
- (c) thirdly, to the benefit of the **Insured** for the **Excess** under this **Policy**.

All recoveries will be applied as above only after deduction of the reasonable cost of obtaining such recovery.

All recoveries made prior to settlement of any **Claim** under this **Policy** will be held for the benefit of the **Insurer** and applied as stated above after settlement if any is made.

Recoveries do not include any amount recovered from insurance, surety, reinsurance, security or indemnity taken for the benefit of the **Insurer**.

## 10 General Conditions

### 10.1 Assignment

This **Policy** cannot be assigned by the **Named Union** or **Insured**.

### 10.2 Authorisation

The **Named Union** is the agent for each **Insured** and each **Insured** is bound by any direction, statement, act or omission of the **Named Union** for all purposes under this **Policy**, subject to claims condition 9.3 'Claims conduct' and general condition 10.10 'Severability and non-imputation'.

### 10.3 Cancellation

The **Named Union** may cancel this **Policy** at any time in writing to the **Insurer** and specify the date from which it would like to cancel the **Policy**. The date cannot be earlier than the date the **Insurer** receives the request.

The **Insurer** may cancel this **Policy** where the law allows the **Insurer** to do so, including where:

- (a) an **Insured** has failed to comply with a provision of the **Policy**; or
- (b) the **Named Union** has failed to comply with a provision of the **Policy** including with respect to payment of premium.

Upon cancellation, the **Insurer** will retain a short period premium calculated at the pro rata proportion of the **Full Annual Premium** for the time it has been on risk and the **Insurer** will refund to the **Named Union** the balance of the premium actually paid (including GST if applicable) less non-refundable government charges, unless there have been any notifications during the **Policy Period** or the **Policy** is cancelled due to fraud, in which case no refund shall be given.

### 10.4 Endorsements

An **Endorsement** does not affect or increase the **Limit of Indemnity**, the **Employment Practices Limit of Indemnity**, the **Maximum Limit of Indemnity** or any other term, except to the extent specifically provided in the **Endorsement**. For the avoidance of doubt, each **Endorsement** is otherwise subject to all the terms of this **Policy**.

### 10.5 Goods and services tax

As part of premium, the **Insurer** will charge the **Named Union** an amount on account of GST, stamp duty and any other government charges and levies that apply. The premium also includes any discounts the **Insurer** has given the **Named Union**, and these discounts are applied before the addition of any applicable government taxes and charges.

The **Insured** must tell the **Insurer** about the input tax credit (ITC) the **Insured** is entitled to for their premium and the **Insured's** claim, each time the **Insured** makes a claim. If the **Insured** does

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not give the **Insurer** this information or if the **Insured** tells the **Insurer** an incorrect ITC, the **Insurer** will not pay any GST liability the **Insured** incurs.

The **Insurer's** liability to the **Insured** will be calculated taking into account any ITC to which the **Insured** is entitled for any acquisition which is relevant to the **Claim**, or to which the **Insured** would have been entitled had the **Insured** made a relevant acquisition. In respect of the **Insured's Policy**, where the **Insured** is registered for GST purposes the **Insured** should calculate the insured amount having regard to the **Insured's** entitlement to ITCs. The **Insured** should, therefore, consider the net amount (after all ITCs) which is to be insured and determine an insured amount on a GST exclusive basis.

This outline of the effect of the GST on the **Insured's** Policy is for general information only. The **Insured** should not rely on this information without first seeking expert advice on the application of the GST to the **Insured's** circumstances.

'GST', 'input tax credit' and 'acquisition' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

#### 10.6 Governing law

The **Policy** will be governed in accordance with law of the State or Territory of Australia in which the **Policy** was issued. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

#### 10.7 Interpretation

In this **Policy** the singular includes the plural and vice versa. The neutral gender includes the female and male genders.

A reference in this **Policy** to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision (whether of the Commonwealth of Australia or elsewhere).

The titles and headings to the various sections of the **Policy** are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.

#### 10.8 Other insurance

The **Insured** may be entitled to cover for civil liability in respect of a **Claim** under an insurance policy which has been arranged by the **Insured** or other persons (Other Insurance). In the event an **Insured** is insured under such Other Insurance cover under this **Policy** shall be in excess to that Other Insurance over the applicable limit of indemnity of that Other Insurance but subject always to the terms and conditions of this **Policy**.

If at the time any **Claim** arises under this **Policy** and there is any other insurance in force covering the same liability the **Insured** shall as soon as reasonably possible give to the **Insurer** full details of such other insurance, including the identity of the insurer and the policy number, and such further information as the **Insurer** may reasonably require. This is to enable the **Insurer** to exercise its right to seek contribution from the insurer of that other insurance.

#### 10.9 Payment of premium

The **Named Union** must pay the 'Premium' specified in the **Schedule** for the **Policy Period** to the **Insurer** by the due date. The due date is on or before ninety days after the inception date of the **Policy Period** or such other time that the **Insurer** agrees in writing. If the **Named Union** fails to pay the 'Premium' by the due date, the **Insurer** is entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984 (Cth).

Subject to the consent of the **Insurer**, the **Named Union** can pay the 'Premium' specified in the **Schedule** for the **Policy Period** to the **Insurer** in equal quarterly instalments. Each instalment must be paid by that instalment due date. The first instalment's due date is on or before the inception date of the **Policy**, and each subsequent instalment's due date is 90 days after the previous instalment's due date, or at such other time as the **Insurer** agrees in writing. If an instalment is not paid by the relevant due date, that payment is overdue. The **Insurer** is entitled to cancel this **Policy** if a payment is overdue for a month or longer, in accordance with the Insurance Contracts Act 1984 (Cth).

#### 10.10 Severability and non-imputation

Where this **Policy** insures more than one party, any failure on the part of any of the parties to:

- (a) comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth);
- (b) comply with any obligation under this **Policy** (other than the obligation to pay premium); or
- (c) refrain from conduct which is dishonest, fraudulent, criminal or malicious,

shall not prejudice the right of the remaining party or parties to indemnity under this **Policy**, provided that such remaining party or parties shall:

- (i) be entirely innocent of and have had no prior knowledge of any such failure; and
- (ii) as soon as possible after becoming aware of any such failure, advise the **Insurer** in writing of all its relevant circumstances.

#### 10.11 Territorial and jurisdictional limits of cover

This **Policy** provides cover for:

- (a) any civil liability resulting from the conduct of the **Healthcare Services** anywhere in the world; and
- (b) **Claims** made anywhere in the world, except for those **Claims**;
  - (i) brought in a court of law, arbitration, tribunal, forum or other body entitled to impose enforceable orders against the **Insured** in the United States of America; or
  - (ii) arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law, arbitration, tribunal or other judicial body in the United States of America.

For the purpose of this general condition the United States of America includes its territories and protectorates.

#### 10.12 Variation of the Policy

No variation of this **Policy** will be effective, unless made by **Endorsement**.

### 11 Definitions

For the purpose of this **Policy**:

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

**Benefits** means:

- (a) fringe benefits and perquisites; or
- (b) amounts due or payments made in connection with superannuation or an employee benefit plan or pension scheme; or
- (c) share or stock options or any other right to purchase, acquire or sell shares or stock; or
- (d) bonuses, or employee or management incentive schemes or similar.

**Birthing Services** means the direct clinical care of women during the antenatal and intrapartum period.

**Claim** means:

- (a) in respect of insuring clauses 1.1 'Professional indemnity for insured persons arising out of their employment' and 1.2 'Professional indemnity for insured persons' side businesses', any demand made by a third party upon the **Insured** for compensation, however conveyed, including a writ, statement of claim, application or other legal or arbitral process;
- (b) in respect of insuring clause 1.3 'Employment practices liability':
  - (i) a verbal or written communication, including electronic communication, to an

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**Insured** alleging an act, error, omission, conduct, facts or circumstances that may constitute an **Employment Practices Breach**; or

- (ii) a civil proceeding commenced by the service of a written complaint, summons, statement of claim, writ or similar pleading or an arbitral process, cross-claim, or counter claim against an **Insured** alleging an act, error, omission, conduct, facts or circumstances that may constitute an **Employment Practices Breach**.

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

**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.

**Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.

**Data** means information, facts, concepts, code or any other information of any kind that is converted, recorded or transmitted in a form to be accessed, communicated, displayed, distributed, interpreted, processed, transmitted, stored or used in or by a **Computer System**.

**Dental Practitioner** means a person registered or licensed as a dental practitioner under a Commonwealth, State or Territory law that provides for the registration or licensing of dental practitioners.

**Documents** means deeds, wills, agreements, maps, plans, records, computer records, **Data**, written or printed books, letters, certificates, written or printed documents or forms of any nature (excluding any bearer bonds, coupons, bank or currency notes or other negotiable instruments) which is the property of the **Insured** or for which the **Insured** is responsible.

**Employee** means a natural person (other than a **Principal**) employed under a contract of service or apprenticeship by a legal entity and includes any trainee, volunteer and casual, part-time, seasonal, temporary and work experience personnel. **Employee** does not include a person engaged under a contract for services; for example, an independent contractor.

**Employment Practices Breach** means any employment related act, error, omission or conduct constituting actual, constructive or alleged: wrongful dismissal; discharge or termination of employment; wrongful failure to employ or promote; wrongful deprivation of career opportunity; misleading representation or advertising in relation to employment; wrongful disciplinary action; negligent employee evaluation; wrongful demotion; breach of employment contract; sexual or workplace harassment (including the actual, constructive or alleged creation of a workplace environment conducive to such harassment); wrongful discrimination; failure to grant tenure; invasion of privacy; employment-related defamation or employment-related wrongful infliction of emotional distress, committed by an **Insured**.

**Employment Practices Limit of Indemnity** means the amount specified beside 'Employment Practices Limit of Indemnity' as shown in the **Schedule**. The **Employment Practices Limit of Indemnity** stated in the **Schedule** and in any certificate of insurance issued by the **Insurer** is exclusive of GST to the extent the **Insured** is entitled to claim an input tax credit.

**Employment Practices Loss** means the amount for which an **Insured** is legally liable for a **Claim** arising from an **Employment Practices Breach**, including damages, compensation orders, interest, **Claimant's Costs** and punitive, exemplary, multiplied and aggravated damage.

**Employment Practices Loss** does not include:

- (a) fines and penalties imposed by law;
- (b) income tax, customs duties, excise duty, stamp duty, sales duty or any other State or Federal tax or duty;
- (c) costs incurred by an **Insured** to make any accommodation in respect of working practices or otherwise on the basis of a person's disability or family responsibilities or as may be required under any law relating to anti-discrimination;
- (d) **Benefits** or damages calculated by reference to **Benefits**;

- (e) compensation for the salary or wages of any **Insured**;
- (f) any amount the **Insured** is required to pay pursuant to a contract of employment, whether express or implied;
- (g) compensation in respect of a contractual or statutory notice period; or
- (h) any amount which the Insurer is prohibited from paying pursuant to the laws of the jurisdiction in which the **Claim** is determined.

**Endorsement** means any document which is described as an endorsement to this **Policy** and intends to vary it.

**Establishment** means an organisation or entity that employs nurses and/or midwives to provide nursing and/or midwifery care, or otherwise use their professional skill and knowledge in the practice of their profession(s). **Establishment** does not include an **Insured Entity**.

**Excess** means the amount shown in the **Schedule** except in respect of **Inquiry Costs** in which case it means the amount shown in the **Schedule** as the 'Inquiry Costs Excess'.

**Full Annual Premium** means the annual premium payable by the **Named Union**, including any additional premium which becomes payable in respect of the **Policy Period**.

**Healthcare Services** means the 'Healthcare Services' described in the **Schedule**, and no other, of the **Insured**.

**Inquiring Body** means any official body or institution empowered by law to investigate the professional conduct of the **Insured** including but not limited to a coroner's court, statutory regulatory body, tribunal or legally constituted industry or professional board but excluding any Royal Commission, parliament, any committee of a parliament or the **Named Union**.

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

**Inquiry Notice** means any notice that may result in the **Insured** incurring **Inquiry Costs**.

**Insolvency or Insolvent** means, in reference to an organisation:

- (a) the organisation is an insolvent under administration or insolvent (each as defined in the Corporations Act 2001 (Cth));
- (b) the organisation has had a controller appointed or is in liquidation, in provisional liquidation, under administration, has been wound up or has had a receiver appointed to any part of its property;
- (c) the organisation is subject to any arrangement, assignment, moratorium, compromise or composition, it is protected from creditors under any statute or it is dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent);
- (d) an application or order has been made, resolution passed, proposal put forward or any other action taken which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) the organisation is taken (under Section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) the organisation is otherwise unable to pay its debts when they fall due; or
- (g) in respect to the organisation, an event having the same or substantially similar effect to (a) to (e) above, occurring under the law of any jurisdiction outside the Commonwealth of Australia.

**Insured** means:

- (a) any **Insured Person**; and
- (b) any **Insured Side Business**.



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

**Insured Entity** means a sole trader, partnership, corporation, trust or legal entity:

- (a) whose **Principals** include an **Insured Person**; and
- (b) whose gross income does not exceed the combined gross income that the **Insured Person Principals** receive from each **Establishment** with whom the **Principals** have contracts of service or contracts for service in the relevant financial year(s).

**Insured Person** means a natural person who is or was:

- (a) an **Employee** of an **Establishment**; and
- (b) a financial member of the **Named Union**,

but only in respect of conduct in their capacity as an **Employee** of an **Establishment** whilst a financial member of the **Named Union**. For the purposes of clarity, point (a) above does not include a natural person who is a contractor of an **Establishment** under a contract for services.

**Insured Person** includes their estate, heirs, legal representatives or legal assigns in the event of the death or legal incapacity of such person.

**Insured Side Business** means:

- (a) any past and/or present **Insured Entity**;
- (b) any past and/or present **Employee** of such **Insured Entity**, but only in their capacity as such;
- (c) any past and/or **Principal** of such **Insured Entity**, but only in their capacity as such;
- (d) the estate, heirs, legal representatives or legal assigns of any natural person specified in the definition of **Insured Entity** or in (b) or (c) above in the event of the death or legal incapacity of such person,

but only in respect of such **Insured Entity's**, **Employee's** and **Principal's** conduct whilst the **Insured Entity** was an **Insured Entity**.

**Insurer** means AAI Limited ABN 48 005 297 807 trading as Vero Insurance.

**Limit of Indemnity** means the amount specified beside 'Limit of Indemnity' as shown in the **Schedule**. The **Limit of Indemnity** stated in the **Schedule** and in any certificate of insurance issues by the **Insurer** is exclusive of GST to the extent that the **Insured** is entitled to claim an input tax credit.

"**L.S.T.**" or "**Local Standard Time**" means the time in the State or Territory of Australia in which the **Policy** was issued.

**Maximum Aggregate Limit of Indemnity** means the amount specified beside 'Maximum Aggregate Limit of Indemnity' as shown in the **Schedule**.

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

**Membership Date** means:

- (a) in respect of an **Insured Person**, the date the member joined the **Named Union**; and
- (b) in respect of an **Insured Side Business** in respect of its liability for the acts or omissions of an **Insured Person**, the date that the relevant **Insured Person** joined the **Named Union**.

**Named Union** means the New South Wales Nurses and Midwives' Association and Australian Nursing and Midwifery Federation New South Wales Branch.

**Policy Period** means the time between 'From' and 'To' noted beside 'Policy Period' in the **Schedule**.

**Policy** means the **Schedule**, the terms of this document and any **Endorsements**.

**Principal** means a sole practitioner, a partner of a firm, a director of a company, or a trustee of a trust.

**Privacy Breach** means an incident involving the unauthorised disclosure, loss, modification, misuse, interference or access of:

- (a) personal information, as defined in the Privacy Act 1988 (Cth) including any amendment, consolidation, re-enactment, replacement or successor of such legislation; or
- (b) third party corporate information that is identified as confidential.

**Private Practice Birthing Services** means the practice of **Birthing Services** in any capacity other than:

- (a) as an **Employee** of an **Establishment**; and/or
- (b) in the course of undertaking **Supervised Practice** at or for an **Establishment**.

**Proposal** means the written proposal or declaration made by the **Named Union** to the **Insurer** containing particulars and statements together with other information provided by the **Named Union**.

**Relative** means an **Insured's**:

- (a) **Spouse**, domestic partner or defacto;
- (b) parent;
- (c) children or siblings; or
- (d) the **Spouse**, domestic partner, defacto parent, child or sibling of a **Relative** specified in (a), (b) or (c) above.

**Retroactive Date** means the 'Retroactive Date' as shown in the **Schedule**.

**Schedule** means the current **Schedule** issued by the **Insurer** to the **Named Union**.

**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.

**Supervised Practice** means 'supervised practice' as defined in the Nursing and Midwifery Board of Australia's 'Re-entry to practice for nurses and midwives' Policy.

End of policy wording

AAI Limited ABN 48 005 297 807 trading as Vero Insurance

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Members of the NSW Nurses and Midwives' Association and the Australian Nursing and Midwifery Federation New South Wales Branch

30/11/2023