MEDICAL MALPRACTICE COMBINED LIABILITY INSURANCE POLICY

Policy Wording
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IMPORTANT INFORMATION

This Policy

This Policy is an important document. The Policy wording and Schedule together set out the cover provided, the amount insured and the terms and conditions of Your insurance. Please read it carefully and keep it in a safe place.

Your Insurance Broker has arranged this Policy for You. If You have any questions about Your cover, or You wish to contact ProRisk, please contact Your Insurance Broker for assistance.

ProRisk

ProRisk, Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076, has the authority to bind this Policy on behalf of the Underwriters.

Claims Made Policy

This Policy is issued by ProRisk on a Claims made and notified basis. This means that the Policy only covers Claims first made against You during the Insurance Period and notified to ProRisk in writing during the Insurance Period. The Policy does not provide cover for any Claims made against You during the Insurance Period if at any time prior to the commencement of the Insurance Period You were aware of facts which might give rise to those Claims being made against You.

Section 40(3) of the Insurance Contracts Act 1984 provides that where the insured gives notice in writing to the insurer during the Insurance Period of facts that might give rise to a Claim against the insured, the insurer cannot refuse to pay a Claim which arises out of those facts, by reason only that the Claim is made after the Insurance Period has expired.

Your Duty of Disclosure

Section 21 of the Insurance Contracts Act 1984 provides that before You enter into a contract of general insurance with an insurer, You have a duty to disclose to the insurer every matter that You know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. You have the same duty to disclose those matters to the insurer before You renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of a matter:

- That diminishes the risk to be undertaken by the insurer;
- That is of common knowledge;
- That Your insurer knows, or in the ordinary course of its business, ought to know;

As to which compliance with Your duty of disclosure is waived by the insurer.

Non-Disclosure

If You fail to comply with Your duty of disclosure, We may be entitled to reduce Our liability under the contract in respect of a Claim or We may cancel the contract. If Your non-disclosure is fraudulent, We may also have the option of avoiding the contract from its beginning.

Retroactive Liability

The Policy is limited by a Retroactive Date. The Policy does not cover any civil liability arising from Your conduct of the Professional Business prior to the Retroactive Date.

Alteration to Risk and Deregistration

The Policy requires You to notify us within thirty days of any material change in the nature of the Professional Business, or any act of insolvency or bankruptcy of the Insured. The Policy requires You to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of the Insured’s statutory registration. Claims arising from conduct which occurs subsequent to the cancellation, suspension or termination of the Insured’s statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing Your profession are excluded from indemnity under the Policy.

Limited Liability For Costs

The Policy provides that if a payment greater than the Limit of Indemnity is required to dispose of a Claim, Our liability for costs and expenses will be limited to the proportion that the Limit of Indemnity bears to the payment required to dispose of the Claim.

Policy Cancellation

In the event of Policy cancellation by the Insured, ProRisk’s cancellation rates will apply.

Waiver of Rights of Subrogation

The Policy provides that You must not, without Our prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which You may have in respect of any Claim covered under this Policy. Further, You must not do anything or fail to do anything which excludes, limits or prejudices Our rights of subrogation.
Privacy Statement

ProRisk is bound by the obligations of the Privacy Act 1988 (as amended) regarding the collection, use, disclosure and handling of personal information. We will protect the privacy of Your personal information.

We collect personal information about You to enable us to provide You with relevant products and services, to assess Your application for insurance and, if a contract is entered, to enable Us to provide, administer, and manage Your Policy, and to investigate and handle any Claims under Your Policy. We may disclose Your information to third parties (who may be located overseas), such as Underwriters, lawyers, claims adjusters, and others appointed by ProRisk or by Underwriters to assist Us in providing relevant products and services. We may also disclose Your information to people listed as co-insured on Your Policy and to Your agents. By providing Your personal information to Us, You consent to Us making these disclosures.

If You do not provide all or part of the information required, We may not be able to provide You with Our products and services, consider Your application for insurance, administer Your Policy, assess or handle Claims under Your Policy, or You may breach Your duty of disclosure.

When You provide Us with personal information about other individuals, We rely upon You to have made them aware of that disclosure, and of the terms of the ProRisk Privacy Statement, and to obtain their consent. For a copy of the ProRisk Privacy Statement or to request access to or update Your personal information, contact the Privacy Officer at ProRisk by email: enquiries@prorisk.com.au or by mail at the address shown on this Policy.

General Insurance Code of Practice


This Policy and the Schedule are Insurance Council of Australia’s General Insurance Code of Practice compliant, apart from any Claims adjusted outside Australia.

Complaints Handling

Any enquiry or complaint relating to this insurance should be referred to ProRisk in the first instance. We have a complaints handling and internal dispute resolution process to assist You, and information about Our complaints handling procedures is available upon request. If this does not resolve the matter or You are not satisfied with the way a complaint has been dealt with, You should write to the Complaints Department of the Underwriters:

The Complaints Manager
Swiss Re International SE Australia Branch
Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Telephone: (02) 8295 9500
Email: complaints.anz@swissre.com

Complaints that cannot be resolved by the Complaints Department of the Underwriters may be referred to the:

Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001
Email: info@afca.org.au
Telephone: 1800 931 678
Further details will be provided at the appropriate stage of the complaints process.

Definitions

Apart from in the various headings, words appearing in bold type in the Policy have specific meanings attached to them, such as “You” and “Us”. When reading the Policy please make sure that You refer to the various definitions to ensure that You understand what is being said.

Service of Suit

We agree that in the event of a dispute arising under this Policy, at Your request, We will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon Us may be served upon Us at the following address:

General Counsel
Professional Risk Underwriting Pty Ltd
Level 3, 100 Wellington Parade
EAST MELBOURNE VIC 3002
MEDICAL MALPRACTICE COMBINED LIABILITY INSURANCE

In consideration of the payment of the Premium and in reliance on the contents of the Proposal and any other information submitted by or on Your behalf, We will indemnify You in accordance with the terms of this Policy.

1. INSURING CLAUSE A - MEDICAL LIABILITY

1.1 We will indemnify You against all sums which You become legally liable to pay for any Claim:

(a) first made against You and notified to Us during the Period of Insurance; and

(b) arising from the provision of Health Care Services in the conduct of the Business; and

(c) for Personal Injury to any of Your patients or clients caused by:

(i) a negligent act, error or omission committed or allegedly committed by You or on Your behalf; or

(ii) a Good Samaritan Act committed or allegedly committed by You or on Your behalf.

1.2 We will indemnify You for Costs and Expenses incurred with Our prior consent for the investigation, defence or settlement of any Claim indemnified by insuring clause A.

2. INSURING CLAUSE B - PUBLIC LIABILITY AND GOODS SOLD OR SUPPLIED

2.1 We will indemnify You against all sums which You become legally liable to pay for any Claim:

(a) first made against You and notified to Us during the Period of Insurance; and

(b) for Personal Injury to any third party or loss or damage to the tangible Property of any third party; and

(c) as a result of an event or an occurrence happening in connection with the Business.

2.2 We will indemnify You for Costs and Expenses incurred with Our prior consent for the investigation, defence or settlement of any Claim indemnified by insuring clause B.

3. INSURING CLAUSE C

3.1 We will indemnify You against all sums which You become legally liable to pay for any Claim first made against You and notified to Us during the Period of Insurance arising in the conduct of Your Business as a result of any of the following:

Confidentiality

(a) Breach or alleged breach of Privacy and Health Records Legislation.

Defamation, libel and slander

(b) Actual or alleged defamation, libel or slander but only where, upon Our reasonable request, You issue an apology or an expression of regret. If You refuse to issue an apology or an expression of regret, We will not be liable to defend or indemnify You in respect of any Claim after the date of such refusal.

Dishonesty

(c) Actual or alleged dishonest or fraudulent acts or omissions of a Principal or Employee provided that:

(i) We will not indemnify any person who commits or condones any such conduct;

(ii) there is no indemnity for any loss or damage sustained after the date of Your discovery of any such conduct, or the date upon which You had reasonable cause for suspicion of such conduct;
(iii) You will, at Our request and expense take all reasonable steps to obtain reimbursement from any person committing or condoning such conduct;

(iv) the amount of indemnity available under this Policy will be reduced by any amount equal to the sum of any monies recoverable from any person committing or condoning such conduct, any monies owed by You to any such person, any monies held by You and belonging to any such person; and

(v) the Excess will apply to each and every individual dishonest or fraudulent act or omission.

Intellectual property

(d) Infringement or alleged infringement of copyright, trademarks, registered designs or patents.

Competition and Consumer Act: misleading or deceptive conduct

(e) Breach or alleged breach of any provision of the Competition and Consumer Act 2010 or the equivalent section(s) of the Fair Trading Legislation in any state and territory but only where the Claim was caused directly by such a breach.

3.2 We will indemnify You for Costs and Expenses incurred with Our prior consent for the investigation, defence or settlement of any Claim indemnified by insuring clause C.

4. AUTOMATIC EXTENSIONS

4.1 The automatic extensions are all subject to the terms and conditions of this Policy unless expressly stated otherwise. The Excess and the Limit of Indemnity (including any sub-limits) stated in the Schedule apply to the automatic extensions and the automatic extensions do not increase the Limit of Indemnity nor the Aggregate Limit of Indemnity.

Loss of Documents

4.2 Loss of or damage to Documents (including but not limited to Documents which have been destroyed, lost or mislaid after appropriate searches) which were in Your physical custody or control, provided that:

(a) the loss of or damage is sustained and notified to Us during the Period of Insurance; and

(b) the indemnity for this automatic extension is limited to the costs, charges and expenses in restoring or replacing the lost or damaged Documents; and

(c) the costs, charges and expenses are supported by invoices and/or accounts submitted to Us for Our approval; and

(d) any document kept in magnetic or electronic form is duplicated with the intention that the back up or duplicate document be used as the basis for restoring any lost or damaged Document to its original status; and

(e) this automatic extension does not extend to indemnify You for:

(i) the loss or damage to any Document the property of or entrusted to You by a third party; or

(ii) damage to any Document caused by normal wear and tear; or

(iii) for corruption, theft, interference with, lack of access to electronically stored data caused or contributed to by a computer virus or a third party where such costs, charges and expenses relate to the replacement / restoration of such data after a period or more than 48 hours after the computer virus or act took place or effect.
4.3 **Inquiries**

We will pay all Costs and Expenses incurred with Our prior consent for the attendance by You at any Inquiry provided that:

(a) We will have the right to appoint legal representatives to represent You at the Inquiry if We consider it to be necessary and may appoint legal representatives of Our choice for that purpose; and

(b) the Inquiry is commenced, ordered or commissioned during the Period of Insurance and is notified to Us during the Period of Insurance; and

(c) where stated in the Schedule, Our limit for all Costs and Expenses incurred under this automatic extension and in the aggregate shall not exceed the sub-limit stated in the Schedule for Inquiries and such sub-limit forms part of the Aggregate Limit of Indemnity under this Policy.

4.4 We will not, however, cover any legal costs associated with an appeal of a decision made as a result of an Inquiry.

4.5 The Excess shall apply to each and every Inquiry.

**Run-off cover**

4.6 If You cease to exist or operate, or are consolidated with, merged into, or acquired by any other entity, We will indemnify You under the insuring clauses and the extensions in respect of any Claim first made against You and notified to Us during the Period of Insurance but only in respect of a Claim arising from events or occurrences, acts, errors or omissions occurring while the Principal or Employee was employed by or part of Your organisation.

**Extended Run off cover**

4.8 We agree to continue the cover under this Policy beyond the Period of Insurance to any person insured by this Policy if:

(a) such person ceases to provide Health Care Services in connection with the Business; and

(b) such person has been insured with Us immediately prior to them ceasing to provide Health Care Services in connection with the Business; and

(c) such person has confirmed the above in writing to Us prior to the Policy expiry date and such person has received confirmation that the run-off cover has been activated.

Provided that:

(i) this extension only applies in relation to the conduct of the Business by reason of any act, error or omission occurring prior to the date that any such person ceases to provide Health Care Services in connection with the Business; and

(ii) the cover under this Policy is only in respect of Claims that are first made whilst We continue to write Medical Malpractice Combined Liability Insurance. Should We cease to write Medical Malpractice Combined Liability Insurance, this Policy will not provide cover for any Claims made after We cease to write Medical Malpractice Combined Liability Insurance.

**Students**

4.9 The definition of Employee in this Policy is extended to include any student who during or prior to the Period of Insurance obtains practical activities experience with You as part of a University, College, including the College of Advanced Education, TAFE, Association or government accredited training course, but only in respect of activities performed for and on Your behalf.
in the Business and under Your supervision.

Mergers and Acquisitions

4.10 The cover provided by this Policy will extend to any entity that is acquired by You during the Period of Insurance and involved in the same Business as You;

4.11 Provided that the assets of the entity to be acquired do not exceed 50% of Your assets.

Vicarious Liability for employed or contracted doctors

4.12 For the avoidance of doubt, and subject to the Policy terms and conditions, including General Condition 8.23, We agree to indemnify You for Your liability for any Claim arising as a consequence of the conduct of Your employed or contracted registered Medical Practitioners but only in respect of Claims arising from activities undertaken on Your behalf and in the conduct of the Business. Such employed or contracted registered Medical Practitioners, are not indemnified under this Policy for any individual liability arising from activities undertaken on Your behalf.

Liability for Contractors and Locums

4.13 We agree to indemnify You for Your liability for any Claim arising as a consequence of the conduct of Your contractors or locums but excluding Medical Practitioners, in respect of Claims arising from activities undertaken in the conduct of the Business.

Compensation for Court Attendance

4.14 We will pay You compensation if legal advisers, acting on Your behalf with Our consent, require any Principal or Employee to attend court as a witness in connection with a Claim covered under this Policy first made and notified to Us during the Period of Insurance, but only in circumstances where You actually pay the Principal or Employee for their time.

4.15 Such compensation by Us will be at the rate equivalent to such Principal’s or Employee’s daily take home salary or wage up to the maximum indicated in the Schedule per person for each day on which attendance is required subject to the maximum indicated in the Schedule for all persons for any one Claim. All payments under this extension will be part of and not in addition to the Limit of Indemnity.

Public Relations Expenses

4.16 We will indemnify You for Public Relations Expenses incurred by You in respect of an Adverse Publicity Event that first occurs and is notified to Us during the Period of Insurance.

4.17 Our total liability under this extension will not exceed the amount indicated in the Schedule during the Period of Insurance and all payments will be part of and not in addition to the Limit of Indemnity.

4.18 You must pay the Excess indicated in the Schedule for Public Relations Expenses, for any one Adverse Publicity Event. The Excess is deducted from Public Relations Expenses before the application of the limit stated in the Schedule. We have no liability for the amount of Public Relations Expenses that is less than the Excess for each Adverse Publicity Event. You agree that the Excess must be borne by You and is to remain uninsured.

Sixty Day Reporting Period

4.19 You may continue to notify Us of Claims up to sixty days after the expiry of the Period of Insurance, but only for Claims first made against You during the Period of Insurance and based on any act, error or omission committed or alleged to have been committed prior to the expiry of the Period of Insurance.

4.20 Any notification to Us during this sixty day reporting period will be deemed to have been first notified to Us during the Period of Insurance.

Continuous Cover

4.21 Notwithstanding exclusion clause 6.15, We will indemnify You under insuring clauses A, B and C for any Claim first made against You during the Period of Insurance arising from circumstances of which You were aware prior to the Period of Insurance provided that:
(a) We were Your medical malpractice insurer at the time that You first became aware of the circumstance and We have continued to be Your medical malpractice insurer; and

(b) The Limit of Indemnity under this extension shall be the lesser available under the terms of the Policy in force at the time that You first became aware of the circumstance and this Policy. The terms of this Policy will otherwise apply.

Spousal Liability

4.22 If a Claim against You includes a Claim against Your Spouse solely by reason of:

(a) such Spouse’s legal status as Your Spouse; or

(b) such Spouse's ownership or interest in property that the claimant seeks to recover as a result of a Claim made against You,

4.23 Then the Spouse's legal liability for compensation resulting from such Claim will be treated for the purposes of this Policy as Your liability.

4.24 This extension does not apply to the extent that the Claim alleges any act, error or omission by Your Spouse.

Statutory Liability

4.25 Notwithstanding exclusion 6.9, We will indemnify You:

(a) for Costs and Expenses incurred with Our prior consent in relation to proceedings under occupational health and safety law or environmental law first brought against You and notified to Us during the Period of Insurance resulting from the conduct of the Business;

(b) to the extent permitted by law, for any pecuniary penalties imposed upon You based on any breach of occupational health and safety law or environmental law as a result of proceedings under occupational health and safety law or environmental law first brought against You and notified to Us during the Period of Insurance resulting from the conduct of the Business, except for any pecuniary penalties:

(i) resulting from any act, error or omission occurring or committed prior to the Retroactive Date; or

(ii) imposed where You knew, or where a reasonable person in the circumstances ought reasonably to have known, prior to the Period of Insurance that You had contravened such law and committed an offence pursuant to that law; or

(iii) imposed as a result of further breaches committed after You first knew, or where a reasonable person in the circumstances ought reasonably to have known, that You had contravened such law and committed an offence pursuant to that law, and which led to the imposition of increased or additional pecuniary penalties;

(c) to the extent permitted by law, for any compensatory civil penalty first brought against You and notified to Us during the Period of Insurance resulting from the conduct of the Business.

4.26 The cover provided under this extension will only apply to such pecuniary penalties imposed in the jurisdiction of Australia and pursuant to the laws of Australia.

4.27 Our total liability under this extension will not exceed the amount indicated in the Schedule. All payments under this extension will be part of and not in addition to the Limit of Indemnity.

Reinstatement of the Limit of Indemnity

4.28 While the Limit of Indemnity for any one Claim remains unchanged, if the Limit of Indemnity for either Medical Malpractice Insurance or Public Liability Insurance is exhausted during the Period of Insurance, We agree to reinstate the Limit of Indemnity for the exhausted insurance up to the Aggregate Limit of Indemnity stated in the
Schedule. At all times the Maximum Aggregate Limit of Indemnity for the Policy applies.

5. OPTIONAL EXTENSIONS

5.1 The optional extensions are all subject to the terms and conditions of this Policy unless expressly stated otherwise. The Excess and the Limit of Indemnity stated in the Schedule apply to the optional extensions and the optional extensions shall not increase the Limit of Indemnity nor the Aggregate Limit of Indemnity.

Joint Ventures

5.2 Underwriters will indemnify You under the insuring clauses or the extensions for any Claim in respect of Your proportion of liability for Your conduct in a joint venture, provided that the Claim is first made and notified to Underwriters during the Period of Insurance.

Principals’ Prior Business

5.3 Underwriters will indemnify the Principals and each of them for any Claim made against them under the insuring clauses or the extensions arising out of a Principal’s conduct of a prior business, provided that the Claim is first made and notified to Underwriters during the Period of Insurance.

6. EXCLUSIONS

6.1 We will not indemnify You for:

Abuse

6.2 Any Claim arising, indirectly or directly, or in any way connected with any verbal, physical or sexual abuse, assault, battery or any violence committed or alleged to have been committed by You.

Asbestos

6.3 Any Claim arising, indirectly or directly, or in any way connected with asbestos other than in respect to the provision of Health Care Services for an asbestos related illness.

6.4 Any Claim:

(a) arising, indirectly or directly, or in any way connected with any liability assumed by You under a contract, deed or agreement which goes beyond the duty to use such skill and care as is usual in the exercise of the Business; or

(b) arising, indirectly or directly, or in any way connected with an assumed or contractual liability including a liability assumed by You under a contractual term, condition or undertaking unless such liability would have existed or attached in the absence of such assumed or contractual liability; or

(c) arising, indirectly or directly, or in any way connected with any liability assumed by You under a guarantee or warranty; or

(d) arising, indirectly or directly, or in any way connected with any liability for which You have foregone, excluded or limited a right of recovery against any party; or

(e) arising, indirectly or directly, or in any way connected with an indemnity given or undertaken or a liability assumed by You on behalf of a concurrent or joint wrongdoer; or

(f) or part of a Claim where You are obligated to pay for or contribute to loss attributable to concurrent wrongdoers that are Medical Practitioners.

Directors and officers

6.5 Any Claim made against a Principal or Employee where such Claim is made solely by reason of the person holding the position, or having acted in the position, of Director or Officer (as these terms are defined in the Corporations Act 2001 (Cth)) of Your organisation or having acted in that capacity.

Dishonest or willful acts

6.6 Subject to Insuring Clause 3.1(c), any Claim or Inquiry directly or indirectly caused by, contributed to by, or arising out of or in connection with any actual or alleged:

(a) dishonest, fraudulent or criminal acts, errors or omissions; or
(b) wilful breach of any statute, contract, agreement or duty; or

(c) any act, error or omission committed or omitted in reckless disregard; or by You.

**Employment liability**

6.7 Any **Claim:**

(a) in relation to, or for, an actual or alleged *Employment Practices Breach*; or

(b) for breach of any obligation owed by You in Your capacity as employer to any Employee or in respect of which compensation is available under any Workers’ Compensation Scheme or any similar legislation.

**Employers and contractors must be registered**

6.8 Any **Claim** which arose out of *Health Care Services* provided by You or a person contracted by You to provide *Health Care Services* where You or the person contracted:

(a) did not hold the requisite qualifications, authorisations or licenses to carry out such *Health Care Services*; or

(b) were required to be but were not registered in accordance with the laws of the Commonwealth or of any state or territory in which the *Health Care Services* were provided.

**Excess**

6.9 The **Excess**.

**Fines, penalties and damages**

6.10 Any fines or penalties including but not limited to civil or criminal penalties and punitive, multiple, aggravated or exemplary damages.

**Insolvency**

6.11 Any **Claim** arising from the administration, receivership, insolvency or bankruptcy of You.

**Jurisdiction and territorial limits**

6.12 Any:

(a) **Claim** arising from any legal proceeding brought in any court of the United States of America or Canada, or their dominions and protectorates, or arising from any judgment registered or lodged in connection with such a legal proceeding or any **Inquiry** commenced, ordered, commissioned or conducted in the United States of America or Canada, or their dominions and protectorates; or

(b) **Claim** arising from any activities, acts, errors or omissions by or on behalf of the **Insured** or events or occurrences in the United States of America or Canada, or their dominions and protectorates; or

(c) loss of or damage to **Documents** occurring within the United States of America or Canada, or their dominions and protectorates.

**Alcohol, Narcotics and Intoxicants**

6.13 Any **Claim** or **Inquiry** directly or indirectly caused by, contributed to by, or arising out of or in connection with Your being under the influence of alcohol, intoxicants or narcotics.

**Other insurance**

6.14 Any **Claim** or **Inquiry** for which assistance, coverage or indemnity may be available to You by a Medical Defence Organisation or other insurer whether or not such assistance, coverage or indemnity is discretionary and not ultimately provided to You by the Medical Defence Organisation or other insurer. In such a case this **Policy** will only contribute proportionally to such other Medical Defence Organisation or insurer.

**Pollution**

6.15 Any **Claim** or **Inquiry** arising, directly or indirectly, from or in connection with:

(a) seepage, subsidence, pollution or contamination; or

(b) the cost of removing, nullifying or cleaning up seeping, polluting, or...
contaminating substances.

Prior reported or Known Circumstances

6.16 Any:

(a) Claim known by or received by You prior to the Period of Insurance; or

(b) Claim, Known Circumstance or Inquiry noted on the Proposal for the current Period of Insurance or any previous Proposal; or

(c) Claim or Inquiry reported, disclosed or notified, or which ought reasonably to have been reported, disclosed or notified, to Us or any other insurer or Medical Defence Organisation prior to the Period of Insurance as being either:

(i) a Claim or an Inquiry; or

(ii) facts, matters or circumstances which may give rise to a Claim and/or an Inquiry; or

(iii) facts, matters or circumstances which may give rise to an allegation or a liability that is or may be the subject of a Claim or an Inquiry; or

(d) Claim or Inquiry directly or indirectly caused by, contributed to by, or arising out of, or in connection with any Known Circumstance; or

(e) Inquiry that was in progress, pending, commenced, ordered or commissioned prior to the Period of Insurance.

Product Liability and Workmanship

6.17 Any Claim arising from the manufacture, construction, installation, assembly, processing, alteration, repair, repackaging, servicing, or importing of any Products by You or on Your behalf or any Product recall.

6.18 Any Claim directly or indirectly arising from workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by You or on Your behalf; or from supervision of such workmanship by You.

6.19 For the avoidance of doubt this exclusion does not apply to:

(a) the relabeling of any Product; or

(b) any book, brochure, CD, DVD or downloadable item which is produced by You.

Property damage

6.20 Any Claim arising from damage to Property owned, leased or hired or under hire purchase or on loan to You or otherwise in Your care, custody or control.

Radioactivity

6.21 Any Claim directly or indirectly caused by, contributed to by, or in connection with or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof. But this exclusion does not apply to any Claim arising from the use of radium, radium compounds or radioisotopes when used away from the place where such are made or produced and used exclusively for the provision of Health Care Services and in the conduct of the Insured’s Business.

Related Persons

6.22 Any Claim:

(a) made against You by any Related Persons, unless originally emanating from an independent third party; or

(b) by any Employee for Personal Injury, unless the Personal Injury is caused by the negligent acts, errors or omissions of You while the Employee is a patient of Yours.

Retroactive Date

6.23 Any Claim or Inquiry directly or indirectly caused by, contributed to by, in connection with or arising from any:

(a) event or occurrence; or

(b) acts, errors or omissions committed or alleged to have been committed; prior to the Retroactive Date.
6.24 Any Claim arising directly or indirectly from, or in connection with any act of Terrorism, or any action taken in controlling, preventing, suppressing or in any way relating to an act of Terrorism.

Refund of Professional Fees and Trading Debts

6.25 Any Claim for refund of professional fees or charges (by way of damages or otherwise); or

6.26 Any Claim for the Costs and Expenses incurred by You or on Your behalf in complying with any contractual obligations or making good any faulty product; or

6.27 Any Claim arising directly or indirectly from the provision of any guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or

6.28 Any Claim arising from a liability to pay trading debts, trade debts or the repayment of any loan.

Vehicles

6.29 Any Claim:

(a) arising from the ownership, possession or use by or on Your behalf of any motor vehicle or trailer for which compulsory insurance is required by law, other than Claims arising from damage to any motor vehicle or trailer temporarily in Your custody or control for the purpose of parking; or

(b) arising from the ownership, possession or use by or on Your behalf of any aircraft, watercraft or hovercraft, other than Claims under the insuring clauses or the extensions, arising from the emergency transportation of any patient accompanied by the Insured.

War

6.30 Any Claim directly or indirectly caused by, contributed to by, in connection with or arising from war, invasion, acts of foreign enemies, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to Property by, or under the order of, any government or public or local authority.

7. CLAIM CONDITIONS

Notification

7.1. This Policy applies only to Claims first made against You during the Period of Insurance and notified to Us during the Period of Insurance.

7.2. A Claim is considered to be first made against You when You:

(a) receive a demand for compensation or damages or any assertion of a financial right made by a third party in writing to You; or

(b) receive any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon You and claiming compensation, damages or other civil rights or remedies against You.

7.3. In the event of a Claim arising under this Policy You must give immediate written notice or written notice as soon as practically possible to Us, via the broker or agent named in the Schedule, but in any event within the Period of Insurance.

Management of Claims

7.4. You or Your legal representatives must not:

(a) take any action which is prejudicial to Our interests; or

(b) admit liability for or settle any Claim or Potential Claim; or

(c) incur any Costs and Expenses without Our prior consent. We accept no liability for any Costs and Expenses incurred without Our prior consent.

7.5. We will be entitled at any time, but not obligated, to take over and conduct in Your name:

(a) the defence of any suit, legal proceeding or action the subject of a
Claim;
(b) the investigation of any Claim or Potential Claim; or
(c) the handling of any Inquiry;
and may appoint legal representatives of Our choice for these purposes.

7.6. Legal advisers retained by Us to act on Your behalf for any Claim are at liberty to disclose to Us any information they receive in that capacity, wherever they obtain it from, including from You. By claiming under this Policy, You authorise such legal advisers to disclose this information to Us and waive all claim to legal professional privilege which might otherwise prevent those legal advisers from disclosing this information to Us.

7.7. The legal advisers retained by Us to conduct the investigation, defence or settlement of any Claim, may provide advice to Us on any issue regarding Our liability to indemnify You and, whilst doing so, may continue to act in the investigation, defence or settlement of the Claim on behalf of both Us and You.

7.8. You agree that all communications between Us and the legal advisers retained by Us to act in the conduct of the investigation, defence or settlement of any Claim in relation to Your entitlement to indemnity from Us are privileged between Us and the legal advisers and You agree that You are not entitled, under any circumstances, to access or obtain any such communications.

7.9. If any actual or apparent conflict arises between the interests of Us and You, the legal advisers retained by Us to conduct the investigation, defence or settlement of any Claim may cease acting on Your behalf and may continue to act on Our behalf in relation to any dispute between Us and You with respect to Your entitlement to indemnity from Us.

7.10. We have the discretion to negotiate the settlement of any Claim or Potential Claim. If We recommend the settlement of a Claim or Potential Claim for a certain amount, and the Claim or Potential Claim can be settled for that amount but You refuse to agree to the settlement and decide to contest the Claim or Potential Claim, then We are only liable under this Policy:
(a) for the recommended settlement amount; and
(b) Costs and Expenses up to the date of Your refusal to settle.

7.11. We may allow You to conduct the defence of any suit, legal proceeding or action the subject of a Claim or Potential Claim if We believe that the Claim or Potential Claim will not exceed the Excess. If We do this, You are required to provide Us with regular progress reports and We reserve the right to take over conduct of the defence of the Claim or the investigation of the Potential Claim at any time.

7.12. Any:
(a) Costs and Expenses incurred by or on Your behalf in the investigation and conduct of a Potential Claim; or
(b) payments made in accordance with Claim Condition 7.10 to settle a Potential Claim;
will be subject to the Excess and will be deemed to be Costs and Expenses incurred in respect of a Claim or a payment made to settle a Claim for the purposes of this Policy including for the purposes of calculating the Limit of Indemnity.

8. GENERAL CONDITIONS

Aggregation

8.1 Where more than one Claim or Potential Claim results from a single:
(a) event or occurrence; or
(b) act, error or omission;

those Claims or Potential Claims will be deemed by this Policy to be one Claim or Potential Claim and We will apply this general condition when determining the Limit of Indemnity available (including any sub-limits), and the Excess applicable to any Claims or Potential Claims.

8.2 For the purposes of general condition 8.1:
(a) all causally connected acts, errors or omissions shall jointly constitute a single act, error or omission; and
(b) a continuous or repeated exposure to substantially the same general conditions will constitute a single event or occurrence.
Cancellation

8.3 We may cancel this Policy at any time at Our discretion in accordance with the provisions of the Insurance Contracts Act 1984 (Cth).

8.4 If this Policy is cancelled We shall retain only the earned portion of the Premium computed from day to day.

Construction and Interpretation

8.5 The construction, interpretation and meaning of this Policy will be determined in accordance with the laws of the state or territory of Australia where Your principal place of business is located. All disputes relating to this Policy must be submitted to the exclusive jurisdiction of the courts of that state or territory or a Federal Court of Australia.

8.6 Paragraph titles used in this Policy are included for descriptive purposes only and do not form part of this Policy for the purposes of its construction or interpretation.

8.7 Except where the context otherwise requires, words denoting the singular include the plural and vice versa.

Consideration

8.8 The indemnity provided by Us under this Policy is in consideration of the payment of the Premium.

8.9 You agree to pay the Premium within the time specified in the Schedule.

Co-operation and mitigation

8.10 You must give Us such information and assistance as We consider necessary to:

(a) determine an appropriate course of action in relation to any Claim, Potential Claim or Inquiry; and

(b) identify any parties that You may have rights against in connection with any Claim or Potential Claim.

Compliance with this general condition will be at Your own expense.

Excess

8.12 You are liable to pay the Excess for each Claim, Inquiry and loss of Documents stated in the Schedule.

8.13 The Excess is inclusive of Costs and Expenses and You are liable to pay Costs and Expenses as they are incurred up to the amount of the Excess.

8.14 In calculating the Excess which is payable by You for the acquisition of goods, services or other supply including Costs and Expenses, this is net of any input tax credit which You are or may be entitled to receive or claim under A New Tax System (Goods and Services Tax) Act 1999 (Cth).

8.15 In the event of a Claim by You under this Policy, You shall, if directed by Us, pay to Us (or as directed by Us), the Excess within seven (7) working days. Any delay, failure or refusal by You to pay the Excess will entitle Us to deduct such amount from any amount(s) required to settle any Claim or judgment, order or any other payment to be made by Us under this Policy. In the event that a failure or refusal to grant access to monies for any Excess results in a failure of a settlement or an increase in Costs and Expenses, Our liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs and Expenses incurred with Your written consent up to the date of such failure or refusal, less the Excess.

8.16 Where We have elected to pay all or part of the Excess in respect of any Claim or Potential Claim, You shall, within seven (7) working days of receipt of Our written request, reimburse Us for such payment.

Limit of Indemnity

8.17 Our liability under this Policy for any one Claim, Inquiry or loss of Documents, and in the aggregate for all Claims, Inquiries, and loss of Documents during the Period of Insurance will not exceed the Maximum Aggregate Limit of Indemnity for the Policy stated in the Schedule.

8.18 Where a sub-limit is stated in the Schedule, or this Policy, that sub-limit shall form part of and erode the Maximum Aggregate Limit of Indemnity for the Policy under this Policy.
8.19 The Limit of Indemnity is inclusive of Costs and Expenses indemnified under this Policy.

8.20 We are not obliged to defend, or continue to defend any Claim or Potential Claim or to pay or continue to pay Costs and Expenses after the Aggregate Limit of Indemnity for either Medical Malpractice Insurance or Public Liability Insurance or the Maximum Aggregate Limit of Indemnity for the Policy has been eroded.

Maintenance of records

8.21 You must at all times:

(a) maintain accurate descriptive records of all professional services and equipment used in medical, clinical or therapeutic consultation, treatments or procedures, which records must be available for inspection and use by Us in the investigation and/or defence of any Claim to which they relate; and

(b) retain all such records for at least seven (7) years from the date of consultation, treatment or procedure and, in the case of a minor, for a period of at least seven (7) years after that minor attains majority.

Material Change

8.22 You must notify Us within thirty (30) days of any material change in the nature of the Business or any material change to the risk during the Period of Insurance.

Medical Practitioners

8.23 At all material times after the Retroactive Date, throughout the Period of Insurance and six (6) years after the expiry of the Period of Insurance You must take all reasonable steps to ensure that:

(a) all Medical Practitioners employed by or contracted to You, or otherwise working in or in connection with the Business are licensed and registered with the relevant state and/or territory Medical Registration Board; and

(b) all such Medical Practitioners are fully insured under their own policy of insurance for their own malpractice, professional errors, omissions and negligence.

8.24 Reasonable steps includes obtaining a copy of their license, registration and certificate of insurance at the commencement of their role and annually thereafter.

Professional instruments

8.25 Any instrument used or intended for use in the Business and which is intended to be used in contact with skin tissue, or to penetrate skin tissue (whether human or animal), or to be used in contact with bodily fluid (whether human or animal) must be:

(a) handled, used and stored in accordance with the manufacturer’s instructions; and

(b) where approved by the manufacturer(s) and by the Department of Health, or equivalent, to be used more than once, sterilised prior to such use using only sterilising apparatus specifically approved by the manufacturer and in accordance with the instructions, recommendations or guidelines of such manufacturer, and in accordance with Department of Health guidelines, or equivalent.

Proportionate liability

8.26 This Policy will only indemnify You for Your proportionate liability for any Claim.

Subrogation

8.27 Where We have paid a Claim or a Potential Claim under this Policy, We will become subrogated to all rights and remedies that You may have against any party in relation to that Claim or Potential Claim. At Our request, and without charge, You must assist Us (including giving evidence at any civil hearing) and provide such information and documentation (including signed statements) as We reasonably require to exercise such rights.

Sanctions Limitation

8.28 We will not be liable under this Policy to make any payment or to provide any other benefit to the extent that trade or economic sanctions or other laws or regulations prohibit Us from providing insurance.

9. DEFINITIONS

9.1 Adverse Publicity Event means an event which, in the reasonable opinion of a Principal
of the Insured, might cause the reputation of the Insured to be seriously affected by adverse or negative publicity.

9.2 **Aggregate Limit of Indemnity** means the amount shown in the Schedule as the Aggregate Limit of Indemnity for either Medical Malpractice Insurance or Public Liability Insurance.

9.3 **Business** means the Business as stated in the Schedule.

9.4 **Claim** means:

(a) any demand for compensation or damages or any assertion of a financial right made by a third party in writing to You; or

(b) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon You and claiming compensation, damages or other civil rights or remedy against You.

9.5 **Costs and Expenses** means all reasonable legal fees, legal costs and other expenses incurred by or on Your behalf, with Our prior consent, in the investigation, defence or settlement of any Claim and/or for the representation or attendance at any Inquiry and/or in the investigation of Potential Claims.

9.6 **Document** means a deed, will, agreement, map, plan, book, letter, record, certificate, photograph or negative, project model or display, forms and documents of any nature, whether written, printed or reproduced by any method and includes computer software, computer records and electronically stored data but does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any similar instrument.

9.7 **Employee** means any natural person employed by You under a contract of service, traineeship, or apprenticeship during or prior to the Period of Insurance, where that natural person is under Your direct control or supervision and acting in the course of conduct of his or her employment but does not include Medical Practitioners acting in such capacity nor Your independent contractors, consultants or agents.

9.8 **Employment Practices Breach** means:

(a) wrongful termination of employment whether actual or constructive; or

(b) employment discrimination of any kind; or

(c) sexual or other harassment in the workplace; or

(d) wrongful deprivation of career opportunity, employment related misrepresentations, retaliatory treatment against Your Employee or Principal, failure to promote, demotion, wrongful discipline or evaluation or refusal to hire.

9.9 **Excess** means the amount(s) shown in the Schedule as the Excess.

9.10 **Fair Trading Legislation** means the Fair Trading Act 1987 (NSW), or the Fair Trading Act 1985 (Vic) or similar legislation enacted by the other states or territories of Australia.

9.11 **Good Samaritan Act** means emergency first aid or medical assistance administered at the scene of a medical emergency, accident or disaster by You who are present either by chance, or in response to an S.O.S call and for which You have no expectation of payment or other reward.

9.12 **Health Care Services** means any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person.

9.13 **Inquiry** means an official investigation, examination, tribunal, inquiry or other official proceeding directly related to the provision of Health Care Services, and in connection with the Business, held or conducted by an overseeing professional body or industry association or any coronial inquiry.

9.14 **Insured, You and Your** means:

(a) the person or entity named as the Insured in the Schedule; or

(b) any person who is, has been or may become during the Period of Insurance, a Principal or Employee of the person or entity named as the Insured in the Schedule but only in respect of Claims arising from activities undertaken on behalf of the Insured.
and in the conduct of the Business and excluding Medical Practitioners acting in such capacity; or

(c) any person who is, has been or may become during the Period of Insurance, a Principal or Employee of the person or entity named as the Insured in the Schedule but only in respect of their attendance at an Inquiry; or

(d) any person who is, during the Period of Insurance, a volunteer or member at any fundraising, social or ethics committee of the person or entity named as the Insured in the Schedule, but only in respect of Claims arising from activities undertaken on behalf of the Insured and in the conduct of the Business; or

(e) the estate or legal representatives of any person who would otherwise be indemnified under this Policy.

9.15 Known Circumstance means any act, error or omission, fact, matter or circumstance, event or occurrence, known or received by You prior to the Period of Insurance:

(a) which You knew; or

(b) which a reasonable person in Your position ought to or would have known or been aware;

might give rise to a Claim and/or an Inquiry or an allegation or a liability that is or may be the subject of a Claim and/or an Inquiry.

9.16 Limit of Indemnity means the amount shown in the Schedule as the Limit of Indemnity.

9.17 Maximum Aggregate Limit of Indemnity for the Policy means the amount shown in the Schedule as the Maximum Aggregate Limit of Indemnity.

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

9.19 Period of Insurance means the period shown in the Schedule as the Period of Insurance, unless terminated earlier.

9.20 Personal Injury means physical injury, mental injury, illness, disease or death of any person.

9.21 Potential Claim means any facts notified to Us in accordance with section 40(3) of the Insurance Contracts Act 1984 (Cth).

9.22 Premium means the amount stated as premium in the Schedule.

9.23 Principal means where the Insured is an individual, that individual, where the Insured is a firm, a partner of that firm, or where the Insured is a company, a director of that company.

9.24 Privacy and Health Records Legislation means the Privacy Act 2001 (Cth) and the: Health Records & Information Privacy Act 2002 (NSW), Health Records Act 2001 (Vic), Health Records (Privacy & Access) Act 1997 (ACT) or similar legislation enacted by the other states or territories of Australia.

9.25 Products mean any solid, liquid or gaseous substance or component part thereof.

9.26 Property means the tangible personal property of third parties.

9.27 ProRisk means Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076.

9.28 Public Relations Expenses means the reasonable costs, charges, fees and expenses of a public relations firm or consultant engaged to prevent or limit the adverse effects of or negative publicity from an Adverse Publicity Event, which You may engage with Our prior written consent, but only during the first thirty days immediately following the Adverse Publicity Event.

9.29 Related Persons means any person or entity covered by this Policy, any Subsidiary, trustee or nominee of the Insured, or any spouse, domestic partner, parent, parent-in-law, domestic partner of parent, sibling, or child of the Insured or any spouse or domestic partner of the Insured's sibling or child.

9.30 Retroactive Date means the date shown in the Schedule as the Retroactive Date.

9.31 Spouse means a lawful spouse, domestic partner (including without limitation same sex partner) or any person deriving similar status by reason of the common law or statute.
9.32 **Subsidiary** means any entity over which the **Insured** is in a position to exercise effective direction or control through ownership or control of more than fifty percent of the issued voting shares of that entity, or any subsidiary at law.

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

9.34 **Underwriters** means Swiss Re International SE Australia Branch (ABN 38 138 873 211).

9.35 **We, Our and Us** means **ProRisk** acting on behalf of **Underwriters**.