

Insurance for Doctors

**Medical Indemnity  
Insurance Policy**

1 July 2023





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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## Policy Limits and Sub-Limits

The Aggregate Limit of Cover for all matters covered under this policy is \$20,000,000. The Sub-Limit of Cover for Expenses is \$2,000,000.

Our liability under each clause is limited to each Sub-Limit of Cover specified in the table below. All Sub-Limits of Cover are subject to the overall Sub-Limit of Cover for Expenses.

### Notes:

- Additional or alternative Sub-Limits of Cover and Deductibles may be set out in the Special Conditions to Your Policy Schedule.
- The Aggregate Limit of Cover and the Sub-Limit of Cover for Expenses are not cumulative.

Clause		Sub-Limit of Cover
<b>Section 1: Claims and Expenses</b>		
1.1	Claims against you	No Sub-Limit of Cover
1.2	Claim Costs	No Sub-Limit of Cover
1.3	Proceedings and investigations	\$2,000,000
1.4	Other complaints and disputes	(a) \$75,000 (b) \$20,000 (c) \$20,000 (d) \$200,000
<b>Section 2: Other Matters</b>		
2.2	Good Samaritan Acts and Gratuitous Advice	No Sub-Limit of Cover for Claims and Claims Costs \$2,000,000 for Expenses
2.3	Vicarious Liability	No Sub-Limit of Cover
2.4	Practice outside the Commonwealth of Australia	No Sub-Limit of Cover for Claims and Claims Costs \$2,000,000 for Expenses
2.5	Volunteer Practice	No Sub-Limit of Cover for Claims and Claims Costs \$2,000,000 for Expenses
2.6	Liability for restricting ability to practise	\$75,000
2.7	Medical research and clinical trials	No Sub-Limit of Cover
2.8	Loss of documents	\$100,000
2.9	Advice and advisory assistance	No Sub-Limit of Cover
2.11	Continuous cover	(a) The limits of cover of the policy under which the matter could have first been notified (b) Any applicable Sub-Limit of Cover of this Policy
2.12	Other proceedings and investigations	(a) \$250,000 (b) \$150,000
2.13	Interruption to income and out of pocket expenses cover	\$1,000 per day and \$50,000 in total
2.14	Run-off cover	No Sub-Limit of Cover for Claims and Claims Costs \$2,000,000 for Expenses
2.15	Public Patients	No Sub-Limit of Cover for Claims and Claims Costs \$2,000,000 for Expenses
2.16	Liability for reporting incidents or other persons	\$100,000
2.17	Innocent partner cover	The lesser of: i) the Doctor's total liability for the Claim and Claim Costs divided by the number of partners in the partnership; and ii) the Aggregate Limit of Cover
2.18	Protection of reputation	\$75,000
2.19	Pursuit of indemnity	\$2,000,000
2.20	Public relations Expenses	\$15,000
2.21	Unintentional intellectual property rights infringement	No Sub-Limit of Cover for Claims and Claims Costs \$2,000,000 for Expenses
2.22	Communicable disease cover	\$100,000
2.23	Prior practice	No Sub-Limit of Cover for Claims and Claims Costs \$2,000,000 for Expenses
2.24	Statutory liability	\$150,000
2.25	Mandatory breach notification	\$20,000
2.26	Telehealth	No Sub-Limit of Cover for Claims and Claims Costs \$2,000,000 for Expenses

This Policy may cover more than one person. In this Policy We use the term 'You' to refer to all covered persons and we use 'Doctor' to refer to the insured medical practitioner.

We will cover You for:

- Claims, Claim Costs and Expenses described in Section 1; and
- additional matters described in Section 2, 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 3 in relation to the conduct of covered matters 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 Aggregate Limit of Cover;
- (b) any Sub-Limit of Cover; and
- (c) any Deductible.

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

### Aggregate Limit of Cover

Means the maximum amount that We are liable to pay or incur in the Period of Insurance in respect of all claims covered under the Policy as specified in the Schedule.

### Category

Means the practice category as specified in the Schedule.

### 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.

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

- alleging any defamation by You arising out of Practice;
- 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 legislation arising out of Practice (other than a matter excluded by clause 5.10);
- 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 Practice other than that directly used for the purpose of Practice; or
- arising out of a matter of a kind described in clause 1.4,

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.

### Communicable Disease

Means Human Immunodeficiency Virus (HIV), Hepatitis B or Hepatitis C.

### Deductible

Means the amount of any claim covered by the Policy which is payable by You and which is specified in the Policy.

### Doctor

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

### Documents

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

### Eligible Midwife

Means any person who is registered as a midwife by the Nursing and Midwifery Board of Australia and whose registration has an eligible midwife notation.

### Employee

Means any person employed by the Doctor or a Practice Entity under a contract of service during or prior to the start of the Period of Insurance and who provides services solely for the purpose of Practice by the Doctor, other than:

- (a) a registered medical practitioner;
- (b) an Eligible Midwife; or
- (c) any other person who provides health care treatment, advice or service charged for and billed in their own name.

### Expenses

Means the reasonable costs and expenses incurred by Us or You (including the reasonable amount of any disbursements) for services provided to Us or You in respect of a matter for which the Policy expressly provides cover.

### Good Samaritan Act

Means the provision of health care treatment or advice by the Doctor or an Employee in an unforeseen emergency situation in respect of which the Doctor or the Employee:

- (a) is not, otherwise than by the Policy, entitled to indemnity or immunity from liability;
- (b) makes no request for payment or reward; and
- (c) provides no ongoing health care treatment or advice after the emergency situation has passed.

# How to read this Policy

## Gratuitous Advice

Means gratuitous health care advice by the Doctor if:

- (a) the Doctor is a registered medical practitioner in Australia at the time the advice is given;
- (b) the Doctor makes no request for payment or reward for the advice; and
- (c) the Doctor does not write a prescription.

## Gross Income

Means the total of all billings generated by You from all areas of Practice for which You require medical indemnity cover for the Period of Insurance (in Your name) or for work for which You are personally liable, including without limitation Medicare benefits, payments by individuals, and payments by the Department of Veterans' Affairs, workers compensation schemes and third party and/or vehicle insurers and income earned for medical practice overseas that is covered by the Policy, whether retained by You or otherwise and before any apportionment or deduction of any expenses and/or tax.

If as part of Practice, You derive income from any other sources (i.e. professional fees, incentive payments, etc) this income must be included in the declaration of Gross Income.

## Inappropriate Practice

Means conduct by You such that We reasonably conclude that:

- (a) the conduct would be unacceptable to the general body of practitioners in the Category; or
- (b) 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 one of You, knowingly, recklessly or negligently, cause or permits another of You to engage in Inappropriate Practice.

## MDASA

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

## Medical Student

Means a person who is, at the time of each act, error or omission giving rise to a Claim or other matter covered under the Policy, enrolled in an accredited course of medical study in a medical school or university in Australia for the purpose of obtaining registration as a medical practitioner and which course is approved by Us.

## 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 or 2 are not noted as being included on the Schedule; and
- (c) any endorsement.

## Practice

Means the provision of health care treatment, advice or service in connection with the Category by You or, where expressly provided in the Policy, by the Doctor.

## Practice Entity

Means a company that is owned and controlled solely by the Doctor and which provides services solely for the purpose of Practice by the Doctor.

## Premium

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

## Public Patient

Means an individual to whom You provide health care treatment, advice or service under the terms of an agreement with a public hospital (within the meaning of the *Health Insurance Act 1973*), an area health service or a State or Territory Government unless the agreement or billing process has the effect of not classifying the individual as a public patient.

## Retroactive Date

Means the date or dates specified as a Retroactive Date 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.

## Sub-Limit of Cover

Means the maximum amount, specified in the Policy, which We are required to pay or incur in respect of all liability under any one or more clauses of the Policy, less any Deductible.

## 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 Doctor;
- (b) any Practice Entity;
- (c) any person who is, during the Period of Insurance, an Employee; and
- (d) any former Employee of the Doctor or Practice Entity.

You includes any Medical Student assigned to You by the Medical Student's medical school or university where a Claim arises out of an act, error or omission incurred on the part of such Medical Student in the course of Practice.

## Claims

### 1.1 Claims against You

We will cover You for legal liability for a Claim first made against You and of which You first notify Us in writing during the Period of Insurance and which arises out of the provision by You of health care treatment, advice or service connected with the Category 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 with Our prior written consent in defending or responding to any of the following matters arising out of Practice after the Retroactive Date, the circumstances of which You first notify Us in writing during the Period of Insurance:

- (a) complaints to or investigations, proceedings or assessments by:
  - (i) a health practitioner board, medical tribunal or other body responsible for Your professional discipline or registration, professional college or association, hospital, health service, health district, health authority, private health insurer, a health care complaints body or a health care ombudsman; or
  - (ii) such other government or statutory authority or other body that performs functions or exercises powers similar to any of the bodies listed in paragraph (a)(i);
- (b) coronial inquiries and royal commissions;
- (c) complaints, investigations and proceedings under the *Health Insurance Act 1973* arising out of any allegation of inappropriate practice as defined in that Act, other than a matter referred to in clause 2.12(b);
- (d) criminal investigations and proceedings; and
- (e) any action by a government or statutory authority 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 legislation.

**Notes:** Except to the extent provided in clause 2.24, no cover is provided for fines and penalties imposed on You. Investigations in relation to privacy and Medicare matters are covered by clause 2.12.

### 1.4 Other complaints and disputes

We will cover the Doctor for Expenses incurred with Our prior written consent in relation to a complaint, proceeding or dispute arising out of Practice after the Retroactive Date, the circumstances of which You first notify Us in writing during the Period of Insurance and which is:

- (a) brought against the Doctor by a person who provides services to You in the course of Practice 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, but excluding a dispute referred to in paragraph (b)

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

- (b) pursued or defended by the Doctor against a person to whom, or together with whom, the Doctor provides services as a contractor, an employee or as a visiting medical practitioner in the course of Practice, that alleges:
  - (i) a breach of the Doctor's contract for service, employment agreement or visiting medical practitioner agreement;
  - (ii) a breach of a relevant award, enterprise agreement or industrial instrument;
  - (iii) 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;
- (c) pursued by the Doctor in relation to the by-laws of a professional college or association arising out of the Doctor's participation, or inability to participate, in a training program; and
- (d) pursued or defended by the Doctor in relation to any threat to the personal safety of the Doctor, any of his or her immediate family or an Employee arising out of Practice provided to another individual by You and where the source of the threat is the individual to whom You provided the health care treatment, advice or service or a parent, spouse, domestic partner or child of that individual.



### 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 subject to the terms set out in each clause for:

- (a) legal liability for any Claim (and for the related Claim Costs);
- (b) Expenses; or
- (c) both,

arising out of health care treatment, advice or service provided after the Retroactive Date if You first notify Us in writing of the Claim or other matter covered under this Section during the Period of Insurance.

### 2.2 Good Samaritan Acts and Gratuitous Advice

- (a) We agree to cover the Doctor for legal liability for any Claim and for Expenses arising out of:
  - (i) Gratuitous Advice given within the Commonwealth of Australia;
  - (ii) Gratuitous Advice given outside the Commonwealth of Australia, where the Doctor is outside the Commonwealth of Australia for the purpose of Practice for no more than 120 days during the Period of Insurance; or
  - (iii) a Good Samaritan Act occurring anywhere in the world.
- (b) We agree to cover any Employee for legal liability for any Claim and for Expenses incurred in the course of his or her employment arising out of a Good Samaritan Act which occurs:
  - (i) within the Commonwealth of Australia; or
  - (ii) outside the Commonwealth of Australia, where the Employee is accompanying the Doctor, who is outside the Commonwealth of Australia for the purpose of Practice for no more than 120 days during the Period of Insurance.

**Note:** Employees are covered for Good Samaritan Acts occurring anywhere in the world except the United States of America.

### 2.3 Vicarious liability

We agree to cover the Doctor and any Practice Entity for legal liability for any Claim that is made against the Doctor, the Practice Entity or both of them in respect of which they are vicariously liable for any act, error or omission committed or alleged to have been committed by any of the following persons:

- (a) an Employee in the course of Practice;
- (b) a locum or a contractor (other than a medical practitioner) in the course of providing health care treatment, advice or service:
  - (i) that he or she is contracted in writing by the Doctor, the Practice Entity or both to undertake; and
  - (ii) for which he or she is registered, if required by law to be registered by a health practitioner board; and
- (c) a non-employed health care professional (other than a medical practitioner) under direct supervision, training or mentoring by the Doctor in the course of providing health care treatment, advice or service within the Category of the Doctor.

In paragraph (b):

- a locum means a person who provided their services to the Doctor, the Practice Entity or both, in the Doctor's absence and on no more than 90 days during the Period of Insurance and who, at the time of the act, error or omission:
  - was not an Employee;
  - was a registered medical practitioner;
  - had their services charged for, and billed, by or on behalf of the Doctor, the Practice Entity or both;
  - was practising in the Category, or a practice category that We determine is a lower risk than the Category; and
  - was covered under a medical indemnity policy that complied with applicable laws and specifically covered the services provided under the contract;
- a contractor means a person who was not an Employee at the time of the act, error or omission but who provided health care treatment, advice or service in the course of Practice charged for and billed by or on behalf of the Doctor or a Practice Entity.

In paragraph (c), a non-employed health care professional means a person who, at the time of the act, error or omission was:

- a registered nurse, a registered nurse practitioner or a registered midwife other than an Eligible Midwife, who was neither employed by nor working under a written contract for services with the Doctor or a Practice Entity and was not in partnership with the Doctor; and
- required by a college, training institution, medical board or nursing and midwifery board to be directly supervised, trained or mentored by the Doctor for the purpose of obtaining, retaining or regaining a recognised professional medical or nursing or midwifery qualification, award or registration.

**Notes:** Partnership in this clause has the same meaning as in clause 2.17.

Employed medical practitioners, contractors and non-employed health care professionals are not insured parties under the Policy.

## Section 2 Other matters that We cover You for

### 2.4 Practice outside the Commonwealth of Australia

In each case, where the Doctor is a permanent resident of Australia at the time of Practice:

- (a) We will cover the Doctor and any Employee under the direct supervision of the Doctor for legal liability for any Claim which arises out of Practice outside the Commonwealth of Australia, where the Doctor is:
  - (i) outside the Commonwealth of Australia for the purpose of Practice; or
  - (ii) providing health care treatment, advice or service connected with the Category to persons outside the Commonwealth of Australia,
 for no more than 120 days during the Period of Insurance;
- (b) We will cover the Doctor only for Expenses incurred in defending any complaint to or investigation, proceeding or assessment by a medical board, medical tribunal or other body responsible for his or her professional discipline or registration which arises out of Practice outside the Commonwealth of Australia, where the Doctor is:
  - (i) outside the Commonwealth of Australia for the purpose of Practice: or
  - (ii) providing health care treatment, advice or service connected with the Category to persons outside the Commonwealth of Australia,
 for no more than 120 days during the Period of Insurance; and
- (c) We will cover the Doctor and any Employee who accompanies the Doctor for legal liability for any Claim which arises out of the Doctor's Practice as a team doctor with an Australian sporting team or cultural group that is travelling, competing or performing in the United States of America, where the Doctor is in the United States for the purpose of Practice as a team doctor for no more than 120 days during the Period of Insurance but only in relation to a Claim that is:
  - (i) made by a member of that team or group who is a citizen or a resident of the Commonwealth of Australia; and
  - (ii) brought and maintained in Australia and determined in accordance with the law of a State or Territory or the Commonwealth of Australia.

**Notes:** Cover under paragraphs (a) and (b) excludes Practice in the United States of America.  
Cover under paragraph (c) for team doctors and their accompanying Employees extends to the United States of America.

### 2.5 Volunteer Practice

We agree to cover the Doctor for legal liability for any Claim which arises out of Practice by the Doctor as an unpaid volunteer in the course of a voluntary activity such as any amateur sporting activity, school or community based event, charity work, aid program or disaster response work.

**Note:** Reimbursement of reasonable incidental expenses for travel, meals and accommodation will not affect cover under this clause.

### 2.6 Liability for restricting ability to practise

We agree to cover the Doctor for legal liability for any Claim and for Expenses arising out of any act, error or omission committed or alleged to have been committed by the Doctor in the course of directly supervising, training or mentoring a registered medical practitioner who does not provide health care treatment, advice or service other than within the Category and where the supervision, training or mentoring:

- (a) is required by a college, training institution or medical board for the purpose of obtaining, retaining or regaining a recognised professional medical qualification, award or registration; or
  - (b) is undertaken at the request or direction of, or with the knowledge and consent of, the Doctor's employer,
- and which has the effect of restricting the ability of the registered medical practitioner to provide health care treatment, advice or service in the future.

### 2.7 Medical research and clinical trials

We agree to cover the Doctor and any Employee acting under the direct control and supervision of the Doctor for any Claim which arises out of the Doctor's role in any medical research or clinical trial as an investigator or co-investigator if the medical research or clinical trial is:

- (a) approved by a properly constituted human research ethics committee approved and registered by the National Health and Medical Research Council;
  - (b) conducted in accordance with the requirements of that ethics committee; and
  - (c) within the Category, or a category that We determine is a lower risk than the Category and for which the Doctor is qualified
- but no cover is provided for any Claim which arises out of:
- (d) the Doctor or any Employee sponsoring, administering, designing or controlling a clinical trial or research project (or failing to do any of those things);
  - (e) medical research or a clinical trial where the Doctor or Employee did not directly participate in the provision of the healthcare treatment, advice or service for that medical research or clinical trial; or
  - (f) the Doctor or any Employee participating (or failing to participate) in an ethics committee for medical research or a clinical trial.

**Note:** Under clause 5.18, no cover is provided for any medical research or clinical trial other than as set out in this clause.

## 2.8 Loss of Documents

We agree to cover You for Expenses incurred in replacing or restoring Documents in Your possession if, in the course of Practice, the Documents are Lost and, after diligent search and inquiry cannot be located, if:

- (a) the Loss first occurs or You first become aware of the Loss within the Period of Insurance and You first notify 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 Lost;
- (c) any claim under this clause will be 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 the Commonwealth of Australia prior to the Loss.

In this clause 2.8 only:

- **Loss and Lost** mean: destruction, damage, loss, mislaying or otherwise rendering unusable or affected to the extent of being unable to be restored.
- Documents in Your possession will include those in the possession of a person to, or with, whom You reasonably entrusted, lodged or deposited the documents in the ordinary course of business.
- We will not be liable for any Expenses for Loss of Documents where, in our opinion, the Loss of Documents arises out of either or both of the following:
  - any software code, including a computer virus, Trojan horse, worm, ransomware, spyware or other malicious software, that is designed to cause loss or damage to, or otherwise impair the functionality of, Your hardware or software; or
  - unauthorised access to Documents and You did not have appropriate security measures, back-up copies, systems or protocols in place to prevent the unauthorised access.

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

## 2.10 Severability and non-imputation

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

- (a) is entirely innocent of and had no prior knowledge of the matter which entitled Us to refuse or reduce Our liability; 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.

## 2.11 Continuous cover

- (a) If:
  - (i) You could have first notified Us of a Claim or other covered matter under an earlier medical indemnity insurance policy issued by Us;
  - (ii) You provide Us with written notice of the Claim or other covered matter during the Period of Insurance; and
  - (iii) We have been Your insurer under a 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 or other covered matter as a notification under the Policy during the Period of Insurance.

- (b) If:
  - (i) You could have first notified MDASA of a Claim or other covered matter under medical indemnity cover provided to You after 1 July 2000 and before 1 July 2003;
  - (ii) You provide Us with written notice of the Claim or other covered matter during the Period of Insurance; and
  - (iii) You were a financial member of MDASA continuously between the date on which You could have first notified MDASA and the date on which the notification was given to Us,

We will treat the notification of the Claim or other covered matter as a notification under the Policy during the Period of Insurance.

- (c) The terms and conditions of the Policy (including any limits of cover and deductible) applicable to a Claim or other covered matter notified under:
  - (i) paragraph (a) will be the terms and conditions applicable to Our medical indemnity insurance policy under which You could have first notified Us; and
  - (ii) paragraph (b) will be the terms and conditions of this Policy.

## Section 2 Other matters that We cover You for

### 2.12 Other proceedings and investigations

We agree to cover You for Expenses incurred with Our prior written consent in defending or responding to complaint to or investigations, proceedings or assessments:

- (a) by the Office of the Australian Information Commissioner 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; and
- (b) by Services Australia or the Professional Services Review Agency in relation to:
  - (i) whether the service You provided met the requirements of the Medicare Benefits Scheme item descriptor;
  - (ii) whether the circumstances in which services were rendered constitute a 'prescribed pattern of services'; or
  - (iii) whether or not You kept adequate and contemporaneous records for Medicare Benefits Scheme services You have rendered or initiated.

To be covered under this clause, the complaint, investigation, proceeding or assessment must arise out of Practice after the Retroactive Date, the circumstances of which You first notify Us in writing during the Period of Insurance.

### 2.13 Interruption to income and out of pocket expenses cover

We agree to cover the Doctor for any personal loss of Gross Income and out of pocket expenses that the Doctor reasonably incurs with Our prior written consent and which arises out of the Doctor's physical attendance being required by Us or by law in responding to a Claim or other covered matter under the Policy.

**Notes:** Out of pocket expenses includes travel, meal and accommodation expenses.  
This clause does not provide cover for any loss of income for any person other than the Doctor including any employees or employer.

### 2.14 Run-off cover

- (a) Subject to paragraphs (b), (c), and (d), We agree to cover You for no additional premium for legal liability for Claims, Claims Costs and Expenses which would otherwise be covered by the Policy but which are not covered by the Policy solely because they arise out of health care treatment, advice or service that is not within the Category, if the Doctor was previously covered by Us for that health care, treatment, advice or service under a contract of insurance and the Doctor has held continuously medical indemnity insurance with Us for a period of at least:
  - (i) 2 years, if the Category is for ongoing practice (other than an employer-indemnified, non-clinical, retired, compound life or suspended Category); or
  - (ii) 5 years, if the Category is an employer-indemnified Category.
- (b) We may require the payment of an additional premium for the cover provided by paragraph (a), based on Your change of Category, whether cover is no longer required for Public Patients and based on Your claims and practice history, in which case no cover is provided by paragraph (a) until such additional premium has been paid to Us.
- (c) We will also offer to provide You with the cover described in paragraph (a) for an additional premium if the Doctor has not continuously held cover with Us for the periods specified in paragraph (a).
- (d) This Policy will apply to each matter for which You are covered under this clause as if each reference in this Policy to 'Practice' includes the provision of the health care treatment, advice or service out of which the covered matter arises.

**Note:** Under clause 4.8, You may be entitled to a rebate of Premium in the event of a change to a lower risk Category.

### 2.15 Public Patients

We agree to cover You for legal liability for any Claim and for Expenses arising out of Practice provided to a Public Patient that is not otherwise excluded by the Policy.

**Notes:** Under clause 4.10, it is a condition of the Policy that the Doctor comply with any request by Us to declare his or her Gross Income, distinguishing between Gross Income derived from Practice provided to Public Patients and Gross Income derived from Practice provided to other persons.

The Doctor must provide to Us prior to the start of the Period of Insurance any information We reasonably require as to whether the Doctor must maintain his or her own insurance for health care treatment, advice or service provided to a Public Patient.

Under clause 5.25, no cover is provided if You are entitled to indemnity from another source.

### 2.16 Liability for reporting incidents or other persons

We agree to cover the Doctor for legal liability for Claims and Expenses arising out of the Doctor having:

- (a) reported an incident or a person to a health practitioner board, medical tribunal, professional college or association, hospital, health service, health authority, private health insurer, Services Australia in relation to Medicare, a health care complaints body, another government department or agency including the police or child protection services, a health care ombudsman or other body responsible for the professional discipline or registration of health care professionals; or
- (b) assisted in an investigation in relation to the incident or the reporting of an incident to any one or more of the bodies described in paragraph (a).

## 2.17 Innocent partner cover

We agree to provide cover for legal liability for any Claim first made against the Doctor and of which You first notify Us in writing during the Period of Insurance and which arises out of Practice after the Retroactive Date where:

- (a) the Claim does not arise out of the provision of health care treatment, advice or service by the Doctor but arises out of the practice of a medical profession by the Doctor;
- (b) the Claim arises out of health care treatment, advice or service first provided on or after the Retroactive Date by another person or entity (the *other party*):
  - (i) with whom the Doctor is jointly and severally liable solely by reason of a partnership with the other party
  - (ii) within the Category, or a category that We determine is a lower risk than the Category and for which the Doctor is qualified; and
  - (iii) in the conduct of the partnership; and
- (c) the Doctor has obtained annually written evidence of current medical indemnity insurance covering the liability of the other party in respect of the provision of health care treatment, advice or service in the conduct of the partnership.

Our liability under this clause is subject to a Sub-Limit of Cover equal to the lesser of:

- the Doctor's total liability for the Claim and Claim Costs divided by the number of partners in the partnership; and
- the Aggregate Limit of Cover.

For the purposes of this clause a *partnership* means a partnership within the meaning of the Partnership Act in the State or Territory in which the partnership is formed.

## 2.18 Protection of reputation

We agree to cover the Doctor for Expenses incurred in relation to complaints and proceedings pursued by the Doctor in which the Doctor alleges that he or she has been defamed arising out of Practice if:

- (a) You first notify Us of the complaint or proceeding in writing during the Period of Insurance; and
- (b) the complaint or proceeding is not pursued against one or more persons insured by Us.

## 2.19 Pursuit of indemnity

We agree to cover the Doctor for Expenses incurred in pursuing a third party including an insurer, employer, professional college or association, hospital, health service, health district, health authority or other government authority for indemnity in respect of any Claim or other matter covered under the Policy, where the Doctor is entitled to indemnity from the third party but is not indemnified by the third party.

## 2.20 Public relations Expenses

We agree to cover the Doctor for Expenses incurred in engaging the services of a public relations consultant solely for the purpose of protecting his or her 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 90 days after the Claim is made against You or after You first become aware of the other covered matter; and
- (b) with Our prior written consent.

## 2.21 Unintentional intellectual property rights infringement

We agree to cover the Doctor for legal liability for any Claims and for Expenses arising out of an unintentional infringement of a third party's intellectual property rights in the course of Practice, where the Doctor has taken reasonable steps to avoid the infringement.

## 2.22 Communicable disease cover

We will pay the Doctor the amount specified in the Schedule if he or she first tests seropositive for a Communicable Disease during the Period of Insurance if:

- (a) at least 3 months after the first date on which the Doctor has been continuously insured with Us under a policy that provides cover for the Communicable Disease:
  - (i) tested seronegative for the Communicable Disease; and thereafter
  - (ii) the Doctor acquired the Communicable Disease arising out of Practice.
- (b) at the start of the Period of Insurance, the Doctor did not know or suspect, and could not reasonably be expected to have known or suspect, that they had the Communicable Disease;
- (c) the Doctor tested seronegative for the Communicable Disease at least 3 months after the start of the Period of Insurance and before the seropositive test;
- (d) all serological testing referred to in this clause is conducted by a properly accredited or approved pathology laboratory in Australia;
- (e) the seropositive result is not vaccine-induced;
- (f) We have not made a payment to the Doctor for communicable disease cover under this or any other policy; and
- (g) the seropositive test result is notified to Us during the Period of Insurance.

Our liability under this clause will be reduced proportionately to the extent that the Doctor is entitled to indemnity under one or more other insurance policies that provide cover in respect of the Communicable Disease.

**Note:** Acceptance of a payment under this cover may affect the amount of other compensation that is payable to You with respect to a related disability or insurance claim. You should speak to Your other providers before making a claim under this clause.

## Section 2 Other matters that We cover You for

### 2.23 Prior practice

- (a) Subject to paragraphs (b) and (d), We agree to cover You for no additional premium for legal liability for Claims and Expenses which are not covered by the Policy solely because they arise out of health care treatment, advice or service that is not within the Category but for which We previously and continuously covered the Doctor (prior to the Period of Insurance) in categories that We determine are each a lower risk than the Category. For the purpose of this paragraph, practice as a medical student or intern is deemed to be a lower risk than the Category.
- (b) If the Claim or Expenses arise out of health care treatment, advice or service for which We last covered the Doctor as a medical student, the terms and conditions of the Policy (including any limits of cover and deductible) will be those of the last insurance policy that We issued to the Doctor as a medical student.
- (c) Subject to paragraphs (b) and (d), We also agree to cover You for no additional premium for legal liability for Claims and Expenses which are not covered by the Policy solely because they arise out of health care treatment, advice or service that is not within the Category but for which You were previously and continuously covered as an Intern or Salaried Medical Officer in Training under a medical indemnity insurance policy issued to You by any other insurer authorised by the Australian Prudential Regulation Authority.
- (d) The terms and conditions of the cover provided in the circumstances described in paragraphs (a) and (c) will be the terms and conditions of this Policy that apply to the Category that describes Your practice at the time of the circumstance or incident out of which the covered matter arises, as determined by Our current Categories of Insurance Guide for Doctors, including any limits of cover and deductibles that We currently apply to that Category.
- (e) This Policy will apply to each matter for which You are covered under this clause as if each reference in this Policy to 'Practice' includes the provision of the health care treatment, advice or service out of which the covered matter arises.

### 2.24 Statutory liability

We agree to cover the Doctor 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 Doctor has taken reasonable steps to avoid the breach; and
- (b) to the extent permitted by law, for any pecuniary penalties or compensatory civil penalties imposed on the Doctor under a law referred to in paragraph (a).

### 2.25 Mandatory breach notification

We agree to cover You for Expenses incurred in making a mandatory notification regarding a breach or suspected breach of Australian workplace health and safety law, environmental law or privacy law to a regulator, statutory body, authority or commissioner.

### 2.26 Telehealth

We agree to cover the Doctor for legal liability for any Claim and for Expenses arising out of Practice by the Doctor via telehealth if, at the time of the health care treatment, advice or service out of which the covered matter arises:

- (a) the Doctor and the telehealth patient are both within the Commonwealth of Australia;
- (b) the Doctor and the telehealth patient have a pre-existing clinical relationship (not based solely on Practice via telehealth) and:
  - (i) the Doctor is within the Commonwealth of Australia and the telehealth patient is outside the Commonwealth of Australia; or
  - (ii) the Doctor is outside the Commonwealth of Australia for no more than 120 days during the Period of Insurance and the telehealth patient is within the Commonwealth of Australia; or
- (c) the Doctor is practising in a radiology or pathology Category and the covered matter arises out of the analysis of images or samples and providing an opinion or other report to another person (the recipient) where:
  - (i) the Doctor is within the Commonwealth of Australia and recipient is outside the Commonwealth of Australia; or
  - (ii) the Doctor is outside the Commonwealth of Australia and the recipient is within the Commonwealth of Australia.

No cover is provided for any Claim or Expenses arising out of Practice via telehealth:

- (d) that is not conducted in accordance with any applicable law, lawful requirement issued by a government or statutory authority or guidelines issued by a professional college or association or a health practitioner board responsible for the Doctor's professional discipline or registration;
- (e) where information relating to the telehealth patient is communicated electronically (including by email, webchat, social media or messaging apps) for the purpose of health care treatment, advice or service by the Doctor (including referring the telehealth patient to another practitioner, providing a medical certificate or writing a prescription) other than where:
  - (i) the Doctor and the telehealth patient have a pre-existing clinical relationship (not based solely on Practice via telehealth); or
  - (ii) the Doctor is given prior access to the medical records of the telehealth patient by another practitioner, practice or hospital with whom or which the telehealth patient has a pre-existing clinical relationship (not based solely on Practice via telehealth); or
- (f) where the telehealth patient has been outside the Commonwealth of Australia for longer than 120 days at the time of the health care treatment, advice or service out of which the covered matter arises.

For the purposes of this clause:

- (i) *telehealth* means the provision of health care treatment, advice or service using information and communication technologies whether or not in real time; and
- (ii) *telehealth patient* means the individual to whom the Doctor provides health care treatment, advice or service via telehealth.

**Notes:** Unless agreed by Us in writing, cover is at all times subject to the provisions of clause 2.4 Practice outside the Commonwealth of Australia. Under clause 5.32, no cover is provided for any telehealth other than as set out in this clause.

## 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 out of 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 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.

### 3.2 Other insurance and 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 5.25, 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 may, at Our absolute discretion and on such terms and conditions as We see fit, agree to cover the Doctor for Expenses incurred in arranging separate legal representation for the Doctor in defending or responding to a coronial inquiry or royal commission if the Doctor:
  - (i) is entitled to be indemnified for those Expenses by an employer;
  - (ii) is not entitled to be covered for those Expenses under the Policy by reason of clause 5.25; and
  - (iii) if the Doctor believes that there may be a conflict of interest if the same lawyers were to act for both the Doctor and the Doctor's employer in relation to the coronial inquiry or royal commission,in which case We reserve the right to seek recovery of the Expenses We have incurred from the Doctor's employer.
- (c) 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.
- (d) 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.

## Section 3

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

### 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 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.

### 3.7 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.

### 3.8 Advances

We may, but are not required to, advance Claim Costs or Expenses to You prior to the completion (including any appeal) of 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 other covered matter, the prevalence and outcome of previous similar Claims or other covered matters, Our assessment of the likely amount of the Claim Costs or Expenses and Your ability to repay them if You are unsuccessful. Our assessment of these matters, and the terms on which We are prepared to continue to advance Claim Costs or Expenses, if at all, 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.

### 3.9 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, health practitioner board, medical tribunal or other body responsible for Your professional discipline or registration, professional college or association, hospital, health service, health district, health authority, private health insurer, Services Australia in relation to Medicare, 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 by 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.

### 3.10 Criminal convictions

If any of You is found guilty of, or admits, any crime then that person 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.



### 4.1 Limit of cover

- (a) Our liability 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) Our liability 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.

**Note:** Our liability to You may also be limited by operation of another clause such as clause 2.17 or clause 4.2.

### 4.2 Practice Entities and multiple policies

- (a) A Practice Entity and its Employees are only covered by the Policy if the entitlement to cover of the Practice Entity and its Employees arises out of Practice by the Doctor.
- (b) 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 Aggregate Limit of Cover and Sub-Limit of Cover.

### 4.3 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.

### 4.4 Deductible – payment

If We notify You in writing that You are entitled to cover for a 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 matter until You have paid the Deductible. If the 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.

### 4.5 Deductible – costs inclusive

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

### 4.6 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 Claims or other covered matters are all made against the same person in relation to the same incident or series of related incidents and:
  - (i) all the Claims are part of the same class action or representative proceeding; or
  - (ii) the incident, or series of related incidents, occurred in connection with a pregnancy or the birth of a child or children.

## Section 4 Additional obligations for You and Us

### 4.7 Material change in risk

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

- (a) the Doctor or a Practice Entity 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*;
- (b) change to the State or Territory in which Practice is conducted;
- (c) change in the Category;
- (d) de-registration, suspension or restriction of the Doctor's registration with a medical board; and
- (e) the Doctor being required to maintain their own insurance for health care treatment, advice or service provided to a Public Patient, and You will immediately notify Us if during or after the Period of Insurance, the Doctor:
  - permanently retires from private medical practice;
  - ceases (temporarily or permanently) practice as a medical practitioner because of maternity, permanent disability or death; or
  - ceases (temporarily or permanently) providing medical services for payment in the course of private medical practice but continues providing medical services free of charge.

### 4.8 Material change in risk – adjustment of Premium

- (a) In the event of change notifiable under clause 4.7 that, in Our opinion, decreases the risk insured by the Policy, We may agree to rebate part of the Premium having regard to:
  - (i) Our customary short term rates; and
  - (ii) the continuing run-off cover provided under the Policy for Claims, Claims Costs and Expenses arising out of circumstances occurring prior to the date of the event.
- (b) Paragraph (a)(ii) does not apply to a change in the Category if the Doctor has held continuously medical indemnity insurance cover with Us for the periods and in the Categories specified in clause 2.14.
- (c) We may apply any rebate of the Premium to offset, wholly or partly, any outstanding amount that You owe to Us, whether or not in connection with this Policy.

### 4.9 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 rates. 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) Other than where the Policy is cancelled during the cooling-off period, the Doctor may cancel the Policy at any time by providing Us with notice in writing. Upon receipt of such notice, We will agree to cancel the Policy and, if You have not notified Us of any claims or circumstances under the Policy prior to the cancellation notice We will rebate the Premium (but not any membership fee) on a pro-rata basis, less an amount equal to 90 days' Premium. 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 notice.
- (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.

### 4.10 Gross Income / sessions declaration

- (a) At any time during the Period of Insurance and within 90 days after the expiry of the Period of Insurance We may send to the Doctor a written notice requiring a declaration of the Doctor's Gross Income or sessions (as the case may be) for the Period of Insurance, distinguishing between Gross Income derived from Practice provided to Public Patients and Gross Income derived from other Practice.
- (b) Within 30 days of receipt of a notice referred to in paragraph (a), the Doctor must provide Us with the written declaration required by the notice.
- (c) We may, at Our discretion and at Our cost, require an audit of the declaration referred to in paragraph (b), in which case You will provide all information and assistance reasonably required for the purpose of the audit. If the Doctor does not provide the declaration, the information or the assistance required, We may, at Our discretion and at Your cost, audit the Doctor's Gross Income or sessions (as the case may be) for the Period of Insurance.
- (d) We may adjust the Premium based on a comparison of the Doctor's declaration provided under this clause with the estimated Gross Income or sessions disclosed by the Doctor when renewing or applying 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, unless the adjustment of the Premium is less than \$50 (exclusive of administrative fees, duties and taxes) in which case neither You nor We will be liable to pay to the other the adjustment.
- (e) We may avoid the Policy from inception as permitted by the Insurance Contracts Act 1984 if You fraudulently fail to disclose or misrepresent your Gross Income or sessions.

#### 4.11 Practice review

We may undertake a Practice review on 21 days' prior written notice to the Doctor, 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.

#### 4.12 Non-payment of Premium

- (a) The Policy will not come into force unless and until You have paid the Premium in full prior to the start of the Period of Insurance. Also, unless the Policy is a renewal of a prior medical 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:** 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) It is also a condition of the Policy that You must:
  - (i) immediately pay any premium owing to Us in relation to each prior insurance policy issued to You as and when it falls due for payment; and
  - (ii) comply with any requirement under a prior insurance policy issued to You to provide Us with a declaration of the Doctor's Gross Income or sessions, or to provide information or assistance in relation to such a declaration, **and if You fail to comply with either of these conditions then We may cancel the Policy.**
- (c) 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.

#### 4.13 Assignment

You may not assign Your interest in the Policy.

#### 4.14 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

#### 4.15 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.

#### 4.16 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.

#### 4.17 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.

#### 4.18 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

other than to the extent that cover is provided under clause 2.10 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 out of 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 insurance policy or for the purpose of seeking cover from any prior policy or indemnity arrangement; 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.

### 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 or by guarantee or warranty by You except to the extent that Your liability is the same as Your liability had the duty or obligation, guarantee or warranty not been assumed.

### 5.5 Trading debts

in any way related to:

- (a) a trading debt; or
- (b) a guarantee.

### 5.6 Fee for Practice

in any way related to all or part of the fee for Practice that You provided or will provide other than in circumstances where in Our view reimbursement of all or part of the fee for Practice will significantly reduce the likelihood of a Claim or complaint being made against You.

### 5.7 Related parties

in any way related to a Claim or a matter that is brought against You by or on behalf of:

- (a) an Employee, other than in respect of:
  - (i) health care treatment, advice or service provided by You to the Employee; or
  - (ii) cover provided under clause 1.4;
- (b) any other person or entity covered by the Policy; or
- (c) any entity controlled by You or in which You have a direct or indirect financial interest.

### 5.8 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.

### 5.9 Transmission of disease

other than in respect of Expenses, in any way related to the transmission of a virus, bacteria or disease carried by You in circumstances where You did not take any or adequate precautions to prevent the transmission of the virus, bacteria or disease 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.

**5.10 Fines and penalties**

other than in respect of any cover provided under clause 2.24, to the extent of any liability for exemplary or aggravated damages, fines or penalties including any civil penalty.

**5.11 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 Practice for pollution-related or asbestos-related conditions.

**5.12 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.

**5.13 Inappropriate Practice**

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

**5.14 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 health care treatment, advice or service is provided in the course of Practice.

**5.15 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 Practice.

**5.16 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.

**5.17 Product liability**

arising out of the manufacture, distribution, promotion or sale by You of any goods or products.

**5.18 Medical research and clinical trials**

arising out of any medical research or clinical trial, whether or not such medical research or clinical trial is related to Practice, other than to the extent that You are entitled to indemnity under clause 2.7.

**5.19 Directorships and committee memberships**

- (a) arising out of Your directorship or membership of, or being an officer of, an external entity or committee being an entity not related to the Doctor or to Practice by the Doctor; or
- (b) arising out of an actual or alleged act, error or omission of the Doctor or an Employee acting in their capacity as a director, officer or committee member of a corporation.

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

### 5.20 Practice outside the Commonwealth of Australia

other than in respect of any cover provided under clauses 2.2, 2.4 or 2.26 arising out of Practice outside the Commonwealth of Australia except to the extent that the Claim or other covered matter relates to an incident that occurred within the Commonwealth of Australia.

### 5.21 United States of America

- (a) other than in respect of any cover provided under clauses 2.2(a)(iii) or 2.4(c), arising out of Practice:
  - (i) in a jurisdiction to which the laws of the United States of America apply; or
  - (ii) to which the laws of the United States of America apply;
- (b) other than in respect of any cover provided under clause 2.2(a)(iii), in any way related to:
  - (i) proceedings commenced or maintained in the United States of America; or
  - (ii) the enforcement anywhere of a judgment or verdict of proceedings commenced or maintained in the United States of America.

### 5.22 Statutory exclusions

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

### 5.23 Obligations to employees

attributable to or as a consequence of 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.

### 5.24 Liability for partners

other than in respect of cover under clause 2.17, 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.

### 5.25 Other indemnities

for which You are indemnified or are entitled to:

- (a) cover under a 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.

**Note:** Before providing health care treatment, advice or service to any Public Patient, consider carefully whether or not there is any entitlement to indemnity for liability arising out of that health care from another source, such as a hospital or area health service.

### 5.26 De-registration and restrictions on Practice

- (a) in any way related to Practice for which the Doctor or an Employee was required to be registered, endorsed or authorised by a health practitioner board but for which he or she was not registered, endorsed or authorised; or
- (b) 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, other than in respect of Expenses incurred by the Doctor or a Practice Entity in relation to such an act, error or omission by a person for whose act, error or omission the Doctor or Practice Entity is vicariously liable.

### 5.27 Publication and authorship

arising out of the conduct by the Doctor as a publisher or author other than in respect of published health care advice, health care articles or academic papers or arising out of presentations by the Doctor or provided directly to a person by the Doctor in the course of Practice.

### 5.28 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.

### 5.29 Outside of Category, training, accreditation and qualifications

in any way related to health care treatment, advice or service:

- (a) that is outside of the Category, other than in an unforeseen emergency situation or to the extent cover is otherwise expressly provided under the Policy; or
- (b) provided by any person who does not have the requisite training, accreditation and qualifications to do so.

### 5.30 Vicarious Liability for medical practitioners

in any way related to any act, error or omission committed or alleged to have been committed by a registered medical practitioner, other than a locum to whom clause 2.3 applies, for which the Doctor, the Practice Entity or both are vicariously liable.

### 5.31 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 insurance policy;
- (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) Your dismissal or termination of employment within 90 days of the date on which You were first insured by Us under an insurance policy;
- (e) the pursuit or defence of a complaint, prosecution or proceedings against or by Your current or former business partner;
- (f) 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;
- (g) the pursuit of the removal or variation of any restriction, limitation, or prohibition that has been imposed on You by any lawful authority, including a health practitioner board, medical tribunal or other body responsible for Your professional discipline or registration; or
- (h) a dispute with any lawful authority, including a health practitioner board, medical tribunal or other body responsible for Your professional discipline or registration, in respect of any restriction, limitation or prohibition after it has been imposed on You.

### 5.32 Telehealth

arising out of any telehealth, other than to the extent that the Doctor is entitled to indemnity under clause 2.26.

For the purpose of this clause, *telehealth* means the provision of health care treatment, advice or service using information and communication technologies whether or not in real time.

**General Enquiries  
and Client Services**

Free Call 1800 777 156  
Facsimile 1800 839 284

**Claims and Legal Services**

(During Office hours and 24 hour emergency legal support)

Free Call 1800 839 280  
Facsimile 1800 839 281

[miga@miga.com.au](mailto:miga@miga.com.au)  
[www.miga.com.au](http://www.miga.com.au)

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