

Insurance for
Eligible Midwives
in Private Practice

Professional Indemnity Insurance Policy

1 July 2013

MIGA

The Medical Insurance Group

Always on your side



« 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

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MIGA is committed to service and has voluntarily adopted the general insurance industry 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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How to read this Policy

We will cover You for:

- Claims, Claim Costs and Expenses described in Section 1; and
- additional matters described in Section 2.

However, We may refuse or reduce Your cover if You do not comply with obligations set out in Section 3 in relation to Claims and with the general obligations set out in Section 4.

We do not cover You for the matters excluded by Section 5.

If You do not pay Your Premium in full when due, this Policy will not commence and You will have no entitlement to cover.

Our liability to cover You is limited by:

- (a) the Limit of Cover;
- (b) any Sub-Limit of Cover; and
- (c) any Deductible.

Important:

- The Policy terms and conditions and Your premium have been determined by Us after taking into account, and in reliance on, Your representation of the Midwifery Services that You provide and intend to provide.
- 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 Us 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, before doing so, You did not notify Us or You did not pay the additional premium, We may cancel the Policy or We 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 Us **not only** for Intrapartum Care but also for any antenatal care or postnatal care that You have provided.

The following words have special meanings when used in this Policy.

Apportionment Certificate

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

Board

Means the Nursing and Midwifery Board of Australia.

Care Plan

Means a documented plan for consultation, referral and transfer of a woman's care with a public Hospital and pursuant to which You record the following information in Your written records:

- (a) the name of the public Hospital to which the woman will be referred if required and, if known, the Medical Practitioner employed or engaged by the Hospital Authority and authorised to participate in a maternity care plan with You;
- (b) a record that the woman has been informed about this arrangement;
- (c) a record of the planned place of delivery (whether in the public Hospital or not);
- (d) a plan for the circumstances in which You will consult, refer and transfer the woman's care;
- (e) a record of any actual consultation, referral or transfer of the woman's care;
- (f) a record that the hospital booking letter has been sent to the Hospital;
- (g) 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);
- (h) a record that any results from diagnostic imaging or pathology have been sent to the Hospital; and
- (i) a record that the discharge summary has been sent to the Hospital and the woman's usual general practitioner or a Medical Practitioner nominated by the woman.

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, subpoena 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 or requires the production of documents to, or a person's attendance before, a court or tribunal

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 reasonable costs and expenses incurred by Us or You in the investigation, settlement or defence of any Claim.

Collaborative Arrangement

Means an arrangement between You and a Specified Medical Practitioner and which arrangement provides 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,

and which arrangement is one of the following:

- (a) an arrangement under which a patient is referred in writing to You for the provision of Midwifery Services by a Specified Medical Practitioner;
- or
- (b) an agreement in writing between You and one or more Specified Medical Practitioners, signed by You and each Specified Medical Practitioner;
- or
- (c) an arrangement under which You record the following in Your written records:
 - (i) the name of at least one Specified Medical Practitioner who is, or will be, collaborating with You in the patient's care (a 'Named Medical Practitioner');
 - (ii) that You have told the patient that You will be providing midwifery services to the patient in collaboration with one or more Specified Medical Practitioners in accordance with regulation 2E of the Health Insurance Regulations 1975;
 - (iii) acknowledgement by a Named Medical Practitioner that the practitioner will be collaborating in the patient's care;
 - (iv) plans for the circumstances in which You will do any of the following:
 - (A) consult with an Obstetric Specified Medical Practitioner;
 - (B) refer the patient to a Specified Medical Practitioner; and
 - (C) transfer the patient's care to an Obstetric Specified Medical Practitioner;
 - (v) any consultation or other communication between You and an Obstetric Specified Medical Practitioner;
 - (vi) any referral of the patient by You to a Specified Medical Practitioner;
 - (vii) any transfer by You of the patient's care to an Obstetric Specified Medical Practitioner;
 - (viii) when You give a copy of the hospital booking letter (however described) for the patient to a Named Medical Practitioner – acknowledgement that the Named Medical Practitioner has received the copy;
 - (ix) when You give a copy of the patient's maternity care plan prepared by You to a Named Medical Practitioner – acknowledgement that the Named Medical Practitioner has received the copy;
 - (x) if You request diagnostic imaging or pathology services for the patient – when You give the results of the services to a Named Medical Practitioner; and

- (xi) that You have given a discharge summary (however described) at the end of Your care for the patient to:
 - (A) a Named Medical Practitioner; and
 - (B) the patient's usual general practitioner or a Medical Practitioner nominated by the patient;

and, if the Health Insurance Amendment (Midwives) Regulation 2013 is registered then, from the effective date of that instrument, a 'Collaborative Arrangement' also includes:

- (d) a written agreement between You and an entity, other than a Hospital, that employs or engages one or more Obstetric Specified Medical Practitioners;

or

- (e) an arrangement with a Hospital that employs or engages one or more Obstetric Specified Medical Practitioners and under which arrangement You are:
 - (i) credentialed to provide midwifery services after successfully completing a formal process to assess Your competence, performance and professional suitability;
 - (ii) given clinical privileges for a defined scope of clinical practice for the Hospital; and
 - (iii) permitted to provide midwifery care to Your own patients at the Hospital;

An Collaborative Arrangement, other than one referred to in paragraph (c) above, may apply to more than one patient.

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 registered by the Board and whose registration has an eligible midwife notation with no restrictions on practice and who has:

- (a) midwifery experience that constitutes the equivalent of 3 years' full time post initial registration as a midwife;
- (b) current competence, as recognised by the Board, to provide pregnancy, labour, birth and postnatal care to women and their infants;
- (c) successfully completed a professional practice review program approved by the Board for midwives working across the continuum of midwifery care;
- (d) undertaken 20 additional hours per year of continuing professional development relating to the continuum of midwifery care; and
- (e) either successfully completed, or provided a formal undertaking to the Board that they will complete within 18 months of recognition as an eligible midwife:
 - (i) an accredited and approved program of study determined by the Board to develop midwives' knowledge and skills in prescribing, or
 - (ii) 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 matter for which the Policy expressly provides Expenses cover.

Hospital

Means a hospital, within the meaning of the Private Health Insurance Act 2007, which has the facilities to provide appropriate Intrapartum Care for women in pregnancy.

Hospital Authority

Has the meaning given to that term by subsection 84(1) of the National Health Act 1953.

Inappropriate Practice

Means conduct by You such that We reasonably conclude 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.

Income

Means the total of all billings generated by You from all areas of your Midwifery Practice for which You require cover (in Your name or for which You are personally liable, whether retained by You or otherwise and before any apportionment of any expenses or tax).

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 2013, the Level 1 Claim Threshold is \$100,000.

Limit of Cover

Means the maximum amount that We are 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 4.1.

MDASA

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

Medical Practitioner

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

Midwifery Services

Means all midwifery services which, except in the circumstances set out in clause 5.9, You provide to private patients as part of, and in accordance with the terms of:

- (a) a Collaborative Arrangement; or
- (b) if You are unable to achieve a Collaborative Arrangement, a Care Plan that You have communicated to a public Hospital,

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.

Obstetric Specified Medical Practitioner

Means a Medical Practitioner who:

- (a) is a specialist in the specialty of obstetrics and gynaecology (however described); or
- (b) provides clinical obstetric services.

Option A

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

Option B

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

Specified Medical Practitioner

Means a Medical Practitioner who is:

- (a) an Obstetric Specified Medical Practitioner; or
- (b) employed or engaged by a Hospital Authority and authorised by the Hospital Authority to participate in a collaborative arrangement.

We, Us and Our

Means Medical Insurance Australia Pty Limited (ABN 99 092 709 629).

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.

Section 1

Claims and Expenses that We cover You for

Claims

1.1 Claims against You

We will cover You for legal liability for Claims first made against You and of which You first notify Us in writing during the Period of Insurance and which arise out of the provision by You of Midwifery Services after the Retroactive Date.

1.2 Claim Costs

We will cover You in respect of Claim Costs incurred with Our prior written consent in the defence or settlement of any Claim covered by the Policy.

Expenses

1.3 Proceedings and investigations

We will cover You for 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 You first notify Us in writing during the Period of Insurance:

- (a) complaints to or investigations or proceedings by:
 - (i) the Board or other body responsible for the professional discipline of midwives, professional college or association, health authority, private health insurer, Medicare Australia, a health care complaints body or a health care ombudsman;
 - (ii) the Office of the Australian Information Commissioner in connection with any matter relating to privacy or confidentiality, including but not limited to the Privacy Act 1988 and any law of the Commonwealth, the States or Territories relating to health records including personally controlled electronic health records; or
 - (iii) 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.

Section 2

Other matters that We cover You for

2.1 Advice and advisory assistance

We 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.

Section 3

How We will conduct Claims and other proceedings and what You must do

3.1 Notification

You must notify Us in writing of each Claim and each other matter for which You seek or intend to seek cover under the Policy by providing particulars of the Claim or matter to Us 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 Us:

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

then We 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.

We continue 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 cover under the Policy,

You must notify Us in writing 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 5.33, no cover is provided if You are entitled to indemnity from another source.

3.3 Admission or limitation of liability

You must not, without Our prior written consent, admit liability for, compromise or assume any contractual liability or agree to reduce or limit the liability of any other person in relation to any matter for which You may have an entitlement to cover under the Policy. We will not withhold Our consent 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

- (a) We may, at any time and in Your name, take over the conduct of any Claim, or other matter covered under the Policy, or of circumstances which may give rise to an entitlement to cover under the Policy, including by appointing a lawyer to represent You. You must assist any lawyer appointed by Us to act in relation to any Claim or other matter and You must not direct, or purport to direct, the lawyer to cease to represent You without Our prior written consent.
- (b) We will take into consideration Your views in relation to the conduct of any Claim or other matter but We will have full discretion in its conduct and settlement or resolution.
- (c) If You do not agree with a proposal by Us to settle a Claim or to resolve a matter covered by the Policy, then You will be entitled to assume the conduct of the Claim or matter but We will not cover You for any amount greater than the amount of money (including Claim Costs and Expenses) for which We believe that We could have settled the Claim or resolved the matter as at the date on which You elected to assume conduct.

3.5 Subrogation

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

3.6 Mitigation, co-operation and assistance

- (a) You will do, and allow to be done, everything reasonably practicable to reduce or avoid liability in respect of a Claim or other matter covered under the Policy or circumstances which may give rise to an entitlement to cover under the Policy.
- (b) You will provide Us, or any person that We nominate, with all information, documents and assistance reasonably required by Us:
 - (i) in relation to the investigation, defence or settlement of a Claim or other matter or circumstances which may give rise to an entitlement to cover under the Policy;
 - (ii) in relation to the pursuit of a subrogated right by Us; and
 - (iii) in order for Us to ascertain Our liability to cover You under the Policy, and We will not cover You for the costs of complying with this condition except to the extent that such costs are Claim Costs or Expenses.

3.7 Advances

We may, but are not required to, advance Claim Costs or Expenses to You prior to the completion (including any appeal) of:

- (a) any proceedings arising from a Claim covered by the Policy; and
- (b) any proceedings or other matters covered by the Policy,

on such terms and conditions as We see fit, having regard to Our assessment as to whether You have reasonable prospects of success in relation to the Claim or matter and whether Our assessment changes during the course of the proceeding or other matter. We may, but are not required to, seek independent legal advice in assessing Your prospects of success. In the event that You are not entitled to cover, any Claim Costs and Expenses advanced to You and any interest chargeable must be repaid by You to Us on such terms and conditions as are specified by Us.

3.8 Appeals and matters instigated by You

We will not cover You for any matter instigated by You (including an appeal or the defence of an appeal against a decision of a court, tribunal, the Board or other body responsible for the professional discipline of midwives, professional college or association, health authority, private health insurer, Medicare Australia, a health care complaints body or a health care ombudsman) unless:

- (a) in the case of an appeal or response to an appeal, You have given Us 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 Us 28 days' written notice prior to first taking any steps in the matter; and
- (c) in each case, We have formed the opinion that there are reasonable prospects of success in relation to the matter and We continue to hold that opinion during the course of the matter.

If We have 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 the matter must be taken then We will not be taken to have formed a favourable view unless We do so subsequently. We may, but are not required to, seek independent legal advice in assessing Your prospects of success.

3.9 Criminal convictions

If You are found guilty of, or admit, any crime then You will have no cover in respect of that matter (including in relation to any appeal) and any moneys advanced by Us in respect of that matter (together with any applicable interest) will immediately become due and payable to Us.

Section 4

Additional obligations for You and Us

4.1 Limit of Cover and Commonwealth Contributions

The Limit of Cover under the Policy for any Claim, Claim Cost or Expense is \$2,000,000 but Our liability to cover You is further limited as follows:

- (a) if the Claim, Claim Cost or Expense does not exceed the Level 1 Claim Threshold (see 'How to read this Policy') then Our 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 We have not received a Commonwealth Contribution in relation to the Claim, Claim Cost or Expense, then We will not be liable to make any payment under the Policy in relation to that Claim, Claim Cost or Expense; or
 - (ii) if We have received a Commonwealth Contribution in relation to the Claim, Claim Cost or Expense, then:
 - (A) Our 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 cover for that part of any Claim, Claim Cost or Expense that exceeds \$2,000,000;

Note: Refer to the Product Disclosure Statement for a simpler explanation of how Commonwealth Contributions are applied to claims. We will manage all claims under the Policy for which You have an entitlement to cover, even if the amount of the claim is greater than \$2,000,000. If We receive 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 Us in relation to the Claim, Claim Cost or Expense, then the Limit of Cover 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 simpler 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 We are liable to the Commonwealth for an overpayment of a Commonwealth Contribution in relation to the Claim, Claim Cost or Expense, You are liable to Us for the amount of the overpayment and must pay it to Us in accordance with Our directions or, if so directed, to the Medicare Australia CEO, and
- (e) any payment by Us 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.

4.2 Material change in risk

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

- (a) 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 Board; 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 Us if during or after the Period of Insurance, if 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 Us to arrange run-off cover for You.

4.3 Material change in risk – adjustment of Premium

In the event of a change notifiable under clause 4.2 that, in Our opinion, decreases the risk insured by the Policy, We may agree to rebate part of the Premium having regard to:

- (a) Our 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.

4.4 Cancellation by Us

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

- (a) We may agree to rebate part of the Premium having regard to Our customary short term rates; and
- (b) You acknowledge that We may notify each of the Board, Medicare Australia and the Department of Health and Ageing of Our intention to cancel the Policy.

Note: Under the terms of the Insurance Contracts Act 1984, We 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 Us 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.

4.5 Statutory declaration of Income

- (a) Within 45 days of receipt of a notice from Us requiring a statutory declaration of the total Income You derived from Midwifery Services covered by the Policy during the Period of Insurance, You must provide Us with the written statutory declaration required by the notice.
- (b) We may, at Our discretion and at Our 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, We may, at Our discretion and at Your cost, undertake an audit of Your records to determine the total Income You derived from Midwifery Services covered by the Policy during the Period of Insurance.
- (c) We may adjust the Premium based on a comparison of Your statutory declaration provided under this clause with the estimated Income You expected to derive from 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 Us the amount of any increase in the Premium and We will pay to You the amount of any decrease in the Premium.

4.6 Review of Midwifery Services

We 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 Us in connection with Our review; and
- (b) to act in accordance with any reasonable recommendation made by Us following completion of Our review.

4.7 Non-payment of Premium

The Policy will not come into force unless and until You have paid the Premium in full prior to the first date of the Period of Insurance. Also, unless the Policy is a renewal of another professional indemnity insurance policy that We have issued to You, the Policy will not come into force until You have provided to Us a completed application for insurance and We have accepted the application.

Note: (1) Where You pay the Premium in full within 30 days of the first date of the Period of Insurance, We may agree to issue the Policy effective retrospectively but otherwise You have no entitlement to cover from Us.

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

4.8 Assignment

You may not assign Your interest in the Policy.

4.9 Notice

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

MIGA
Level 14
70 Franklin Street
Adelaide SA 5000

4.10 Agency

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

4.11 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.

4.12 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.

4.13 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.

Section 5**Claims and Expenses that We do not cover You for**

We will refuse or reduce a claim for cover under the Policy which relates to any Claims, Claim Costs or Expenses:

5.1 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 cover 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.

5.2 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.

5.3 Fraud, dishonesty, crime, recklessness and intentional acts

in any way related to Your:

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

5.4 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.

5.5 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.

5.6 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.

5.7 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.

5.8 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.

5.9 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 except to the extent that the Claim, Claim Costs or Expenses relate to the following Midwifery Services:

- (a) pre-pregnancy counselling advice;
- (b) initial contact from a woman, before the woman has made a decision on her maternity care or where the woman has miscarried early in pregnancy;
- (c) postnatal care exceeding six weeks after birth, but only where the woman has had a stillbirth, a premature birth or is experiencing post natal depression;
- (d) lactation, sleeping and settling consultation and advice;
- (e) group antenatal education classes which do not involve individual antenatal care;
- (f) ad hoc antenatal or postnatal advice to women at maternity expositions and other events and where You are contracted by a retail outlet; or
- (g) other services agreed between You and Us from time to time,

if, in each case, the service is one for which You are appropriately trained, qualified and registered and is within the current scope of midwifery practice as determined by the Board.

5.10 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 (3rd edition) (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 (or any equivalent provisions of any guidelines that replace them), which deal with *"When a woman chooses outside the recommended ACM National Midwifery Guidelines for Consultation and Referral"* and the *"Record of Understanding"*, 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 and that you have completed a Record of Understanding, as per Appendix B of the Guidelines; 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 and that you have completed a Record of Understanding, as per Appendix B of the Guidelines; 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 and that you have completed a Record of Understanding, as per Appendix B of the Guidelines.

5.11 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.

5.12 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).

5.13 Matters specified in Rules

which:

- (a) is included in a class of Claims or matters referred to in clause 1.3;
- (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.

5.14 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.

5.15 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.

5.16 Fines and penalties

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

5.17 Pollution or asbestos

in any way related to pollution or asbestos other than in relation to Midwifery Services that You provide to a woman or an infant who has a pollution-related or asbestos-related condition.

5.18 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.

5.19 Inappropriate Practice

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

5.20 Discrimination

other than in respect of Expenses, arising out of any actual or alleged unlawful discrimination, harassment or breach of any equal opportunity law except to the extent that it relates to a complaint or proceeding by a person to whom You provide Midwifery Services.

5.21 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.

5.22 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.

5.23 Public liability

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

5.24 Product liability

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

5.25 Competition and consumer protection

arising from any contravention of the Competition and Consumer Act 2010 or any equivalent provision in any State or Territory legislation.

5.26 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.

5.27 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.

5.28 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.

5.29 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.

5.30 Statutory exclusions

for which We are prohibited or not authorised by law from providing cover including, but not limited to, workers' compensation.

5.31 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.

5.32 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.

5.33 Other indemnities

for which You are indemnified or are entitled to:

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

In addition, Our liability to cover 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 cover under an insurance policy that provides specific cover for the costs and expenses.

5.34 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, endorsed or authorised by the Board but for which You were not registered, endorsed or authorised;
- (b) Midwifery Services for which You were registered, endorsed or authorised by the Board but for which You would not have been registered, endorsed or authorised but for a misrepresentation or non-disclosure to the Board;
- (c) the provision of Midwifery Services by You that are in breach of any restriction, limitation or prohibition imposed by any lawful authority, including the Board, tribunal or council, 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 Board at the time of the prescribing.

5.35 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.

5.36 Written consent

where, in the case of any Claim Costs or Expenses, You did not obtain Our written consent prior to incurring the Claim Costs or Expenses.

5.37 Other matters

where the Claim Costs or Expenses are in any way related to:

- (a) a dispute with Us 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 You by Us or Our 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 Board, regulatory authority or judicial authority in respect of any restriction, limitation or prohibition after it has been imposed on You.

How to contact Us

National Free Call

1800 777 156

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www.miga.com.au

Email

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