

MIGA

The Medical Insurance Group

Insurance for Privately Practising Eligible Midwives



Professional Indemnity Insurance Policy

Medical Insurance Australia Pty Ltd / ABN 99 092 709 629

Applies 1 July 2010 to 30 June 2011

« attach Schedule here

For ease of accessing your current information, we recommend that upon receipt of your Schedule, simply attach it to the inside front cover of this Policy Wording booklet

National Free Call:
1800 777 156

24 hour emergency advisory service:
(08) 8238 4444

Facsimile:
(08) 8238 4445

Website:
www.miga.com.au

Email:
miga@miga.com.au

To contact any staff member type their name in lower case in the following format: [firstname.lastname@miga.com.au]

Postal:
PO Box 1223, Unley DC 5061

Adelaide Head Office:
(08) 8238 4444

Brisbane:
(07) 3025 3259

Melbourne:
(03) 9832 0847

Sydney:
(02) 8860 9525

Head Office location:
Optus House, Level 9
431-435 King William Street
Adelaide South Australia 5000



MIGA is committed to service and has voluntarily adopted the general insurance industry 2010 Code of Practice

Printed using paper with EMAS,
ISO14001 Environment Management Certification,
FSC certified paper;
Printed by carbon neutral printer Finsbury Green

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Division 1

Insuring Agreements

1.1 Preamble

Medical Insurance Australia will indemnify You for Claims and Claim Costs as set out in Division 1 Section 1 and for Expenses as set out in Division 1 Section 2. Medical Insurance Australia will also indemnify You for any automatic extensions in Division 2.

However, cover under the Policy is subject to the conditions set out in Division 3 and Medical Insurance Australia will not indemnify You for the matters excluded by Divisions 4 and 5.

Certain words used in the Policy have the meanings ascribed to them by Division 6.

Any indemnity provided by Medical Insurance Australia to You is provided in consideration of payment of the Premium by You and is subject to the terms and conditions of the Policy and the Limit of Indemnity.

Important:

- The Policy terms and conditions and Your premium have been determined by Medical Insurance Australia after taking into account, and in reliance on, Your representation of the Midwifery Services that You provide and intend to provide during the Period of Insurance
- The Schedule records Your Midwifery Services as either: Option A - antenatal care, Intrapartum Care and postnatal care; or Option B – antenatal care and postnatal care only but **no** Intrapartum Care
- If You have selected Option B but You intend to provide Intrapartum Care then You must immediately advise Medical Insurance Australia and the additional premium advised to You must be paid prior to You providing any such Intrapartum Care
- If You have selected Option B and You provide Intrapartum Care but You do not notify Medical Insurance Australia or You do not pay the additional premium, Medical Insurance Australia may cancel the Policy or Medical Insurance Australia may be entitled to avoid the Policy from the beginning and treat it as if it was never issued to You, in which case You will have **no** entitlement to indemnity from Medical Insurance Australia **not only** for Intrapartum Care but also for any antenatal care or postnatal care that You have provided.

Section 1 – Midwifery Services

1.2 Indemnity for Claims

Medical Insurance Australia will indemnify You against legal liability for Claims first made against You and first notified to Medical Insurance Australia in writing during the Period of Insurance and which arise out of the provision by You of Midwifery Services after the Retroactive Date.

1.3 Indemnity for Claim Costs

Medical Insurance Australia will indemnify You in respect of Claim Costs incurred with the prior written consent of Medical Insurance Australia in the defence or settlement of any Claim covered by the Policy.

1.4 Advances

In respect of the cover provided by Division 1 Section 1, Medical Insurance Australia may advance Claim Costs to You prior to the completion (including any appeal) of any proceedings arising from a Claim covered by Division 1 Section 1 on such terms and conditions as Medical Insurance Australia sees fit. In the event that You are not entitled to indemnity, any Claim Costs advanced to You and any interest chargeable will be repaid by You to Medical Insurance Australia on such terms and conditions as are specified by Medical Insurance Australia.

Section 2 – Specific Expenses

1.5 Specific Expenses

Medical Insurance Australia will indemnify You against Expenses incurred in defending or responding to any of the following matters that arise in connection with the provision of Midwifery Services after the Retroactive Date, the circumstances of which are first notified to Medical Insurance Australia in writing during the Period of Insurance:

- (a) complaints to or investigations or proceedings by:
 - (i) the Nursing and Midwifery Board of Australia or other body responsible for the professional discipline of midwives, professional college or association, health authority, Medicare Australia, a health care complaints body or a health care ombudsman; or
 - (ii) such other government or statutory authority or other body that perform functions or exercises powers similar to any of the bodies listed in (i) above;
- (b) coronial inquiries and royal commissions; and
- (c) criminal investigations and proceedings.

1.6 Advances

In respect of the cover provided by clause 1.5, Medical Insurance Australia may advance Expenses to You prior to the completion (including any appeal) of any proceedings or other matters covered by clause 1.5, on such terms and conditions as Medical Insurance Australia sees fit, and having regard to its assessment as to whether You have reasonable prospects of success in relation to the matter. In the event that You are not entitled to indemnity, any Expenses advanced to You and any interest chargeable will be repaid by You to Medical Insurance Australia on such terms and conditions as are specified by Medical Insurance Australia.

Conditions Applicable to Section 2

1.7 Preconditions to cover

Medical Insurance Australia will not be liable to meet any Expenses under Division 1 Section 2 in relation to any matter instigated by You (including an appeal or the defence of an appeal against a judgment or decision of a court or tribunal) unless:

- (a) in the case of an appeal or response to an appeal, You have given Medical Insurance Australia 7 days' written notice prior to first making the appeal or lodging any defence or response to the appeal;
- (b) in any other case, You have given Medical Insurance Australia 28 days' written notice prior to first taking any steps in the proceedings or issuing any process; and
- (c) in each case, Medical Insurance Australia has formed the opinion that there are reasonable prospects of success in relation to the matter.

If Medical Insurance Australia has not formed an opinion as required by paragraph (c) prior to the time on which an appeal must be made, a defence lodged, a response made to an appeal or the time by which the first steps in proceedings or the issue of process must be done then Medical Insurance Australia will not be taken to have formed a favourable view unless it does so subsequently.

1.8 Criminal convictions

If You are found guilty of, or admit, any crime in any way related to a matter referred to in clause 1.5, then the cover provided by Division 1 Section 2 will not apply to You for any Expenses in relation to that matter (including in relation to any appeal) and any moneys advanced by Medical Insurance Australia under this provision (together with any applicable interest) will immediately become due and payable to Medical Insurance Australia.

1.9 Representation

Medical Insurance Australia may, at its absolute discretion, direct that You retain a lawyer, nominated by Medical Insurance Australia, to act on Your behalf in relation to circumstances that may give rise to an entitlement to indemnity under Division 1 Section 2, in which event You will retain the nominated lawyer to act on Your behalf and will provide all information, documents and assistance reasonably required by the lawyer.

1.10 Reasonable prospects of success

Medical Insurance Australia may, at its absolute discretion, elect not to indemnify You for the whole or part of the Expenses if the Expenses relate to a matter that may give rise to an entitlement to indemnity under Division 1 Section 2 and which Medical Insurance Australia believes You are more likely than not to be unsuccessful in defending. In the event that Medical Insurance Australia makes such an election, Medical Insurance Australia will indemnify You for the Expenses that relate to such matter up to the date of the election but if You successfully pursue or defend the matter Medical Insurance Australia will indemnify You for such part of its Expenses as is reasonable having regard to the Expenses incurred, the outcome sought by You and the actual outcome of the matter.

Division 2

Automatic Extensions

2.1 Advice and advisory assistance

Medical Insurance Australia will provide to You advice and advisory assistance in respect of any cover provided to You under the Policy. Where You require emergency medico-legal assistance, the advice and advisory assistance will be made available 24 hours a day.

2.2 ROCS prescribed events

The Policy expires if any of the circumstances prescribed under the Commonwealth run-off cover scheme (ROCS) contained in the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*, as amended from time to time and any regulations made under it, occur.

Note: If the Policy expires in the circumstances described above, You will be provided with run-off cover at no additional cost to You.

Division 3

Conditions

Claims conditions

3.1 Claim notification

You must provide written notice of each Claim and each intention to seek indemnity under any other cover provided by the Policy by providing particulars of the Claim or matter in respect of which indemnity is sought to Medical Insurance Australia as soon as possible and, in any event, during the Period of Insurance.

Note : The *Insurance Contracts Act 1984* provides that if, after the end of the Period of Insurance, a claim is made against You which arises from facts that might give rise to a Claim that You notified to Medical Insurance Australia:

- in writing;
- as soon as reasonably practicable after You became aware of them; and
- before the end of the Period of Insurance

then Medical Insurance Australia will provide cover in accordance with the terms and conditions of the Policy in respect of the claim against You even if the claim was made after the end of the Period of Insurance.

Medical Insurance Australia continues to encourage every midwife to notify any circumstance or incident which has the potential to lead to a claim as soon as they become aware of the circumstance or incident.

This note is for information purposes only and does not form part of the Policy.

3.2 Other insurance or indemnity

In the event of:

- a) a Claim;
- b) You incurring Expenses; or
- c) circumstances which might give rise to an entitlement to indemnity under the Policy,

You will provide written notice to Medical Insurance Australia of any other insurance or indemnity under which You are entitled to a benefit in respect of the event referred to above.

Note: Under clause 4.33, no indemnity is provided if You are entitled to indemnity from another source.

3.3 Admission or limitation of liability

You must not admit liability for, compromise or assume any contractual liability or agree to reduce or limit the liability of any other party in relation to any Claim or circumstances in respect of which an entitlement to indemnity under the Policy may arise or has arisen without the prior written consent of Medical Insurance Australia, which consent will not be withheld unreasonably. This provision does not apply to any apology or expression of regret that an applicable statute specifies will not constitute an admission of liability.

3.4 Conduct of Claims

- a) Medical Insurance Australia may, at any time and in Your name, take over the conduct of any Claim, even if the Claim may or does exceed the Limit of Indemnity.
- b) Medical Insurance Australia will take into consideration Your views in relation to the conduct of any Claim but Medical Insurance Australia will have full discretion in the conduct and settlement of any Claim.
- c) If You do not agree with a proposal by Medical Insurance Australia to settle a Claim, then You will be entitled to conduct the defence of the Claim but Medical Insurance Australia will not be liable to indemnify You for any amount greater than the amount of money for which Medical Insurance Australia could have settled the Claim, plus the Claim Costs to the date on which You elected to contest the Claim.

3.5 Subrogation

- a) Medical Insurance Australia may, in Your name, pursue a right of contribution or indemnity that You may have against any other person whether or not Medical Insurance Australia has paid any or all of a claim or other amounts covered by the Policy.
- b) You must not, without the prior written consent of Medical Insurance Australia, engage in any conduct that has the effect of excluding, restricting or modifying any right of recovery that Medical Insurance Australia may have against another party.

3.6 Claims co-operation – mitigation

You will do, and allow to be done, everything reasonably practicable to reduce or avoid liability in respect of a Claim or circumstances which may give rise to an entitlement to indemnity under the Policy.

3.7 Claims co-operation – assistance

You will provide Medical Insurance Australia, or any party that Medical Insurance Australia nominates, with all information, documents and assistance reasonably required by Medical Insurance Australia:

- a) in relation to the investigation, defence or settlement of a Claim or circumstances which may give rise to an entitlement to indemnity under the Policy;
 - b) in relation to the pursuit of a subrogated right by Medical Insurance Australia; and
 - c) in order for Medical Insurance Australia to ascertain its liability to indemnify You under the Policy,
- and Medical Insurance Australia will not indemnify You for the costs of complying with this condition except to the extent that such costs are Claim Costs or Expenses.

General conditions

3.8 Limit of Indemnity and Commonwealth Contributions

The Limit of Indemnity under the Policy for any Claim, Claim Cost or Expense is \$2,000,000 but Medical Insurance Australia's liability to indemnify You is further limited as follows:

- a) if the Claim, Claim Cost or Expense does not exceed the Level 1 Claim Threshold (refer to the definition in Division 6) then Medical Insurance Australia's liability for the Claim, Claim Cost or Expense will not exceed the Level 1 Claim Threshold;
- b) if the Claim, Claim Cost or Expense exceeds the Level 1 Claim Threshold, then:
 - i) if Medical Insurance Australia has not received a Commonwealth Contribution in relation to the Claim, Claim Cost or Expense, then Medical Insurance Australia will not be liable to make any payment under the Policy in relation to that Claim, Claim Cost or Expense; or
 - ii) if Medical Insurance Australia has received a Commonwealth Contribution in relation the Claim, Claim Cost or Expense, then:
 - A) Medical Insurance Australia's liability for the Claim, Claim Cost or Expense will be equal to the sum of the Level 1 Claim Threshold plus 20% of the amount by which the Claim, Claim Cost or Expense exceeds the Level 1 Claim Threshold;
 - B) the Commonwealth Contribution will be applied to the remaining 80% of the amount by which the Claim, Claim Cost or Expense exceeds the Level 1 Claim Threshold,
 but the Policy will not provide any indemnity for that part of any Claim, Claim Cost or Expense that exceeds \$2,000,000;

Note: Refer to the Product Disclosure Statement for a more detailed explanation of how Commonwealth Contributions are applied to claims. Medical Insurance Australia will manage all claims under the Policy for which You have an entitlement to indemnity, even if the amount of the claim is greater than \$2,000,000. If Medical Insurance Australia receives a Commonwealth Contribution for the claim then the Medicare Australia CEO will meet 80% of the claim over \$100,000 and not exceeding \$2,000,000 and the amount of any eligible claim above \$2,000,000 will be met by an additional Commonwealth Contribution, to an unlimited amount.

- c) if Medicare Australia has issued an Apportionment Certificate to Medical Insurance Australia in relation to the Claim, Claim Cost or Expense, then the Limit of Indemnity under the Policy for the Claim, Claim Cost or Expense will not exceed the proportion of the overall liability specified in the Apportionment Certificate as the proportion that is to be attributed to You;

Note: Refer to the Product Disclosure Statement for a more detailed explanation of how Apportionment Certificates apply to claims made against You where a claim has been made or may be made against another person in relation to the same incident from which the claim against You arises.

- d) if Medical Insurance Australia is liable to the Commonwealth for an overpayment of a Commonwealth Contribution in relation to the Claim, Claim Cost or Expense, You are liable to Medical Insurance Australia for the amount of the overpayment and must pay it to Medical Insurance Australia in accordance with its directions or, if so directed, to the Medicare Australia CEO, and

- e) any payment by Medical Insurance Australia to a party in respect of a matter that might give rise to a Claim is taken to be a payment made to settle a Claim.

3.9 Material change in risk

You will provide immediate notice to Medical Insurance Australia of any temporary or permanent material change to You or to Your Midwifery Services during the Period of Insurance including, but not limited to:

- a) if You are an individual, You become bankrupt within the meaning of that term in the *Bankruptcy Act 1966*;
 - b) any change to the State or Territory in which You provide Midwifery Services;
 - c) any de-registration, suspension or restriction of Your registration with the Nursing and Midwifery Board of Australia; and
 - d) if the Schedule records Your Midwifery Services as Option B, any decision by You to provide Intrapartum Care,
- and You or Your legal personal representative will immediately notify Medical Insurance Australia if during or after the Period of Insurance, You:
- e) permanently retire from private practice;
 - f) cease (temporarily or permanently) private practice because of maternity, permanent disability or death.

Note: Notifying us that You have retired from practice or ceased practice will assist Medical Insurance Australia to arrange run-off cover for You.

3.10 Material change in risk – adjustment of Premium

In the event of a change notifiable under clause 3.9 that, in the opinion of Medical Insurance Australia, decreases the risk insured by the Policy, Medical Insurance Australia may agree to rebate part of the Premium having regard to:

- a) Medical Insurance Australia's customary short term rates; and
- b) the continuing run-off cover provided under the Policy for Claims arising from circumstances occurring prior to the date of the event.

Note: The maximum annual cost of the insurance, including premium and all charges is fixed by agreement with the Commonwealth of Australia at \$7,500, excluding the cost of any premium funding arrangement You may enter into.

3.11 Cancellation – Medical Insurance Australia

Medical Insurance Australia may cancel the Policy as permitted by the *Insurance Contracts Act 1984*, in which event:

- a) Medical Insurance Australia may agree to rebate part of the Premium having regard to Medical Insurance Australia's customary short term rates; and
- b) You acknowledge that Medical Insurance Australia may notify each of the Nursing and Midwifery Board of Australia, Medicare Australia and the Department of Health and Ageing of its intention to cancel the Policy.

Note: Under the terms of the *Insurance Contracts Act 1984*, Medical Insurance Australia may only cancel this insurance if You:

- fail to comply with Your duty of utmost good faith
- fail to comply with Your duty of disclosure
- make a misrepresentation to Medical Insurance Australia prior to this insurance coming into effect
- fail to comply with a provision of this insurance, including a provision with respect to payment of the premium
- make a fraudulent claim under this insurance or some other insurance that provides cover during the period of insurance.

3.12 Statutory declaration of caseload

- a) Within 45 days of receipt of a notice from Medical Insurance Australia requiring a statutory declaration of the total number of women to whom (and to whose babies) You provided midwifery services covered by the Policy during the Period of Insurance, You must provide Medical Insurance Australia with the written statutory declaration required by the notice.

(continued on next page)

Division 3 – Conditions – continued

- b) Medical Insurance Australia may, at its discretion and at its cost, require an audit of the statutory declaration referred to in paragraph (a), in which case You will provide all information and assistance reasonably required for the purpose of the audit. If You do not provide the statutory declaration, the information or the assistance required, Medical Insurance Australia may, at its discretion and at Your cost, undertake an audit of Your records to determine the total number of women to whom (and to whose babies) You provided midwifery services covered by the Policy during the Period of Insurance.
- c) Medical Insurance Australia may adjust the Premium based on a comparison of Your statutory declaration provided under this clause with the estimated number of women to whom (and to whose babies) You expected to provide midwifery services covered by the Policy during the Period of Insurance as disclosed by You in the renewal or application form for the Policy. If the Premium is adjusted, You will pay to Medical Insurance Australia the amount of any increase in the Premium and Medical Insurance Australia will pay to You the amount of any decrease in the Premium.

3.13 Review of Midwifery Services

Medical Insurance Australia may undertake a review of Your Midwifery Services on 21 days' prior written notice to You, in which event You agree:

- a) to provide any information, documents and assistance reasonably requested by Medical Insurance Australia in connection with its review; and
- b) to act in accordance with any reasonable recommendation made by Medical Insurance Australia following completion of its review.

3.14 Non-payment of Premium

The Policy will not come into force unless and until:

- a) You have provided to Medical Insurance Australia a completed application for insurance;
- b) Medical Insurance Australia has accepted the application for insurance; and
- c) You have paid the Premium in full prior to the first date of the Period of Insurance.

Note: 1) Where a) and b) above apply but where You pay the Premium in full within 30 days of the first date of the Period of Insurance, Medical Insurance Australia may agree to issue the Policy effective retrospectively but otherwise You have no entitlement to indemnity from Medical Insurance Australia.

2) Where You arrange to pay the Premium by instalments utilising the premium funding arrangement offered by Medical Insurance Australia, the Premium will be deemed have been paid in full on the date the premium funder advises Medical Insurance Australia that Your premium funding application has been approved.

3.15 Assignment

You may not assign Your interest in the Policy.

3.16 Notice

A requirement of the Policy that You provide written notice to Medical Insurance Australia may be satisfied by You providing written notice to:

MIGA
Level 9, Optus House
431-435 King William Street
Adelaide SA 5000

3.17 Agency

In arranging the Policy, MDASA will be acting under an authority given by Medical Insurance Australia to arrange the Policy and MDASA will be arranging the Policy as agent of Medical Insurance Australia and not as Your agent. In dealing with or settling a claim under the Policy, MDASA will be acting under an authority given by Medical Insurance Australia to deal with or settle the claim and MDASA will be dealing with or settling the claim as agent of Medical Insurance Australia and not as Your agent.

3.18 Jurisdiction

The Policy is governed by the law of South Australia and any dispute relating to the Policy will be determined by the courts of South Australia.

3.19 Severability

A term or condition or part of a term or condition of the Policy that is illegal or unenforceable may be severed from the Policy and the remaining terms and conditions of the Policy, or parts thereof, continue in force.

3.20 Interpretation

The singular includes the plural and vice versa, unless the context otherwise requires. A reference to a person includes a body corporate, an unincorporated body or other entity. Headings are for convenience only and do not affect interpretation. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

Division 4

Exclusions

Medical Insurance Australia will refuse or reduce a claim for indemnity under the Policy which relates to a Claim, Claim Cost or Expense:

4.1 Prior or pending

- a) incurred by or made or threatened against You prior to the Period of Insurance; or
- b) arising directly or indirectly from any circumstances that, prior to the Period of Insurance:
 - i. You knew, or that a reasonable person in Your position would have known, may result in an entitlement to indemnity under the Policy;
 - ii. have been notified under any prior policy of insurance or for the purpose of seeking indemnity from another organisation; or
 - iii. have been disclosed by You or ought to have been disclosed by You prior to the Period of Insurance.

4.2 Retroactive Date

in any way related to circumstances that occurred prior to the Retroactive Date.

Note: You are not covered for any Claim made against You or any other matter covered by the Policy which relates to events or circumstances that occurred prior to 1 July 2010, or a later date as specified in the Schedule.

4.3 Fraud, dishonesty, crime, recklessness and intentional acts

in any way related to:

- a) any dishonest, fraudulent, malicious or criminal act or omission of You;
- b) any reckless act or omission of You; or
- c) intentional breach of statute, contract or duty of care by You.

4.4 Contractually assumed liability

in any way related to any duty or obligation assumed under contract by You except to the extent that Your liability is the same as Your liability had the duty or obligation not been assumed.

4.5 Trading debts

in any way related to:

- a) a debt owed in connection with a supply of goods or services, or a sale or letting of premises, in the course of business; or
- b) a guarantee.

4.6 Fee for Midwifery Services

in any way related to all or part of the fee for Midwifery Services that You have provided or will provide.

4.7 Intrapartum Care outside of a Hospital where Option A applies

where Option A applies,

in any way related to Intrapartum Care which is not provided in a Hospital, other than Intrapartum Care provided during an unforeseen emergency situation where timely access to a Hospital was not possible.

4.8 Intrapartum Care outside of a Hospital where Option B applies

where Option B applies,

in any way related to Intrapartum Care, other than Intrapartum Care provided during an unforeseen emergency situation but only where:

- a) timely access to a Hospital was not possible;
- b) You make no request for payment or reward for the Intrapartum Care provided; and
- c) You provide no ongoing Intrapartum Care after the emergency situation has passed.

Note: The Policy provides no cover for Intrapartum Care for a planned home birth, regardless of whether You have selected Option A or Option B.

4.9 Collaborative Arrangements or communication of a Care Plan

in any way related to Midwifery Services that are not provided as a part of, and in accordance with the terms of, a Collaborative Arrangement or a Care Plan that You have communicated to a public hospital.

4.10 Guidelines for Midwifery Services

in any way related to Midwifery Services:

- a) that are not provided in accordance with the Australian College of Midwives' (ACM) National Midwifery Guidelines for Consultation and Referral (September 2008 or as amended) (the Guidelines) or, if working in collaboration with an obstetrician, either the ACM Guidelines or the guidelines of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, in particular in relation to the requirements for discussion, consultation and referral; or
- b) that are provided by You to a woman after she has indicated to You that she does not want You to follow all or part of the Guidelines, unless You have complied with the requirements of Appendix A of the Guidelines (which deals with "*When a woman chooses outside the recommended ACM National Midwifery Guidelines for Consultation and Referral*") and if You continue to provide Midwifery Services to the woman:
 - i. if You have a written agreement with the medical practitioner or obstetrician with whom You have a Collaborative Arrangement in relation to the ongoing care of the woman, You have a mutually agreed clinical pathway in relation to that woman's ongoing care by You; or
 - ii. You have included in Your clinical notes the details of discussions that You have undertaken with the medical practitioner or obstetrician with whom You have a Collaborative Arrangement in relation to the ongoing care of the woman including a mutually agreed clinical pathway in relation to that woman's ongoing care by You; or
 - iii. if You do not have a Collaborative Arrangement but instead You have communicated a Care Plan in relation to the woman to a public Hospital, You have a record in Your clinical notes of the details of discussions that You have undertaken with the public Hospital in relation to the ongoing care of the woman.

4.11 Public Patients

in any way related to Midwifery Services which are provided to a person who is a Public Patient.

Note: A Public Patient includes a public patient in a private hospital.

4.12 Employment

in any way related to Midwifery Services that are provided by You in the course of Your employment other than Midwifery Services that are provided by You in the course of Your employment (full or part-time) by a company that is owned solely by You, or that is owned solely by practising midwives including You, where the only directors of that company are You and other practising midwives.

(Subject to any rules that may be made under the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*).

4.13 Matters specified in Rules

which:

- a) is included in a class of Claims or matters referred to in clause 1.5;
- b) relates to an incident of a kind; or
- c) relates to a type of midwifery practice,

that is specified in Rules made for the purposes of paragraphs 11(3)(k), (l) or (m) of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*.

4.14 Intoxication

other than in respect of Expenses, where You were under the influence of drugs or alcohol and that fact was directly related to the act, error or omission that gave rise to a claim under the Policy.

Division 4 – Exclusions – continued**4.15 Transmission of disease**

other than in respect of Expenses, in any way related to the transmission of a disease or virus carried by You in circumstances where You did not take any or adequate precautions to prevent the transmission of the disease or virus and where the adequacy or the omission of the precautions would not be widely accepted in Australia by peer professional opinion as competent professional practice.

4.16 Fines and penalties

to the extent that the Claim is for exemplary or aggravated damages, fines or penalties including any civil penalty.

4.17 Pollution

in any way related to pollution.

4.18 Occupier's liability and property damage

in any way related to any actual or alleged liability:

- a) for personal injury arising from Your ownership or occupation of real property; or
- b) for property damage or loss consequent upon property damage.

4.19 Inappropriate Practice

other than in respect of Expenses, in any way related to Inappropriate Practice.

4.20 Discrimination

arising out of any actual or alleged unlawful discrimination, harassment or breach of any equal opportunity law other than to the extent that it relates to complaints or proceedings by persons to whom You provide Midwifery Services.

4.21 Radiation

in any way related to ionising radiations or contamination by radioactivity from any nuclear material except if the circumstances relate to the use of radioisotopes, radium or radium compounds by You in the course of providing Midwifery Services.

4.22 War and terrorism

in any way related to:

- a) war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil or military uprisings or government power being taken unlawfully;
- b) property being taken, damaged or destroyed by a government or public local authority; or
- c) any act, including but not limited to, the use of force or violence or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious, ideological or similar purposes, including the intention to influence any government or to put the public, or any section of the public, in fear,

other than in respect of any Claim arising directly from Midwifery Services provided to persons injured as a result of any of the above.

4.23 Public liability

normally insured under a public liability policy or for which You are indemnified or entitled to be indemnified by a public liability policy held by You.

4.24 Product liability

arising from the manufacture or sale by You of any goods or products.

4.25 Trade practice

arising from any contravention of Part IV of the *Trade Practices Act 1974* or any equivalent provision in any State or Territory legislation.

4.26 Medical research and clinical trials

arising from any medical research or clinical trial, whether or not such medical research or clinical trial is related to Midwifery Services.

4.27 Directorships and committee memberships

- a) arising from Your directorship or membership of, or being an officer of, an external entity or committee being an entity not related to You or to the provision of Midwifery Services by You; or
- b) arising from an actual or alleged act, error or omission of You acting in Your capacity as a director, officer or committee member of a corporation.

4.28 Midwifery Services outside the Commonwealth of Australia

- a) arising from Midwifery Services provided outside the Commonwealth of Australia and its territories; or
- b) arising from Midwifery Services provided within the Commonwealth of Australia and its territories but where the recipient of Your Midwifery Services was outside the Commonwealth of Australia and its territories at the time Your Midwifery Services were provided.

4.29 United States of America

in any way related to:

- a) proceedings commenced or maintained in the United States of America; or
- b) the enforcement anywhere of a judgment or verdict of proceedings commenced or maintained in the United States of America.

4.30 Statutory exclusions

for which Medical Insurance Australia is prohibited or not authorised by law from providing an indemnity including, but not limited to, workers' compensation.

4.31 Obligations to employees

attributable to or as a consequence of bodily injury, mental injury, sickness, disease or death of any of Your employees or damage, loss or destruction of any property of any employee arising out of or in the course of their employment.

4.32 Liability for partners

arising solely by reason of a partnership between You and another person or entity or by reason of a similar contractual arrangement between You and that person or entity.

4.33 Other indemnities

for which You are indemnified or are entitled to indemnity:

- a) under any other contract of insurance required to be effected by or under a law; or
- b) from any other source including but not limited to a government, governmental authority, hospital, health service or health authority.

4.34 De-registration and restrictions on Midwifery Services

in any way related to:

- a) Midwifery Services for which You were required by law to be registered by the Nursing and Midwifery Board of Australia but for which You were not registered;
 - b) Midwifery Services for which You were registered by the Nursing and Midwifery Board of Australia but for which You would not have been registered but for a misrepresentation or non-disclosure to the Nursing and Midwifery Board of Australia;
- (continued on next page)

Division 4 – Exclusions – continued

- c) the provision of Midwifery Services by You in respect of which there was at any relevant time any restriction, limitation or prohibition imposed by the Nursing and Midwifery Board of Australia, regulatory authority or judicial authority, where the liability arises from an act, error or omission in breach of that restriction, limitation or prohibition; or
- d) prescribing, for which You were not authorised by the Nursing and Midwifery Board of Australia at the time of the prescribing.

4.35 Publication and authorship

arising out of the conduct by You as a publisher or author other than in respect of published health care advice or health care articles or arising out of presentations by You or provided directly to a person by You in the course of providing Midwifery Services.

Division 5

Exclusions relating to Claim Costs and Expenses

5.1 Written consent

Medical Insurance Australia will not indemnify You for Claim Costs or Expenses incurred prior to, or in the absence of, the written consent of Medical Insurance Australia.

5.2 General exclusions

Medical Insurance Australia will not indemnify You for Claim Costs or Expenses in any way related to:

- a) a dispute with Medical Insurance Australia or MDASA in any way related to a claim under any section of the Policy or any other policy of insurance;
- b) Your failure to provide all reasonable information, documents and assistance required of it by Medical Insurance Australia or its nominees;
- c) Your bankruptcy or insolvency;
- d) the pursuit or defence of a complaint, prosecution or proceedings against or by Your current or former business partner;
- e) a complaint in respect of property damage or loss, other than prostheses, dental attachments, bodily implants or similar items attached to or implanted in the body; or
- f) a dispute with the Nursing and Midwifery Board of Australia, regulatory authority or judicial authority in respect of any restriction, limitation or prohibition after it has been imposed on You.

5.3 Other indemnities

Medical Insurance Australia's liability to indemnify You for Claim Costs or Expenses is reduced by any amount that You receive from any other source in respect of those costs and expenses including any orders in Your favour and any indemnity of which You have a benefit, including a right to an indemnity under an insurance policy that provides specific cover for the costs and expenses.

Division 6

Dictionary

In the Policy, unless the contrary intention appears:

Apportionment Certificate

Has the meaning given to that term by the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*.

Claim

Means:

- a) the receipt by You of any written or oral notice of demand (the **demand**); or
- b) service on You of any writ, statement of claim, summons, application or other originating legal or arbitral process (including any cross claim, counter claim or third party notice) (the **process**),

where the demand or the process claims damages, contribution or indemnity, injunctive or equitable relief;

but Claim does not include a demand or process:

- arising out of the use or occupation of any premises or any plant or equipment used in the course of providing Midwifery Services other than that directly used for the purpose of providing Midwifery Services; or
- arising out of any contractual dispute other than in relation to a contract for Midwifery Services, other than to the extent cover is otherwise expressly provided under the Policy.

Claim Costs

Means any costs and expenses incurred by Medical Insurance Australia or You in the investigation, settlement or defence of any Claim.

Collaborative Arrangement

A Collaborative Arrangement must provide for:

- consultation between You and an Obstetric Specified Medical Practitioner;
- referral of a patient to a Specified Medical Practitioner; and
- transfer of a patient's care to an Obstetric Specified Medical Practitioner.

A Collaborative Arrangement means one of the following types of arrangements:

- a) a patient is referred in writing to You for Midwifery Services by a Specified Medical Practitioner;

or

- b) an arrangement in writing between You and one or more Specified Medical Practitioners which provides for consultation between You and the Medical Practitioner(s), referral of patients to the Medical Practitioner(s), transfer of a patient's care to the Medical Practitioner(s) and which is signed by You and the Medical Practitioner(s);

or

- c) You have met each of the following requirements for each patient:
 - You have recorded the name of the Specified Medical Practitioner who is (or will be) collaborating with You in Your written records;
 - You have told the patient that You will be collaborating with a Specified Medical Practitioner and recorded this in Your written records;
 - You have an acknowledgement by the named Medical Practitioner that they will be collaborating with You in the patient's care and You have recorded this in Your written records (this acknowledgement may apply to more than one patient);
 - You have recorded in Your written records plans for the circumstances in which You will consult with an Obstetric Specified Medical Practitioner, refer the patient to a Specified Medical Practitioner and transfer the patient's care to an Obstetric Specified Medical Practitioner;
 - You have recorded any consultation or other communication between You and an Obstetric Specified Medical Practitioner about the patient's care in Your written records;
 - You have recorded any referral of the patient by You to a Specified Medical Practitioner in Your written records;

(continued on next page)

- You have recorded any transfer by You of the patient's care to an Obstetric Specified Medical Practitioner in Your written records;
- when You give a copy of the hospital booking letter (however described) for the patient to a named Medical Practitioner, You have recorded the acknowledgement that the named Medical Practitioner has received a copy of the hospital booking letter in Your written records;
- when You give a copy of the patient's maternity care plan prepared by You to a named Medical Practitioner, You have recorded in Your written records the acknowledgement that the named Medical Practitioner has received the copy of the maternity care plan;
- if You request diagnostic imaging or pathology services for the patient, You have recorded when you give the results of those services to a named Medical Practitioner in Your written records; and
- You have given a discharge summary (however described) at the end of Your care for a patient to the named Medical Practitioner and the patient's Usual General Practitioner and recorded this in Your written records.

An arrangement referred to in paragraph (b) above may apply to more than one patient.

For the purposes of this definition only:

Medical Practitioner

Means a medical practitioner within the meaning given by subsection 3(1) of the *Health Insurance Act 1973*.

Obstetric Specified Medical Practitioner

Means:

- a) an Obstetrician; or
- b) a Medical Practitioner who provides obstetric services.

Specified Medical Practitioner

Means

- a) an Obstetrician; or
- b) a Medical Practitioner who provides obstetric services; or
- c) a Medical Practitioner employed or engaged by a Hospital Authority and authorised by the Hospital Authority to participate in a collaborative arrangement.

Obstetrician

Means a Medical Practitioner who is a specialist in the specialty of obstetrics and gynaecology (however described).

Specialist

Has the meaning given by subsection 3(1) of the *Health Insurance Act 1973*.

Usual General Practitioner includes a Medical Practitioner nominated by the patient.

Hospital Authority

Means a hospital authority within the meaning of subsection 84(1) of the *National Health Act 1953*.

Care Plan

In the event that You are unable to achieve a Collaborative Arrangement, it is acceptable for the purposes of this insurance only, for You to communicate a Care Plan to a public Hospital.

A Care Plan means a documented plan for consultation, referral and transfer of a woman's care with a public Hospital.

In this case You must maintain comprehensive written records which include:

- the name of the public Hospital (and Specified Medical Practitioner, if known) to which the woman will be referred if required;
- a record that the woman has been informed about this arrangement;
- a record of the planned place of delivery (whether in the public Hospital or not);
- a plan for the circumstances in which You will consult, refer and transfer the woman's care;
- a record of any actual consultation, referral or transfer of the woman's care;
- a record that the hospital booking letter has been sent to the Hospital;

(continued on next page)

- a record that the maternity care plan has been sent to and acknowledged by the Hospital (e.g. in writing or a record in Your notes of an oral acknowledgement);
- a record that any results from diagnostic imaging or pathology have been sent to the Hospital; and
- a record that the discharge summary has been sent to the Hospital and the woman's Usual General Practitioner.

For the purposes of this definition only:

Medical Practitioner

Means a medical practitioner within the meaning given by subsection 3(1) of the *Health Insurance Act 1973*.

Specified Medical Practitioner

means a Medical Practitioner employed or engaged by a Hospital authority and authorised by the Hospital authority to participate in a maternity care plan with You.

Usual General Practitioner includes a Medical Practitioner nominated by the woman.

Commonwealth Contribution

Has the meaning given to that term in the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*.

Eligible Midwife

Means a person who is licensed, registered or authorised to practise midwifery by or under a law of the Commonwealth, a State or a Territory with no restrictions on practice who has:

- Midwifery experience that constitutes the equivalent of 3 years full time post initial registration as a midwife;
- Current competence, as recognised by the Nursing and Midwifery Board of Australia (the Board), to provide pregnancy, labour, birth and postnatal care to women and their infants;
- Successfully completed a professional practice review program approved by the Board for midwives working across the continuum of midwifery care, or has provided an undertaking to complete (and successfully completes) such a program by not later than 31 October 2010;
- Agreed to undertake 20 additional hours per year of continuing professional development relating to the continuum of midwifery care; and
- Either successfully completed, or provided a formal undertaking to the Board that they will complete within 18 months of recognition as an eligible midwife:
 - an accredited and approved program of study determined by the Board to develop midwives' knowledge and skills in prescribing, or
 - a program, recognised by the Board, that is substantially equivalent to such an approved program of study.

Expenses

Means the reasonable costs and expenses (including the reasonable amount of any disbursements) for services provided to You in respect of a claim or a matter covered by Division 1 Section 2 of the Policy or by a clause in Division 2 of the Policy.

Hospital

Means a facility declared to be a hospital under the *Private Health Insurance Act 2007* and which has the facilities to provide appropriate Intrapartum Care for women in pregnancy.

Inappropriate Practice

Means conduct by You such that Medical Insurance Australia reasonably concludes that the conduct would be unacceptable to the general body of the members of Your profession including, but not limited to, sexual misconduct.

Inappropriate Practice includes, but is not limited to, conduct by which You knowingly, recklessly or negligently engage in Inappropriate Practice.

Intrapartum Care

Means the management and delivery of care to a pregnant woman and her baby (or babies) from the onset of labour to the birth of the baby (or babies) and the expulsion or delivery of the placenta and includes the assessment of neonatal wellbeing, basic resuscitation measures after birth, the surgical repair of any episiotomy or genital tract trauma and the stabilisation of maternal physiology especially in relation to uterine tone and blood loss.

Level 1 Claim Threshold

Has the meaning given to that term by the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*. As at 1 July 2010, the Level 1 Claim Threshold is \$100,000.

Limit of Indemnity

Means the maximum amount that Medical Insurance Australia is liable to pay or incur in the Period of Insurance in respect of each and every claim by You under the Policy as specified in clause 3.8.

MDASA

Means Medical Defence Association of South Australia Limited (ABN 41 007 547 588), its successors and assigns.

Medical Insurance Australia

Means Medical Insurance Australia Pty Limited (ABN 99 092 709 629), its successors and assigns.

Midwifery Services

Means all midwifery services which You provide to private patients as part of, and in accordance with the terms of, a Collaborative Arrangement and for which You are appropriately trained, qualified and registered. If Midwifery Services are recorded in the Schedule as Option B, then Midwifery Services does not include any Intrapartum Care.

Option A

Means that the Schedule records that the Midwifery Services that You provide are antenatal care, Intrapartum Care and postnatal care.

Option B

Means that the Schedule records that the Midwifery Services that You provide are antenatal care and postnatal care only and not Intrapartum Care.

Period of Insurance

Means the period specified in the Schedule as the Period of Insurance.

Policy

Means:

- a) the Schedule;
- b) this document; and
- c) any endorsement.

Premium

Means the Premium specified in the Schedule.

Public Patient

Has the same meaning as that term has in relation to a hospital in the *Health Insurance Act 1973*.

Retroactive Date

Means 1 July 2010 or such later date as specified in the Schedule.

Schedule

Means the schedule forming part of the Policy, signed by Medical Insurance Australia.

You or Your

Means the Eligible Midwife identified in the Schedule and includes Your estate, heirs and legal representatives or assigns in the event of Your death or permanent disablement on the basis that those persons will have the benefit of the Policy on condition that they at all times observe and comply with the terms and conditions of the Policy.

Contacting MIGA

National Free Call:
1800 777 156

24 hour emergency advisory service:
(08) 8238 4444

Website:
www.miga.com.au

Email:
miga@miga.com.au

Head Office

Level 9, Optus House
431– 435 King William Street Adelaide
PO Box 1223, Unley DC, SA 5061
Telephone: (08) 8238 4444
Facsimile: (08) 8238 4445

Branch Offices

Brisbane
(07) 3025 3259

Melbourne
(03) 9832 0847

Sydney
(02) 8860 9525