

**Medical Malpractice Combined Liability
Insurance Policy**



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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 (Facts Prior to Commencement of 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 **Period of Insurance** and notified to **ProRisk** in writing during the **Period of Insurance**. A claims made policy does not provide cover for any **Claims** made against **You** during the **Period of Insurance** if at any time prior to the commencement of the **Period of Insurance** **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* (Cth) provides that where the **insured** gives notice in writing to the insurer during the **Period of Insurance** 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 **Period of Insurance** has expired.

This means that if during the **Period of Insurance** **You** became aware of any facts that might give rise to a **Claim** it is in your interest to inform **Us** of those facts during the **Period of Insurance**. This will serve to protect **Your** rights to make a later **Claim** that has arisen from those notified facts.

Insurer May Not Refuse to Pay a Claim in Certain Circumstances

Section 54 of the *Insurance Contracts Act 1984* (Cth) provides that **We** cannot refuse to pay a **claim** in certain circumstances:

- (a) by reason only of an act (or failure to act) of **You** or another person, if that act (or failure to act), which occurred after the **Policy** was entered into, did not cause any part of the **Loss** giving rise to the **Claim**. For example, if you have failed to satisfy a technical requirement of the **Policy** but can prove that this technical breach could not have reasonably caused or contributed to the **Loss** (that is the subject of **Your Claim**), **We** cannot refuse the **Claim**; or

- (b) where the act was necessary to protect a person's safety, to preserve property or if it was not reasonably possible for the person not to do the act.

We can reduce **Our** liability for the **Claim** by the amount that fairly represents the extent to which **We** were prejudiced as a result of **Your** actions or **Your** failure to act.

Your Duty of Disclosure

Section 21 of the *Insurance Contracts Act 1984* (Cth) 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 **Us**;
- that is of common knowledge;
- that **We** know, or in the ordinary course of business, ought to know;
- where **We** waive **Your** duty of disclosure.

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**.

Waiver of Rights of Subrogation

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**. **Our** consent will not be unreasonably withheld. Further, **You** must not do anything or fail to do anything which excludes, limits or prejudices **Our** rights of subrogation.

This term is subject to section 54 of the *Insurance Contracts Act 1984* (Cth) which limits **Our** right to refuse to pay a **Claim**.

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

ProRisk and the **Underwriters** proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the Code can be obtained from www.codeofpractice.com.au.

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

Financial Hardship

We will review any Financial Hardship application in accordance with the General Insurance Code of Practice and any applicable guidelines.

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 2, 115 Bridge Road
Richmond VIC 3121

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 failure to act 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 reasonable **Costs** and **Expenses** incurred with **Our** prior consent which will not be unreasonably withheld, 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 reasonable **Costs** and **Expenses** incurred with **Our** prior consent, which will not be unreasonably withheld, 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 failures to act 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** reasonable 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 failure to act.

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 Fair Trading Acts of the States and Territories, the *Competition and Consumer Act 2010* (Cth) and any similar law of any State or Territory and any amendment, consolidation or re-enactment of any of those Acts, including obligations in relation to restrictive trade practices (such as cartel conduct), misleading and deceptive or unconscionable conduct, unfair contract terms, consumer guarantees and safety of goods and services, but only where the **Claim** was caused directly by such a breach.

- 3.2 **We** will indemnify **You** for reasonable **Costs and Expenses** incurred with **Our** prior consent, which will not be unreasonably withheld, 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) 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.

Inquiries

- 4.3 **We** will pay all reasonable **Costs and Expenses** incurred with **Our** prior consent, which will not be unreasonably withheld, for the attendance by **You** at any **Inquiry** provided that:
- (a) **We** will 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 failures to act occurring prior to the date that **You** ceased to exist or operate, or were consolidated with, merged into or acquired by another entity.
- 4.7 **We** will indemnify **Your** former **Principals** and **Employees** under the insuring clauses and the extensions in respect of any **Claim** first made against **Your** former **Principal** or **Employee** and notified to **Us** during the **Period of Insurance** but only in respect of a **Claim** arising from events or occurrences, acts, errors or failures to act 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 failure to act 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** reasonable compensation if legal advisers, acting on **Your** behalf with **Our** consent, which will not be unreasonably withheld, 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 failure to act 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 6.16, **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 failure to act by **Your Spouse**.

Statutory Liability

4.25 Notwithstanding exclusion 6.10, **We** will indemnify **You**:

- (a) for reasonable **Costs and Expenses** incurred with **Our** prior consent which will not be unreasonably withheld 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 failure to act 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.

Assumed and proportionate liability

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**, however pursuant to clause 8.28, this **Policy** will only indemnify **You** for **Your** proportionate liability for any **Claim**.

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:

- (a) director - defined in the *Corporations Act 2001* (Cth) to mean (in summary) a person who is appointed to the position of director or alternate director (regardless of the name given to that position), and unless the contrary intention appears, a person who is not validly appointed as a director if they act in the position of a director or the directors are accustomed to act in accordance with that person's instructions or wishes; or
- (b) officer – defined in the *Corporations Act 2001* (Cth) to mean (in summary) a director or secretary, or a person who makes or participates in making decisions affecting the whole or substantial part of the **Business**, or who has the capacity to affect financial standing, or in accordance with whose instructions or wishes the directors are accustomed to act, or a receiver, administrator, restructuring practitioner, liquidator or trustee,

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 failures to act; or

- (b) wilful breach of any statute, contract, agreement or duty; or
- (c) any act, error or failure to act committed or omitted in reckless disregard; or of 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 failures to act 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, 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 failures to act 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 failures to act committed or alleged to have been committed prior to the **Retroactive Date**.

Terrorism

- 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.

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. **You** will notify **Us** in writing as soon as practicable after **You** first become aware of such **Claim** and within the **Period of Insurance**. Such written notice to be sent to ProRisk at Level 2, 115 Bridge Road, Richmond, Victoria, 3121.

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, which will not be unreasonably withheld. **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.

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** will not agree to the settlement of any **Claim** or **Potential Claim** without consultation with **You**, however, 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 reasonable 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 should **We** consider it reasonable to do so.

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 failure to act;

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 failures to act shall jointly constitute a single act, error or failure to act; and
- (b) a continuous or repeated exposure to substantially the same general conditions will constitute a single event or occurrence.

Cancellation

8.3 **We** will only cancel this **Policy** as permitted by law.

8.4 The **Policy** may otherwise be cancelled in writing following mutual agreement between **Us** and **You**.

8.5 **You** may cancel this **Policy** at any time in writing to **Us**. In the event of cancellation, **We** will retain the earned proportion of the premium calculated pro rata as at the date of cancellation, provided we will always retain a minimum of 25% of the premium.

Construction and Interpretation

8.6 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.

8.7 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.

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

Consideration

- 8.9 The indemnity provided by **Us** under this **Policy** is in consideration of the payment of the **Premium**.
- 8.10 **You** agree to pay the **Premium** within the time specified in the **Schedule**.

Co-operation and mitigation

- 8.11 **You** must give **Us** such information and assistance as **We** consider reasonably 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.

- 8.12 **You** must take all reasonable steps to avoid, minimise or mitigate any liability, loss or damage that is or may be the subject of a **Claim** or a **Potential Claim** and compliance with this general condition will be at **Your** own expense.

Excess

- 8.13 **You** are liable to pay the **Excess** for each **Claim**, **Inquiry** and loss of **Documents** stated in the **Schedule**.
- 8.14 **We** are liable to pay a **Claim** above the **Excess**.
- 8.15 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)*.
- 8.16 In the event of a **Claim** by **You** under this **Policy**, **You** will pay **Us**), the **Excess** within seven (7) working days or such other reasonable period agreed between **Us** and **You**. Any delay, failure or refusal by **You** to pay the **Excess** will entitle **Us**, acting reasonably, 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**. Where a delay, failure or refusal by **You** to pay the **Excess** results in a failure of settlement or an increase in **Costs and Expenses**, **We** will not be liable to the extent that this prejudices **Our** interests.

- 8.17 Where **We** have elected to pay all or part of the **Excess** in respect of any **Claim** or **Potential Claim**, **You** will, within seven (7) working days of receipt of **Our** written request or such other reasonable period agreed between **Us** and **You**, reimburse **Us** for such payment, unless as otherwise agreed.

Limit of Indemnity

- 8.18 **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**.
- 8.19 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**.
- 8.20 The **Limit of Indemnity** is inclusive of **Costs and Expenses** indemnified under this **Policy**.
- 8.21 **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

- 8.22 **You** must at all times:
- (a) maintain reasonably 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** when reasonably required 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

- 8.23 This **Policy** requires **You** to 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**.
- 8.24 If you notify **Us** of any material change in the nature of the **Business** or any material change to the risk, **We** will assess and evaluate any increase in risk and, **We** may then, acting reasonably:
- (a) agree to continue cover, in return for the payment of additional premium and any amendments to the terms of this **Policy**; or
 - (b) cancel the **Policy**.

Medical Practitioners

- 8.25 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, failures to act and negligence.
- 8.26 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

- 8.27 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

- 8.28 Notwithstanding exclusion 6.4(f), this **Policy** will only indemnify **You** for **Your** proportionate liability for any **Claim**.

Subrogation

Where **We** have paid a **Claim** or a **Potential Claim** under this **Policy**, **We** will retain the right to be subrogated to all rights or recovery in respect of such payments **You** may have against any party in relation to that **Claim** or **Potential Claim**. In addition, all reasonable assistance, including the provision of documentation, will be rendered to **Us** in the prosecution of such rights by **You**. Any recovery received will be applied first against any loss insofar as it exceeds the **Limit of Liability**, then against any payment made by **Us**, and finally against the **Excess**.

Sanctions Limitation

- 8.29 **We** will not be liable under this **Policy** to provide any cover nor make any claim or pay any other benefit to the extent that the provision of such cover, payment of such claim or provision of such other benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction applicable to **Us**.

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 **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.
- 9.11 **Health Care Services** means any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person.
- 9.12 **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.
- 9.13 **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**.
- 9.14 **Known Circumstance** means any act, error or failure to act, 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**.

- 9.15 **Limit of Indemnity** means the amount shown in the **Schedule** as the Limit of Indemnity.
- 9.16 **Maximum Aggregate Limit of Indemnity for the Policy** means the amount shown in the **Schedule** as the Maximum Aggregate Limit of Indemnity.
- 9.17 **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.
- 9.18 **Period of Insurance** means the period shown in the **Schedule** as the Period of Insurance, unless terminated earlier.
- 9.19 **Personal Injury** means physical injury, mental injury, illness, disease or death of any person.
- 9.20 **Potential Claim** means any facts notified to **Us** in accordance with section 40(3) of the *Insurance Contracts Act 1984* (Cth), which provides that where an insured gives notice in writing of facts that might give rise to a claim against them as soon as reasonably practicable after they became aware of those facts, but before the policy expires, the insurer is not relieved of liability under the policy because the claim is made after the expiration of policy.
- 9.21 **Premium** means the amount stated as premium in the **Schedule**.
- 9.22 **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.
- 9.23 **Privacy and Health Records Legislation** means the *Privacy Act 1988* (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, which regulate the collection and handling of personal information and health information.
- 9.24 **Products** mean any solid, liquid or gaseous substance or component part thereof.
- 9.25 **Property** means the tangible personal property of third parties.
- 9.26 **ProRisk** means Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076.
- 9.27 **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**.
- 9.28 **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.
- 9.29 **Retroactive Date** means the date shown in the **Schedule** as the Retroactive Date.
- 9.30 **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.
- 9.31 **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.
- 9.32 **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.
- 9.33 **Underwriters** means Swiss Re International SE Australia Branch (ABN 38 138 873 211).
- 9.34 **We, Our and Us** means **ProRisk** acting on behalf of **Underwriters**.