

Insurance for  
Healthcare Companies

**Professional  
Indemnity Insurance**

1 July 2017

2017

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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# How to read this Policy

**This Policy may cover more than one party. In this Policy We use the term 'You' to refer to all covered parties.**

## How to read this Policy

We will cover You for:

- Claims, Claim Costs and Expenses described in Section 1;
- additional matters described in Section 2; and
- optional matters described in Section 3,

if each is listed as included in the Schedule.

However, We may refuse or reduce Your cover if You do not comply with the obligations set out in Section 4 in relation to Claims and with the general obligations set out in Section 5.

No cover is provided by the Policy to any Doctor and a Doctor is not one of You other than for a Claim arising out of their act, error or omission in the course of carrying out their responsibilities as a member of an HREC or as provided in clause 3.3 if listed as included in the Schedule.

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

The cover We provide to You is limited by any:

- Limit of Cover;
- Aggregate Limit of Cover;
- Sub-Limit of Cover; and
- Deductible.

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

### Aggregate Limit of Cover

Means the maximum amount that We will pay or incur in the Period of Insurance in respect of all claims by You under the Policy as specified in the Schedule, less any Deductible.

### Business

Means the provision by You of health care treatment, advice or service in connection with Your business as specified in the Schedule.

### Claim

Means:

- the receipt by You of any written or oral notice of demand (the demand); or
- 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.

Claim includes, but is not limited to, a demand or process:

- alleging any defamation by You arising out of Business;
- alleging a contravention of or seeking relief under a provision of the *Competition and Consumer Act 2010* or any equivalent provision in any State or Territory fair trading legislation arising out of Business;
- in respect of legal liability arising out of the rendering of emergency first aid assistance to anyone; or
- requiring the production of medical records,

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 Business other than that directly used for the purpose of Business; or
- arising out of any contractual dispute other than in relation to a contract for Business,

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 or defence of any Claim.

### Deductible

Means the amount of any Claim or other matter covered by the Policy which is payable by You and which is specified in the Schedule, unless otherwise provided by the Policy.

### Doctor

Means a medical practitioner who is Registered.

### Documents

Means any written material or any computer or electronic data used or created in the course of Business but will not include any currency, negotiable instrument, cheque, stamp, bond or coupon or any document evidencing title to or which constitutes any form of security.

### Employee

Means:

- any person employed by You under a contract of service during or prior to the commencement of the Period of Insurance other than a Doctor, except to the extent provided in clause 3.3 if listed as included in the Schedule; and
- the estate heirs and legal representatives or assigns of an Employee in the event of the death or permanent disablement of the Employee 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.

### 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.

### Good Samaritan Act

Means the provision of medical treatment or medical advice:

- by one of You during the course of Your employment by another of You;
- in an emergency situation;
- where You are not, otherwise than by the Policy, entitled to indemnity in respect of the Claim;
- where You make no request for payment or reward for the medical treatment or medical advice provided; and
- where You provide no ongoing medical treatment or medical advice after the emergency situation has passed.

### Healthcare Company

Means the company, corporation or other legal entity specified in the Schedule.

**HREC**

Means a properly constituted human research ethics committee approved and registered by the National Health and Medical Research Council which has been established by the Healthcare Company for the purpose of reviewing research proposals in the course of Your business as specified in the Schedule.

**Limit of Cover**

Means the maximum amount that We will pay or incur in respect of any claim by You under the Policy as specified in the Schedule, less any Deductible.

**MDASA**

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

**Period of Insurance**

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

**Policy**

Means:

- (a) the Schedule;
- (b) this document except to the extent that one or more clauses within Sections 1, 2 or 3 are not noted as being included on the Schedule; and
- (c) any endorsement.

**Premium**

Means the amount specified in the Schedule as the Premium, subject to any applicable adjustments relating to the Period of Insurance.

**Registered**

Means maintaining current Registration required to provide the health care treatment, advice or service giving rise to a Claim or other matter covered by the Policy, at the time and in the place it is provided.

**Registration**

Includes the licensing, approval, admission, certification, registration (including registration by a medical board), or any other form of authorisation, of a person required by or under legislation for carrying on the occupation of medical practitioner.

**Retroactive Date**

Means the Retroactive Date specified in the Schedule.

**Schedule**

Means the schedule forming part of the Policy, signed by Us.

**Senior Counsel**

Means a barrister-at-law who is entitled to use the post-nominals QC or SC in recognition of their professional eminence.

**Spouse**

Means a person who is married to or in a registered relationship with You or an Employee and the marriage or registered relationship is recognised under an Australian State or Territory law.

**Sub-Limit of Cover**

Means the maximum amount, specified in the policy, which We are required to pay or incur in respect of any particular section of the Policy, less any Deductible.

**Subsidiary**

Means a subsidiary, within the meaning of the *Corporations Act 2001*, of You whose principal business activity is the Business.

**Work Experience**

Means supervised work with the Healthcare Company involving practical training and observing that is undertaken by a person at the time of each act, error or omission giving rise to a Claim or other matter covered by the Policy which includes:

- (a) a vocational placement or a school based training arrangement as defined under the *Fair Work Act 2009*; or
- (b) a similar arrangement which is approved by the Healthcare Company.

**We, Us and Our**

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

**You and Your**

Means:

- (a) the Healthcare Company and its Subsidiaries; and
- (b) any person who was, at the time of the act, error or omission giving rise to the Claim or other matter covered by the Policy, an Employee.

You includes any:

- (c) person who was at the time of the act, error or omission undertaking Work Experience with the Healthcare Company but only for a Claim arising out of an act, error or omission on the part of such person in the course of Business;
- (d) person who is a member of an HREC but only for a Claim arising out of an act, error or omission on the part of such person in the course of carrying out their responsibilities as a member of the HREC;
- (e) person who was at the time of the act, error or omission a principal, partner or director of the Healthcare Company or its Subsidiary but only for a Claim arising out of an act, error or omission on the part of such person in the course of Business;
- (f) person other than a Doctor who was, at the time of the act, error or omission, providing unpaid voluntary services to the Healthcare Company with its express consent;
- (g) person who is or was a Spouse of an Employee or a person defined in (d) or (e) above and against whom a Claim is made because of their status as a Spouse or because of their ownership of property from which the claimant seeks to make a recovery;
- (h) legal representative, executor or administrator of a person listed in paragraphs (c) to (g) above, in the event of that person's death or permanent disablement.

## Section 1 Claims and Expenses that We cover You for

### Claims

#### 1.1 Claims against You

We will cover You for legal liability for a Claim arising out of any act, error or omission by You relating to the provision by You of health care treatment, advice or service in connection with Your business as specified in the Schedule after the Retroactive Date which is first made against You and of which You first notify Us in writing during the Period of Insurance.

#### 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

Subject to the Sub-Limit of Cover specified in the Schedule, We will cover You in respect of Expenses incurred with Our prior written consent:

- (a) arising out of an event that occurs during the Period of Insurance or after the Retroactive Date and prior to the end of the Period of Insurance;
- (b) in respect of which event You have not, and could not have, previously notified under any prior insurance or in any prior period;
- (c) in respect of which event You have first notified Us in writing during the Period of Insurance and prior to any such Expenses first being incurred; and
- (d) incurred with Our prior written consent,

but only to the extent those Expenses are incurred in defending or responding to criminal, judicial, statutory, administrative, coronial or royal commissions, prosecutions, proceedings, inquests, inquiries, complaints (including reporting of others) or investigations relating to the provision by You of health care treatment, advice or service in the course of the Business specified in the Schedule.

**Note:** Except to the extent provided in clause 2.4, no cover is provided for fines or penalties imposed on You.

#### 1.4 Other complaints and disputes

Subject to the Sub-Limit of Cover specified in the Schedule, We will cover the Healthcare Company for Expenses incurred with Our prior written consent in relation to any of the following matters arising out of Business after the Retroactive Date, the circumstances of which You first notify Us in writing during the Period of Insurance:

- (a) a complaint or proceeding brought against the Healthcare Company by a person who provides services to the Healthcare Company in the course of Business that alleges:
  - (i) a breach of the person's employment agreement or contract for service;
  - (ii) a breach of a relevant award, enterprise agreement or industrial instrument;
  - (iii) a breach of anti-discrimination or equal opportunity law;
  - (iv) harassment;
  - (v) bullying;
  - (vi) a breach of the National Employment Standards in Part 2-2 of the *Fair Work Act 2009*;
  - (vii) a breach of the general protections provisions in Part 3-1 of the *Fair Work Act 2009*; or
  - (viii) unfair or unlawful dismissal;
- (b) a complaint or proceeding pursued by the Healthcare Company in relation to any threat to the personal safety of any of You (other than a Doctor if clause 3.3 is listed as included in the Schedule) or any of his or her immediate family arising out of Business; and
- (c) a complaint or proceeding brought against the Healthcare Company by a Doctor in relation to the administration and claiming of Medicare billings on behalf of the Doctor.

**Note:** Refer to Section 5 of the Policy for important information about Sub-Limits of Cover and Deductibles.

### 2.1 What this section covers

Unless otherwise expressly provided, for each clause in this Section that is listed as included in the Schedule, We agree to provide cover for:

- (a) legal liability for any Claim first made against the Healthcare Company and of which You first notify Us in writing during the Period of Insurance arising out of Business after the Retroactive Date (and for the related Claim Costs); and
- (b) Expenses incurred in defending or responding to any matter referred to in clause 1.3 or clause 1.4 arising out of Business after the Retroactive Date, the circumstances of which You first notify Us in writing during the Period of Insurance.

### 2.2 Severability and non-imputation

Any conduct by any of You which would allow Us to refuse or reduce cover to that party will not prejudice the right of any other party who is one of You to cover under the Policy on condition that the latter party:

- (a) is entirely innocent of and had no prior knowledge of the matter which entitled Us to refuse or reduce cover; and
- (b) as soon as practicable, upon first becoming aware of any such matter, had provided written notice to Us of all known facts in relation to that matter.

### 2.3 Vicarious liability

We agree to cover You for legal liability for any Claim to the extent that You are vicariously liable at law for any act, error or omission committed or alleged to have been committed in the course of Business by:

- (a) an Employee;
- (b) a contractor, consultant or agent of You; or
- (c) a Doctor,

however no cover is provided by the Policy to the contractor, consultant, agent or Doctor (other than for a Claim arising out of their act, error or omission in the course of carrying out their responsibilities as a member of an HREC or under clause 3.3 if listed as included in the Schedule).

### 2.4 Statutory liability

We agree to cover the Healthcare Company for Expenses incurred in defending a dispute arising out of:

- (a) an unintentional breach of Australian workplace health and safety law, environmental law or privacy law where the Healthcare Company can demonstrate that the breach did not arise out of the Healthcare Company's reckless act, error or omission or wilful disregard of such laws; and
- (b) to the extent permitted by law, for any pecuniary penalties or compensatory civil penalties imposed on the Healthcare Company under a law referred to in paragraph (a).

**Note:** Refer to Section 5 of the Policy for important information about Sub-Limits of Cover.

### 2.5 Good Samaritan Acts

We agree to cover Employees for legal liability in relation to Good Samaritan Acts arising out of Business conducted within Australia.

### 2.6 Loss of Documents

We agree to pay the reasonable costs incurred by You in replacing or restoring Documents in Your possession if the Documents are destroyed, damaged, modified, lost or mislaid and after diligent search and inquiry cannot be located, on condition that:

- (a) the loss occurs or You first become aware of the loss within the Period of Insurance and it is notified to Us in writing within the Period of Insurance;
- (b) You notify Us within 14 days after the date on which You first become aware of the fact that the Documents have been destroyed, damaged, lost or mislaid;
- (c) any claim under this clause is properly supported by accounts and invoices approved by Us or a person acting on Our behalf; and
- (d) the Documents were at all times within Australia prior to their destruction, damage or loss.

For the purposes of this clause, Documents in Your possession will include those in the possession of a party to whom You entrusted, lodged or deposited the Documents in the ordinary course of Business.

**Note:** Refer to Section 5 of the Policy for important information about Sub-Limits of Cover and Deductibles.

## 2.7 Continuous cover

If:

- (a) You could have first notified Us of a claim under an earlier Business Medical Indemnity Insurance Policy issued by Us;
- (b) You provide Us with written notice of the Claim during the Period of Insurance; and
- (c) We have been Your insurer under a Business Medical Indemnity Insurance Policy continuously between the date on which You could have first notified Us and the date on which the notification was in fact given,

We will treat the notification of the Claim as a notification under the Policy during the Period of Insurance.

The terms and conditions of the cover (including any limits of cover and deductible) applicable to a Claim notified under this clause will be the terms and conditions applicable to the Insurance for Healthcare Companies (or equivalent policy) under which the notification could have first been given.

## 2.8 Newly created or acquired Subsidiaries

We agree that You include any Subsidiary created or acquired by You during the Period of Insurance from the date of its creation or acquisition and for a period of up to 60 days or until the end of the Period of Insurance, if sooner, but only in respect of Claims made against the Subsidiary arising out of an act, error or omission occurring after the date of creation or acquisition of the Subsidiary.

## 2.9 Past Subsidiaries

We agree that the term 'You' includes any entity that ceases to be a Subsidiary of You but only in respect of an act, error or omission that occurred or is alleged to have occurred between the date of acquisition or creation of the Subsidiary by You and the date such entity ceased to be a Subsidiary.

## 2.10 Extended Reporting Benefit

We agree that:

- (a) if, during the Period of Insurance, any of You cease to exist, are merged with or acquired by any other entity, or become an externally administered body corporate within the meaning of the *Corporations Act 2001* then the Policy will continue to provide cover until the end of the Period of Insurance for Your liability arising out of any act, error or omission occurring prior to the date on which that entity ceased to exist, was merged or acquired or became an externally administered body corporate; and
- (b) if this Policy is not cancelled but We do not offer to renew it for any reason other than non-payment of Premium or any other breach of the terms of this Policy, then the Policy will continue to provide cover for Your liability arising out of any act, error or omission occurring prior to the expiry date for the earlier of 30 days after the end of the Period of Insurance or until this Policy is replaced by alternative cover.

## 2.11 Fraud and dishonesty

We agree to cover You for legal liability for any Claim, Claim Costs and Expenses that would otherwise be excluded by clause 6.5 but no cover is provided by Us:

- (a) to any party who committed, condoned or was knowingly involved in an act, omission or breach of a kind excluded by clause 6.5; or
- (b) for any Claim or Claim Costs arising out of a loss of money or negotiable instruments.

## 2.12 Breach of privacy or confidentiality

Subject to Clauses 2.10 and 6.5, We agree to cover You for legal liability for any Claims, Claim Costs and Expenses arising out of any breach of privacy or confidentiality in the course of Business, including but not limited to the *Privacy Act 1988* and any law of the Commonwealth, the States or Territories relating to health records.

No cover is provided by the Policy for any Claims, Claim Costs or Expenses that are in anyway related to a breach of privacy or confidentiality arising out of an intentional or reckless act or omission.

## 2.13 Unintentional intellectual property rights infringement

We agree to cover You for legal liability for any Claims, Claim Costs and for Expenses arising out of an unintentional infringement of a third party's intellectual property rights in the course of Business, where You can demonstrate that the infringement did not arise out of Your wilful or reckless act, error or omission.



## 2.14 Competition and Consumer Act and similar legislation

We agree to cover You for legal liability for any Claims, Claim Costs and Expenses arising out of any allegation of an act or omission by You in the course of Business that contravenes, or entitles a person to relief against You under, the *Competition and Consumer Act 2010* or any equivalent provision in any State or Territory legislation.

**Note:** Clauses 2.10 and 6.5 apply to fraudulent, dishonest and reckless acts and omissions of You, including intentional breaches of statute.

## 2.15 Out of pocket expenses cover

We agree to pay on behalf of the Healthcare Company or a Subsidiary any personal out of pocket expenses that You (other than the Healthcare Company or a Subsidiary) reasonably incurs with Our prior written consent in responding to a Claim or a matter for which We have agreed to provide cover under the Policy if the Healthcare Company or a Subsidiary is required or permitted to pay those expenses.

**Note:** Refer to Section 5 of the Policy for important information about Sub-Limits of Cover.

Out of pocket expenses includes travel, meal and accommodation expenses.

This clause provides no cover for any loss of income or for any remuneration or benefits payable to You.

## 2.16 Joint venture liability

We agree to cover You for legal liability for any Claims, Claim Costs and for Expenses to the extent of Your liability as a participant in a joint venture which provides health care treatment, advice or service for the purpose of Business.

The cover provided under this clause is subject to a Sub-Limit of Cover equal to the lesser of:

- Your liability for the Claim, Claim Costs or Expenses under the terms of the joint venture arrangement; and
- the total amount of the Claim, Claim Costs or Expenses for which joint venture participants are liable, divided by the number of joint venture participants.

No cover is provided under this clause unless You provided full written disclosure of Your expected annual income from the joint venture to Us prior to the Period of Insurance.

## 2.17 Public relations expenses

We agree to cover the Healthcare Company for Expenses it incurs in engaging the services of a public relations consultant solely for the purpose of protecting its reputation arising out of a Claim or other matter for which We have agreed to provide cover under the Policy if the consultant is retained and if the expenses are incurred:

- (a) within the first 30 days after the Claim is made against You or after the other covered matter occurs; and
- (b) with Our prior written consent.

**Note:** Refer to Section 5 of the Policy for important information about Sub-Limits of Cover.

## 2.18 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 the Company is in Australia and requires emergency claims and medico-legal support, it will be available 24 hours a day.

## 2.19 Medical research and clinical trials

We agree to cover the Healthcare Company and Employees for any Claim arising out of their role in any medical research or clinical trial if the medical research or clinical trial is:

- (a) approved by an HREC;
- (b) conducted in accordance with the requirements of that HREC; and
- (c) in the course of the Business.

## Section 3

### Cover for Claims and Expenses which We may agree to provide to You

#### 3.1 What this section covers

Unless otherwise expressly provided, for each clause in this Section that is listed as included in the Schedule, We agree to provide cover if the relevant optional extension is listed as included in the Schedule and any additional premium is paid.

#### 3.2 Business outside Australia

We will Cover You for legal liability for any Claim and Claim Costs arising out of Business outside Australia if:

- (a) the legal liability arises out of an event that occurs after the Retroactive Date;
- (b) the Claim is first made against You during the Period of Insurance; and
- (c) the Claim is first notified to Us during the Period of Insurance

but no cover is provided to You for legal liability arising out of Business in:

- (i) the United States of America;
- (ii) Canada; or
- (iii) a jurisdiction to which the laws of the United States of America or Canada apply.

#### 3.3 Cover for Doctors

(a) Subject to clauses 3.3(b) and 3.3(c), We agree:

- (i) that an Employee includes any Doctor employed by You under a contract of service (an Employee Doctor) and declared by You in writing to Us prior to or within 7 days of the Employee Doctor commencing employment, including a declaration that the Employee Doctor is Registered;
- (ii) to cover You for legal liability in relation to gratuitous medical advice given in the course of Business within Australia by an Employee Doctor who did not write a prescription and where You made no request for payment or reward for the advice; and
- (iii) to provide to an Employee Doctor advice and advisory assistance in respect of any cover provided to them under the Policy. Where the Employee Doctor is in Australia and requires emergency medico-legal assistance, the advice and advisory assistance will be made available 24 hours a day.

(b) You must provide immediate notice to Us of any temporary or permanent material change to an Employee Doctor during the Period of Insurance including, but not limited to:

- (i) the Employee Doctor becoming insolvent under administration within the meaning of that term in the *Corporations Act 2001*;
- (ii) cancellation, suspension or variation of the Employee Doctor's Registration; or
- (iii) if any of the circumstances prescribed under the Commonwealth run-off cover scheme (ROCS) occur under which We are required to make an offer of run-off cover to the Employee Doctor on the terms contained in the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

(c) Cover provided by this clause is subject to the following additional exclusions:

- (i) Deregistration and restrictions on Practice

We will refuse or reduce a claim for cover under the Policy which relates to a Claim, Claim Costs or Expenses in any way related to an act, error or omission in the conduct of Business:

- (A) for which an Employee Doctor was required to be Registered but for which the Employee Doctor was not Registered; or
- (B) which was in breach of any restriction, limitation or prohibition imposed on the Employee Doctor's Registration.

- (ii) Claim Costs and Expenses

We will not cover You for Claim Costs or Expenses in any way related to:

- (A) the pursuit or defence of a complaint, prosecution or proceedings against or by a current or former business partner of an Employee Doctor; or
- (B) a dispute with any medical board, regulatory authority or judicial authority in respect of any restriction, limitation or prohibition imposed on the Employee Doctor's Registration.

## Claims conditions

### 4.1 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* provides that if, after the end of the Period of Insurance, a claim is made against You which arises out of facts 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 You to notify any circumstance or incident which has the potential to lead to a claim as soon as You become aware of the circumstance or incident.

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

### 4.2 Other insurance

In the event of:

- a Claim;
- You incurring Expenses; or
- 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 events referred to above. You must also notify Us in writing if, during the Period of Insurance, You arrange a professional indemnity policy in order to cover Your liability for any Claim or other matter covered by this Policy arising out of Business, in which case clause 6.27 will apply.

### 4.3 Insurance held by Doctors

You must do everything reasonably necessary to ensure that all Doctors who provide health care treatment, advice or service charged for and billed by or on behalf of You, whether or not employed by You, effect and maintain during the Period of Insurance medical indemnity insurance that complies with the requirements of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

### 4.4 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 be entitled 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.

### 4.5 Other insurance – Expenses

The cover that We provide to You for Claim Costs or Expenses under the Policy is reduced by any amount that You receive from any other source including any orders in Your favour and any indemnity of which You have a benefit.

### 4.6 Conduct

- 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.
- 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.
- 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 and after deducting the Deductible) 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. Similarly, We may elect not to cover You for Expenses in pursuing a matter which We believe You are more likely than not to be unsuccessful in pursuing. If We make such an election, We will only cover You for Your Expenses (less the Deductible) that relate to the matter up to the date of the election but if You successfully pursue the matter We will cover You for such part of Your Expenses as is reasonable having regard to the Expenses incurred, the outcome You sought and the actual outcome.

#### 4.7 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 amounts covered by the Policy.
- (b) We will not pursue a right of contribution or indemnity against one of You unless that party been dishonest or fraudulent or has committed a criminal or illegal act or omission.
- (c) 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.

#### 4.8 Contesting Claims and other matters

Unless a Senior Counsel, instructed by agreement between You and Us or, in the absence of such agreement, by Us, advises that a Claim or other matter covered by the Policy should be contested, We will not require You to contest the Claim or matter. The Senior Counsel will be instructed to provide the requested advice based on the economics of the Claim or matter, the damages and costs likely to be recovered, the likely costs of the conduct of the Claim or matter and the prospects of successfully defending the Claim or obtaining a more favourable outcome in the matter. The cost of the advice provided by the Senior Counsel will be part of the Claim Costs or Expenses.

#### 4.9 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:
  - if cover for Claims Costs is listed as included in the Schedule, Claim Costs; or
  - if cover for Expenses is listed as included in the Schedule, Expenses.

#### 4.10 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 out of 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 and having regard to relevant matters including Our assessment as to whether You have reasonable prospects of success in relation to the Claim or matter, which may change 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.

#### 4.11 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 of a matter referred to in clause 1.3) 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.

#### 4.12 Criminal convictions

If any of You is found guilty of, or admit, any crime then that party 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.

### 5.1 Limit of Cover

- (a) The cover We provide to You for any one and all Claims, Claim Costs and Expenses (including any automatic extensions and optional extensions) under the Policy will not exceed the Aggregate Limit of Cover. Any payment by Us to a person in respect of a matter that might give rise to a Claim is taken to be a payment made to settle a Claim.
- (b) The cover We provide to You for any one and all Claims, Claim Costs and Expenses (including any automatic extensions and optional extensions) under the Policy to which a Sub-Limit of Cover applies will not exceed the Sub-Limit of Cover.
- (c) The Aggregate Limit of Cover and each Sub-Limit of Cover is exclusive of GST to the extent that We are entitled to a GST credit.

### 5.2 Multiple policies

Where You are entitled to cover under more than one policy issued by Us, the limits and sub-limits of cover under each policy are not cumulative and the amount of cover that We are required to provide to You under all policies issued by Us will not exceed the highest single aggregate limit of cover and highest single sub-limit of cover.

### 5.3 Deductible

We will only cover You for that part of a Claim, Claim Costs or Expenses (including any cover under any automatic extension or optional extension) that exceeds the Deductible. The Aggregate Limit of Cover and any Sub-Limit of Cover are inclusive of the Deductible.

### 5.4 Deductible – payment

If We notify You in writing that You are entitled to cover for a Claim or other matter covered by the Policy and to which a Deductible applies, You will pay the Deductible to Us within 14 days of receipt of the notice. Subject to law, We are not required to take any steps in relation to the Claim or other matter until You have paid the Deductible. If the Claim or other matter covered by the Policy is resolved for a cost to Us that is less than the Deductible, We will repay to You an amount equal to the difference between the Deductible and the cost incurred by Us in disposing of the matter.

### 5.5 Deductible – costs inclusive

If the Policy states that a Deductible is inclusive of costs and expenses, You will indemnify Us for Our reasonable Claim Costs or Expenses, up to the amount of the Deductible, but You will not indemnify Us for any costs incurred in determining Our liability to cover You.

### 5.6 Multiple Claims and matters

All covered Claims, Claim Costs and Expenses arising out of any of the following will be treated as if they arise out of a single Claim or matter to which one Deductible and Aggregate Limit of Cover or Sub-Limit of Cover will apply:

- (a) a related course of treatment to a single person;
- (b) all Inappropriate Practice involving a single person; or
- (c) the provision of health care treatment, advice or service to any one woman and her unborn child or children in relation to all injuries, illnesses or symptoms suffered by them in relation to the pregnancy of the woman and the birth of the child or children.

### 5.7 Material change in risk

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

- (a) a change in ownership or control of any of You (including a Subsidiary);
- (b) any of You (including a Subsidiary) becoming insolvent under administration or becoming an externally- administered body corporate, resolving or being ordered to be wound-up, or being deregistered within the meaning of those terms in the *Corporations Act 2001*;
- (c) a change to where Business is conducted; and
- (d) a change to Business.

## 5.8 Cancellation

- (a) We may cancel the Policy as permitted by the Insurance Contracts Act 1984, in which event We may agree to rebate part of the Premium having regard to Our customary short term rate. If You are paying the Premium by instalments, We will cancel the Policy without further notice to You if an instalment payment is one month or more late.
- (b) We may agree to cancel the Policy at the request of the Healthcare Company, in which event We may agree to rebate a proportion of the Premium having regard to Our customary short term rates. If You have paid the Premium by instalments, We will retain a minimum of three instalments and release You from any further obligation to pay the remainder of the Premium but only if You have not notified Us of any claims or circumstances under the Policy prior to the cancellation request.
- (c) If the Policy is cancelled for any reason after You have notified Us of any claims or circumstances under the Policy, You are not entitled to any rebate of the Premium and, if You are paying the Premium by instalments, You must continue to pay all remaining instalments for the Period of Insurance.

## 5.9 Business review

We may undertake a review of Your Business 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.

## 5.10 Non-payment of Premium

- (a) The Policy will not come into force unless and until:
  - (i) You have provided to Us a completed application for insurance;
  - (ii) We have accepted the application for insurance; and
  - (iii) You have paid the Premium in full prior to the first date of the Period of Insurance.

**Note:** Where You pay the Premium in full after the start of the Period of Insurance, We may agree to issue the Policy effective retrospectively but otherwise You have no entitlement to cover from Us

- (b) You must notify Us immediately if You anticipate being unable to pay one or more Premium instalments when due. We will refuse any claim or request for cover under the Policy if an instalment payment is 14 days or more late.

## 5.11 Assignment

You may not assign Your interest in the Policy.

## 5.12 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

## 5.13 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 agent of Us and not of You. 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 agent of Us and not of You.

## 5.14 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.

## 5.15 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.

## 5.16 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.

## 5.17 Confidentiality

You agree not to disclose the existence or terms of the Policy to any person without Our prior written consent, except to the extent that disclosure is required by law.

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

### 6.1 Prior or pending

other than to the extent that cover is provided under clause 2.7 if listed as included in the Schedule:

- (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) You have notified under any prior policy of insurance or for the purpose of seeking cover from a medical defence organisation; or
  - (iii) have been disclosed by You or ought to have been disclosed by You prior to the Period of Insurance.

### 6.2 Retroactive Date

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

### 6.3 Conduct of Doctors

made against You and arising out of the act, error or omission of a Doctor, except to the extent that:

- (a) cover is provided by clause 2.3 or clause 3.3 if listed as included in the Schedule; or
- (b) You have incurred liability by Your own act, error or omission or have a strict liability under statute.

### 6.4 Insurance not held by Doctors

made against You and arising out of the act, error or omission of a Doctor who did not at all relevant times effect and maintain medical indemnity insurance that complies with the requirements of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

### 6.5 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;
- (c) assault; or
- (d) intentional breach of statute, contract or duty of care.

### 6.6 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.

### 6.7 Trading debts

in any way related to:

- (a) a trading debt;
- (b) a guarantee; or
- (c) the fee for the health care treatment, advice or service that You have provided or will provide.

### 6.8 Related parties

in any way related to a Claim or proceedings against one of You by or on behalf of any other of You (including an entity controlled by You or in which You have any financial interest), other than in relation to health care treatment advice or service provided to the latter as a patient.

### 6.9 Intoxication

where You were under the influence of drugs or alcohol and that fact was directly related to the act or omission that gave rise to a claim under the Policy.

**6.10 Transmission of disease**

in any way related to the transmission of virus, bacteria or disease knowingly carried by You in circumstances where You have not taken precautions to prevent the transmission of the virus, bacteria or disease which would not be widely accepted in Australia by peer professional opinion as competent professional practice.

**6.11 Fines and penalties**

other than to the extent that cover is provided under clause 2.4, if listed as included in the Schedule, to the extent of any liability for exemplary or aggravated damages, fines or penalties including any civil penalty.

**6.12 Pollution or asbestos**

in any way related to pollution or asbestos other than in relation to health care treatment, advice or service provided by You in the course of Business for pollution-related or asbestos-related conditions.

**6.13 Occupier's liability and property damage**

in any way related to any actual or alleged liability:

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

**6.14 Inappropriate practice**

other than in relation to Expenses, in any way related to inappropriate practice within the meaning of the *Health Insurance Act 1973*.

**6.15 Discrimination**

other than in respect of Expenses, arising out of any actual or alleged unlawful discrimination, harassment or breach of equal opportunity law except to the extent that it relates to a complaint or proceeding by a person to whom health care treatment, advice or service is provided in the course of Business.

**6.16 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 Business.

**6.17 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 out of health care treatment, advice or service provided to persons injured as a result of any of the above.

**6.18 Product liability**

arising out of the manufacture, installation, assembly, processing, sale, supply or distribution by You of any goods or products, or arising out of workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, repair, demolition or disassembly, or supervision of any of those things, by or on behalf of You other than in respect of a Claim or Expenses arising out of the supply of products for the purpose of health care treatment, advice or service to persons in the course of Business.

**6.19 Medical research or clinical trials**

arising out of any medical research or clinical trial, whether or not such medical research or clinical trial is related to Business, other than to the extent that You are entitled to cover under clause 2.19.



## 6.20 Intellectual Property

other than to the extent that cover is provided under clause 2.13, if listed as included in the Schedule, arising out of any actual or alleged infringement of intellectual property rights.

## 6.21 Cyber Liability

in any way related to:

- (a) the misuse of the Internet or similar facility;
- (b) any computer virus, worm, logic bomb, Trojan horse or similar problem;
- (c) any loss of data or damage to any computer system, including but not limited to hardware or software; or
- (d) the malfunctioning of the Internet or similar facility, or of any Internet address, Website or similar facility,

except to the extent that the Internet or similar facility or data or computer system is used by or relied upon by You for the purpose of providing health care treatment, service or advice in the course of Business and without knowledge of the relevant matter referred to in paragraphs (a) to (d).

## 6.22 Directorships and committee memberships

arising out of an actual or alleged act, error or omission of Your director, officer or Employee acting in their capacity as Your director, officer or committee member or any corporation, other than when acting in their capacity as a member of an HREC.

## 6.23 Business outside Australia

other than to the extent that cover is provided under clause 3.2 if listed as included in the Schedule, arising out of Business conducted outside Australia.

## 6.24 North America

in any way related to:

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

## 6.25 Statutory exclusions

for which We are prohibited or not authorised by law from providing cover including, but not limited to, workers' compensation or motor vehicle accident personal injury claims.

## 6.26 Obligations to employees

attributable to or as a result of Your liability as an employer, whether under workers compensation or occupational health and safety legislation, the common law or otherwise for bodily injury, mental injury, sickness, disease or death of any employee of You or damage, loss or destruction of any property of any employee arising out of or in the course of their employment.

## 6.27 Other indemnities

other than in relation to Expenses, for which You are indemnified or are entitled to indemnity from any other source including but not limited to a government, governmental authority, hospital, health service or health authority.

For the sake of clarity:

- (a) for any Claim or other matter in respect of which You are entitled to indemnity under another insurance policy arranged on Your behalf or to which You are not a party, this Policy provides no cover; and
- (b) to the extent that You are entitled to indemnity under another insurance policy that is specified in the Schedule or which is a professional indemnity policy You have effected in order to cover Your liability for any Claim or other matter covered by this Policy arising out of Business, this Policy only provides cover in excess of Your entitlement to indemnity under that other policy.

## 6.28 Registration

- (a) in any way related to health care treatment, advice or service for which You, or a person referred to in clause 2.3, are not Registered and were not Registered; and
- (b) other than in respect of Expenses, in any way related to an act, error or omission that is in breach of any condition, undertaking, endorsement, suspension, restriction, limitation or prohibition imposed by any lawful authority, including a health practitioner board, tribunal or council.

**6.29 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.

**6.30 Dispute with Us or MDASA**

in any way related to 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.

**6.31 Failure to provide information**

in any way related to Your failure to provide all reasonable information, documents and assistance required of it by Us or Our nominees.

**6.32 Employment**

other than to the extent that cover is provided under clause 1.4, if listed as included in the Schedule, in any way related to actual or alleged unfair dismissal, harassment, breach of employment contract, unfair demotion, failure to promote, deprivation of career opportunity, wrongful discipline, negligent evaluation, failure to grant tenure of employment, refusal to employ, or defamation, misrepresentation or denial of natural justice relating to employment matters.

**6.33 Bankruptcy or insolvency**

in any way related to Your bankruptcy or insolvency.

**6.34 Property damage or loss**

in any way related to 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.



**General Enquiries  
and Client Service**

Free Call 1800 777 156  
Facsimile 1800 839 284

**Claims and Legal Services**

(During Office hrs and 24hr emergency legal support)

Free Call 1800 839 280  
Facsimile 1800 839 281

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