

Care Combined Liability *Insurance*

Policy Wording & PDS



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IMPORTANT INFORMATION - ALL POLICY SECTIONS

About Probitas 1492 (Pacific) Pty Ltd

Probitas 1492 (Pacific) Pty Ltd ABN 82 663 993 244 AFSL 545082 has an authority from the **Insurer** to arrange, enter into, bind and administer this **Policy** (including handling and settling **Claims**) on behalf of the **Insurer** as if it were the **Insurer**. Probitas 1492 (Pacific) acts as an agent for the **Insurer** and not for the **Insured** (also referred to in this Important Information as “you” and “your”).

This Policy

This **Policy** is an important document, please keep it in a safe place in the event that you need to refer to it in the future.

The **Policy** should be read in conjunction with the **Schedule** and any endorsements we issue, together they provide a description of the terms, conditions and limitations of this insurance cover.

Please read these **Documents** carefully so that you understand the insurance provided and to ensure that it meets your requirements.

Further Information

Your insurance broker has arranged this insurance on your behalf, if you have any questions or need more information concerning this insurance, please contact your insurance broker as your insurance broker is your agent for this insurance.

Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us of anything that you know, or could reasonably be expected to know, that may affect our decision to insure you and on what terms. You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary, replace, or reinstate an insurance contract. If you have made a statement and this changes before the end of the above relevant time, you must tell us about this change before the time ends.

You do not need to tell us anything that:

- reduces the risk we insure you for;
- is of common knowledge;
- we know or should know as an **Insurer**;
- we waive your duty to tell us about.

Non-disclosure

If you do not meet the duty, to the extent permitted by law, we may reject or not fully pay your **Claim**. We may also, or as an alternative, cancel your insurance or if the failure to meet the duty was fraudulent, treat it as if it never existed.

Also refer to [8.A\) Alteration to Risk](#).

Claims made sections

[3.3.B\) I\) Communicable Disease](#), [Policy Section 2](#), [Policy Section 3](#) and [Policy Section 4](#) of this **Policy** are issued on a **Claims** made and notified basis. This means that [3.3.B\) I\) Communicable Disease](#), [Policy Section 2](#), [Policy Section 3](#) and [Policy Section 4](#) of this **Policy** only cover **Claims** first made against you during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance**.

Retroactive date

[3.3.B\) I\) Communicable Disease](#) will not provide cover in relation to any **Personal Injury** happening prior to the **Retroactive Date**.

[Policy Section 2](#), of this **Policy** will not provide cover in relation to any **Abuse** happening prior to the **Retroactive Date**.

[Policy Section 3](#), of this **Policy** will not provide cover in relation to any conduct, act, error or omission committed or alleged to have been committed prior to the **Retroactive Date**.

[Policy Section 4](#), of this **Policy** will not provide cover in relation to **Wrongful Act(s)** committed or alleged to have been committed prior to the **Retroactive Date**.

Written Notification of facts

By reason only of the operation of section 40(3) of the *Insurance Contracts Act 1984* (and not as a term of the **Policy**), if you give us notice in writing of facts that might give rise to a **Claim** against you as soon as reasonable after you became aware of those facts but before the insurance cover provided by the **Policy** expired, we are not relieved of liability under the **Policy** in respect of the **Claim**, when made, by reason only that it was made after the expiration of the **Period of Insurance**. Any such rights arise under the legislation only and not the **Policy** terms.

Several liability

The subscribing **Insurers'** obligations under this **Policy** to which they have subscribed are several and not joint and **Insurers** are limited solely to the extent of their individual subscriptions.

The subscribing **Insurers** are not responsible for the subscription of any co-subscribing **Insurer** who for any reason does not satisfy all or part of its obligation.

General insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice (Code), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyds has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code, please visit www.codeofpractice.com.au.

The Code Governance Committee (CGC) is an independent body that monitors and enforces **Insurers** compliance with the Code. For more information on the Code Governance Committee (CGC) go to <https://insurancecode.org.au>.

Privacy Statement

In this Statement:

- “We”, “Our” and “Us” means Probitas 1492 (Pacific) Pty Ltd and the Lloyd’s Underwriters we act on behalf of.
- “You” and “Your” refers to anyone using Our services or providing Personal Information.

We are committed to protecting Your privacy in accordance with the requirements of the *Privacy Act 1988* (Cth) (“Privacy Act”) and the Australian Privacy Principles (APPs), as amended, replaced or superseded from time-to-time.

This Statement is a summary of Our Privacy **Policy** and provides an overview of how We collect, hold, use and disclose Personal Information. Our Privacy **Policy** may change from time to time and where this occurs, the updated Privacy **Policy** will be posted to Our website at: <https://probitas1492.com/privacy-Policy-probitas-pacific/>

Personal Information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information or opinion is true or not;
- whether the information or opinion is recorded in a material form or not.

It includes Sensitive Information as defined in the Privacy Act which includes, amongst other things, information about an individual’s racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health

information about an individual, genetic information, biometric information or templates.

Why we collect, hold, use and disclose your Personal Information

The primary purpose for collecting, holding, using and disclosing Your Personal Information is to enable Us to provide Our insurance services to You or where reasonably necessary for or directly related to one or more of our insurance functions and activities (including but not limited to deciding whether to issue a **Policy**, determine the terms and conditions of the **Policy**, compiling **Data** to help develop and identify other products and services that may interest **Clients**, and handling **Claims**). Sometimes We may use Your Personal Information for Our marketing campaigns and research, in relation to new products, services or information that may be of interest to You.

If You do not provide the personal information requested and/or do not provide Us with Your consent to collecting, holding, using or disclosing Your Personal Information as set out in this Privacy Statement, We may not be able to provide our insurance services (for example, Your insurance application may not be accepted) or You may be in breach of Your duty regarding disclosure to **Insurers**.

How we obtain your Personal Information

We collect Your Personal Information at various points including, but not limited to, when You are applying for, changing, or renewing an insurance **Policy** with Us or when We are processing a **Claim** or handling any complaint. Personal Information is usually obtained directly from You, but sometimes via a **Third Party** such as an insurance intermediary or your broker or Your employer (e.g. in the case of a group insurance **Policy**). Please refer to Our Privacy **Policy** for further details.

When information is provided to Us via a **Third Party**, We use that information on the basis that You have consented or would reasonably expect Us to collect Your Personal Information in this way. We take reasonable steps to ensure that You have been made aware of how We handle Your Personal Information.

When do We disclose Your Personal Information?

We may disclose the information We collect to **Third Parties** where it is reasonably necessary for, or directly related to, the services we provide to You.

This can include the **Policyholder** (where the **Insured Person** is not the **Policyholder**, i.e. group policies) to joint **Policyholders**, our related companies (and persons they rely on to provide their services), our agents or contractors, **Insurers**, their agents and others they rely on to provide their services and products (e.g. Reinsurers), **Premium** funders, other insurance intermediaries, insurance reference bureaus, **Loss** adjusters or assessors, medical service providers, credit agencies, lawyers and accountants, prospective purchasers of our **Business** and our alliance and other **Business** partners. They are prohibited from using Your Personal Information except for the specific purpose for which We supply it to them, and We take such steps as are reasonable to ensure that they are aware of the provisions of Our Privacy **Policy** in relation to Your Personal Information.

These **Third Parties** which may be located outside of Australia (such as in the UK). These entities and their locations may change from time-to-time. Please contact Us, if You would like a full list of the countries in which these **Third Parties** are located. When we send information overseas, in some cases we may not be able to take reasonable steps to ensure that overseas providers do not breach the Privacy Act and they may not be subject to the same level of protection or obligations that are offered by the Act. By proceeding to acquire our services and products you agree that you cannot seek redress under the Act or against us (to the extent permitted by law) and may not be able to seek redress overseas. If you do not agree to the transfer of your personal information outside Australia, please contact us.

When You give Us Personal Information about other individuals

In such a case We rely on You to have made or make the individual aware that You will or may provide their personal information to Us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant Personal Information to Us.

Your decision to provide Your Personal Information

In dealing with Us, You agree to Us collecting, using and disclosing Your Personal Information, which will be collected, stored, used and disclosed by Us as set out in this Privacy Statement and Our Privacy **Policy**.

Access to and correction of Your Personal Information

Please contact Us if You would like: a copy of Our Privacy **Policy**, or to cease to receive marketing offers from Us or persons with whom We have an association to seek access to, update or correct Your Personal Information held by Us.

How to Make a Complaint

If You have a complaint or would like more information about how We manage Your Personal Information, please review Our Privacy **Policy** for more details, or contact Us. We will notify You as soon as possible if Your personal information is involved in a **Data** breach that is likely to result in serious harm to You.

Governing law and summons notice or process

We agree that:

- if a dispute arises under the **Policy**, the **Policy** will be subject to Australian law and practice, and we will submit to the jurisdiction of any competent Court in the Commonwealth of Australia within the State or Territory in which the **Policy** was issued;
- any summons notice or process to be served upon us may be served upon:
 - Lloyd's Underwriters' General Representative in Australia, Suite 1603, Level 16, 1 Macquarie Place, Sydney NSW 2000,
 - who has authority to accept service on our behalf;
- if a suit is instituted against any of us, all Lloyd's Underwriters participating in the **Policy** will abide by the final decision of such Court or any competent Appellate Court.

Our rights are subject to applicable law

Where we may refuse to pay or reduce the amount we pay under a **Claim** under the **Policy**, we may only do so to the extent permitted by applicable law. Any rights we have are subject to the operation of the *Insurance Contracts Act 1984* (Cth) and any other relevant statute or legislation. You should seek appropriate advice regarding your rights.

Complaints and disputes resolution process

Internal Dispute Resolution process

We view seriously any complaint made about our products or services and will deal with it promptly and fairly. If you have a complaint, please first try to resolve it by contacting the relevant member of our staff. If the matter is still not resolved, please then contact our Internal Disputes Resolution **Officer** using the contact details on the back cover of this document. They will seek to resolve the matter in accordance with our Dispute Resolution procedures.

If we cannot resolve your complaint to your satisfaction, we will (or you may) escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team:

- Lloyd's Australia Limited
Level 16, Suite 1603, 1 Macquarie Place,
Sydney, NSW 2000
Telephone: (02) 8298 0783
Email: jdaustralia@lloyds.com

If You are not satisfied with the final decision, you may wish to contact the Australian Financial Complaints Authority (AFCA) details below.

Australian Financial Complaints Authority (AFCA)

AFCA is a free independent external disputes resolution service provided to customers to review and resolve complaints subject to them falling within its rules. You may refer a complaint to the AFCA at any time. Time limits apply. For example, AFCA may not consider a complaint referred to AFCA more than 2 years after we provide a final IDR response to the **Insured**, unless AFCA considers special circumstances apply. If in doubt, contact AFCA.

For details You can visit their website at www.afca.org.au or contact them:

- Australian Financial Complaints Authority
PO Box 3
Melbourne, VIC 3001
Telephone: 1800 931 678
Email: info@afca.org.au

If AFCA tells you that under its Rules it cannot assist or consider the dispute, then you can seek independent legal advice. You can also access any other external dispute resolution (including in some cases the Financial Ombudsman Service (UK)) or other options that may be available to you.

For more information on how we handle complaints request a copy of our procedures from us.

CONSULTATION SERVICE

During the **Period of Insurance**, the **Insured** is entitled to up to two hours free legal advice (thirty minutes in relation to each particular matter) from our panel legal firms with respect to the risks **Insured** under this **Policy**, except in relation to the scope of cover provided, **Claims** disputes or complaints against the **Insurer**. Please provide the legal adviser with your **Policy** details.

Firm	Contact	Phone	Email
Landers and Rogers	Kelly Kandelaars	0499 499 552	kkandelaars@landers.com.au
Landers and Rogers	Lisa Newcombe	03 9269 9135	lnewcombe@landers.com.au
Wotton Kearney	Chris Spain	03 9604 7956	chris.spain@wottonkearney.com.au
Wotton Kearney	Edward Smith	03 8416 3620	edward.smith@wottonkearney.com.au

1. GENERAL MATTERS - APPLICABLE TO ALL POLICY SECTIONS

1.1 AGREEMENT WITH THE INSURED

This **Policy** is a legal contract between the **Named Insured** and the **Insurer**. The Important Information does not form part of the **Policy**.

The **Named Insured** has agreed to pay the **Insurer** the **Premium** and the **Insured** may access the benefit of cover under the **Policy**, provided that the **Insured** meets the eligibility criteria at the time.

1.2 DEDUCTIBLE

The **Insured** shall be liable to pay the amount of the **Deductible** specified in the **Schedule**. The **Insurer** has no liability to indemnify the **Insured** for any amount less than or equal to the **Deductible**.

Where the **Insurer** has elected to pay all or part of the **Deductible**, the **Insured** shall, within seven (7) days from the date of such payment, reimburse the **Insurer** for such payment.

Any delay, failure, or refusal by the **Insured** to pay the **Deductible** will entitle the **Insurer** to deduct such amount from any amount(s) required to settle any **Claim** or judgment, order, or any other payment to be made by the **Insurer** under this **Policy**.

Where the **Deductible** is expressed in the **Schedule** or elsewhere in this **Policy** to be inclusive of **Defence Costs** and/or costs and expenses, then the **Insured** will pay all **Defence Costs** and costs and expenses indemnified by this **Policy**, up to the amount of the **Deductible**, incurred by the **Insurer** pursuant to the engagement of advisers considered necessary by the **Insurer** to determine the liability of the **Insured** and to resolve the **Claim**.

Any costs incurred by the **Insurer** to determine whether the **Insurer** has a liability to indemnify the **Insured** under this **Policy Section** shall not be subject to the **Deductible** but shall be borne by the **Insurer**.

All **Claims**, **Loss** or other payments under a single **Policy Section** which arise from a single event, act, error, omission or **Occurrence**, or which arise from causally connected or interrelated conduct, acts, errors, omissions or **Occurrences** shall be regarded as one **Claim** or **Occurrence** under that **Policy Section** and the **Limit of Liability** and **Deductible** shall apply accordingly. Where more than one **Deductible** would otherwise apply, the highest applicable **Deductible** shall be payable.

1.3 HOW MUCH THE INSURER WILL PAY

The most the **Insurer** will pay in respect of any single **Claim**, **Loss** or other payment covered by this **Policy** is the **Limit of Liability** or any applicable **Sublimit** stated in the **Schedule** or specified clause of this **Policy**.

Where an aggregate limit for the **Policy Period** applies it is specified in the **Schedule**.

The **Deductible** specified in the **Schedule** is deducted from any amount payable under this **Policy**, before the application of the relevant **Limit of Liability** or **Sublimit**, unless otherwise specified in this **Policy**.

Sublimits form part of and are not in addition to the **Limit of Liability**.

Where the **Limit of Liability** is inclusive of **Defence Costs** or costs and expenses, it is specified in the relevant **Policy Section** of this **Policy** wording.

2. DEFINITIONS ALL POLICY SECTIONS

Where used in this **Policy**, the following definitions apply.

Word or term	Meaning
Aircraft	any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
Abuse	all forms of actual or alleged physical, mental, sexual or financial abuse .
Sexual Abuse	any assault or abuse of a sexual nature, sexual molestation, indecent exposure, sexual harassment or intimidation, whether such act is the subject of criminal investigation or not.
Business	as defined in <u>Policy Section 1</u> and as specified in the Schedule for <u>Policy Section 2</u> .
Care Services	the Care Services specified in the Schedule and includes Good Samaritan Acts and the provision of first aid.
Claim	the definition of Claim under Policy Sections 2, 3 and 4.
Computer System	any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, Data storage device, networking equipment or back up facility, owned or operated by the Insured or any other Third Party pursuant to a written contract with the Insured in order to provide hosted computer application services or processes, storing or hosting of the Insured's electronic Data .
Continuity Date	the Continuity Date specified in the Schedule and is the earliest date that a Claim can occur for the Claims made cover including for <u>3.3.B) I) Communicable Disease</u> , <u>Policy Section 2</u> , <u>Policy Section 3</u> and <u>Policy Section 4</u> .
Cyber Act	an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, or the threat or hoax of such act involving access to, processing of, use of or operation of any Computer Systems .
Cyber Security Breach	<ul style="list-style-type: none">• unauthorised access or use of Computer Systems;• a denial-of-service attack affecting Computer Systems;• the infection of Computer Systems with malicious code or software; or• the transmission of malicious code of software from a Computer System.
Cyber Incident	<ul style="list-style-type: none">• any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System: or• any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.
Data	information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System .
Deductible	the amount of the Deductible as specified in the Schedule for each Policy Section and is the amount the Insured is liable to pay before the Insurer makes payment under the Policy , including costs and expenses under <u>Policy Section 1</u> or Defence Costs under Policy Sections 2, 3 and 4 .
Defence Costs	the reasonable legal costs including reasonable appeal costs and other necessary expenses incurred in the investigation, defence, settlement and/or appeal of a Claim by the Insured or on the Insured's behalf with the Insurer's prior written consent. Defence Costs do not include the Insured's overheads or any salaries, wages, fees or Benefits of Insured Persons .
Documents	includes any Documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic Data material. Documents does not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.
Employee	any person employed under a contract of service or apprenticeship with the Named Insured or its Subsidiary during or prior to commencement of the Period of Insurance and falls within the definition of "worker" under any workers compensation legislation.

Employment Practices Liability	<p>any:</p> <ul style="list-style-type: none"> • discharge or termination, either actual or constructive, of an employment relationship; • breach of any oral or written, express or implied, employment contract or quasi-employment contract; • misleading representation or advertising relating to employment. • failure to employ or promote; • unfair deprivation of a career opportunity; • unfair discipline; • failure to grant tenure; • negligent Employee evaluation; • workplace harassment of any kind (whether sexual or otherwise), including the alleged creation or permission of a harassing workplace environment; or • employment-related: <ul style="list-style-type: none"> ○ denial of natural justice; ○ invasion of privacy; ○ defamation; ○ infliction of emotional distress; or ○ discrimination on any legally prohibited basis.
Environmental Legislation	any Commonwealth, State or Territory statute, regulation, by-law or local law prohibiting, controlling or regulating the discharge, release, escape or disposal of Pollutants into or upon land, the atmosphere or any watercourse or body of water.
Expiry Date	the last day of the Period of Insurance as listed on the Schedule .
Extension	<p>any:</p> <ul style="list-style-type: none"> • standard Extension identified under each Policy Section; and • optional Extension shown in the Schedule as included. <p>Provided that no Extension will increase the Limit of Liability.</p>
Family Member	any spouse, domestic partner, or companion, any parent, or parent of the spouse, domestic partner or companion, any sibling or child of the Insured .
Good Samaritan Acts	assisting at the scene of a medical emergency, accident or disaster provided by the Insured or any Employee present either by chance, or in response to an S.O.S. call following a disaster or accident whilst at or in transit to or from the address of the Business , provided that the Insurer shall not be liable where the Employee was acting at the time under a contract of employment with any employer other than the Insured .
Hovercraft	any vessel, craft or thing made or intended to float on or in or through the atmosphere or water.
Insurer	the Insurer specified in the Schedule .
Insured	the definition of Insured specified under each Policy Section and as applying to that Policy Section .
Insured Person	any executive Officer or Employee of the Insured . For the purposes of <u>Policy Section 4</u> , the extended definition of Insured Person stipulated in that section applies.
Investigation Costs and Expenses	the definition of Investigation Costs and Expenses specified under Policy Sections 2, 3 and 4 as applying to each Policy Section accordingly.
Limit of Liability	the Limit of Liability as specified in the Schedule for each applicable Policy Section .
Loss	the total amount which an Insured becomes legally obligated to pay in respect of a Claim made against such Insured and shall include damages, judgments, settlements, legal costs and expenses awarded against an Insured to any claimant, Defence Costs and costs and expenses and any other amount indemnified under this Policy .
Medical Practitioner	a person with a doctor's qualification or higher who is registered under the <i>Health Practitioner Regulation National Law Act 2009</i> to practice that profession in Australia.
Medical Services	nursing and other care related services but does not include services provided by a Medical Practitioner .

Named Insured	the individual or entity specified in the Schedule and any Subsidiary , and any other entity controlled by it and over which it assumes active management whose place of incorporation is within Australia at the inception of the Period of Insurance .
Official Investigation or Inquiry	the definition of Official Investigation or Inquiry specified under Policy Sections 2, 3 and 4 and as applying to each Policy Section accordingly.
Penalty	any monetary sum payable by the Insured to any Regulatory Authority or a disciplinary committee of any association or professional body of which the Insured is a member pursuant to a Wrongful Breach by the Insured but excluding: <ul style="list-style-type: none"> • any amounts payable as compensation • any compliance, remedial, reparation or restitution costs; • any damages, including but not limited to any exemplary or punitive damages; • any consequential economic Loss; • any amounts uninsurable under the law pursuant to which this Policy is construed; • any legal costs and associated expenses of the Regulatory Authority.
Period of Insurance	the period shown in the Schedule .
Personal Injury	death, physical injury, bodily injury, sickness or disease to any person, disability, shock, mental anguish or mental injury, false arrest, wrongful detention, false imprisonment or malicious prosecution, wrongful entry or eviction or other invasion of the right of privacy, defamation of character, including, libel and slander or invasion of the right of privacy, and assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.
Policy	this Policy wording, the Schedule and any endorsements.
Policy Section	the separate sections of the Policy identified as <u>Policy Section 1 - General and Products Liability</u> , <u>Policy Section 2 - Abuse Liability</u> , <u>Policy Section 3 - Professional Indemnity including Malpractice</u> , and <u>Policy Section 4 - Management Liability</u> .
Pollutants	<ul style="list-style-type: none"> • any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals; or • any waste materials including materials recycled, reconditioned, or reclaimed; or • any other air emission, odour, wastewater, oil, oil products, infectious or medical waste or any noise emission.
Premium	the amount as agreed between the Insurer and the Named Insured .
Property Damage	<ul style="list-style-type: none"> • damage to or loss or destruction of tangible property including any resultant loss of use of that property; or • loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an Occurrence.
Proposal	the written application for insurance cover made by the Insured to Probitas 1492 (Pacific) or the Insurer containing particulars and statements which, together with other information provided by the Insured or the Insured's Insurance Broker is the bases on which the Insurer will determine acceptance of the risk.
Regulatory Authority	a person or entity appointed, constituted or acting under a delegation pursuant to any legislation for the purposes of enforcement of such legislation.
Retroactive Date	the date specified under that heading in the Schedule for each Policy Section or specified clause of this Policy .
Schedule	the respective Schedule attaching to and forming part of each specific Policy Section .
Senior Counsel	a barrister in active practice who is entitled to use the post nominals K.C. or S.C. in any one or more superior court in Australia or New Zealand.
Sublimit	any amount shown as a Sublimit of indemnity in the Schedule or specified clause of this Policy .
Subsidiary	a company or entity of which the Named Insured : <ul style="list-style-type: none"> • is the sole owner; or • controls the composition of the board of Directors; or

- controls more than half the voting power; or
- holds more than half of the issued share capital;
- as at the commencement of the **Period of Insurance**.

Terrorism

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, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Watercraft

any vessel, craft or thing made or intended to float on or in or travel on or through water.

3. POLICY SECTION 1 - GENERAL AND PRODUCTS LIABILITY

3.1 DEFINITIONS - POLICY SECTION 1

The following words have the following meaning for Policy Section 1 only.

Word or term	Meaning
Advertising Liability	<ul style="list-style-type: none">• Liability arising out of one or more of the following:<ul style="list-style-type: none">○ defamation except arising out of the publication or utterance of defamatory statements or disparaging material prior to the inception date of this Policy or made at the Insured's direction with the Insured's knowledge of the falsity of the statement or material;○ infringement of copyright, title or slogan;○ unfair competition, misappropriation of advertising ideas or style of doing Business; or○ invasion of privacy• committed or alleged to have been committed in any advertisement and arising out of any advertising activities conducted by the Named Insured or on the Named Insured's behalf, in the course of carrying out the Business. <p>For the purpose of this definition, 'advertising' means any manner of communication given to the public including by way of any form of print media, telecommunication, radio or television broadcast, electronic mail, internet, world wide web or exhibit.</p>
Business	<ul style="list-style-type: none">• The Business as specified in the Schedule and includes the following activities incidental to the Business as specified:• ownership, tenancy, maintenance and/or repair of real property;• fundraising activities including events held at the Named Insureds premises, dinner dance, award nights, golf days and the like;• social outings/events or recreational and welfare activities organised and supervised by the Named Insured for the benefit of residents, Clients, retirement village unit owners, volunteers, or staff;• Good Samaritan Acts and/or provision of first aid;• provision of fire and security services primarily for the protection of persons, or property owned or leased by the Named Insured;• lawn bowls, badminton, tennis, swimming (including water aerobics), hydro baths, snooker, darts, croquet, indoor bowls, table tennis, dancing or dance/exercise (Pilates) classes forming part of the activities offered by the Named Insured for the benefit of day care centre Clients of the Named Insureds' residential aged care facility, volunteers, staff or residents of the Named Insureds' aged care facility and/or retirement village;• working bees and other activities conducted by volunteers, for the benefit of the Named Insured or the benefit of the residents of the Named Insureds', aged care facilities and the retirement villages, resident's association, ancillary clubs or committees if falling within the definition of Insured in this Policy Section; and• any Newly Acquired Business.
Newly Acquired Business	<ul style="list-style-type: none">• any facility or Business acquired or created by the Named Insured during the Period of Insurance of the same type already Insured by this <u>Policy Section 1</u> prior to its acquisition or creation. Cover is only available for a period of up to sixty (60) days (but never beyond the Expiry Date of the Period of Insurance) from the date of its acquisition or creation.• The Insurer may, at its discretion, agree to provide further indemnity beyond a period of sixty (60) days (but never beyond the Expiry Date of the Period of Insurance) where:<ul style="list-style-type: none">○ the Named Insured has notified the Insurer of the acquisition or creation of the entity or Subsidiary or acquisition and has provided all information requested by the Insurer; and○ any terms imposed by the Insurer including the charging of any additional Premium considered appropriate, have been agreed by the Named Insured;• Provided that any indemnity provided in respect of the Newly Acquired Business will only apply in respect of Personal Injury or Property Damage or Advertising Liability happening during the Period of Insurance but subsequent to the date of its acquisition or creation. It is a prerequisite to cover that the Business of the Newly Acquired Business is the same as the Business currently shown in the Schedule.

Insured

- a) **Named Insured**; and
- b) every **Director**, executive **Officer**, **Employee**, partner, or shareholder of the **Named Insured**;
- the legal personal representative of any person entitled to indemnity under a) and b) above, in circumstances which give rise to indemnity under this **Policy Section**;
- any voluntary worker (which term includes children engaged in social work as part of their school curricular), social worker, advisory board member or member who represents consumers interests on the Quality Care Advisory Board, counsellor;
- the residents association, or residents ancillary, clubs or committees (including **Officers**, committee and members) established for the benefit of the **Named Insured** and/or the **Named Insured's Employees** and/or residents of the **Named Insured's** residential aged care facility or retirement village if such association, ancillary, club or committee is formed with the consent of the **Named Insured** and then only whilst acting within the scope of their duties in such capacity for and on behalf of such association, ancillary, club or committee;
- any principal for their vicarious liability arising out of the actions of the **Named Insured**, subject always to the **Limit of Liability** in the **Schedule**. For the purpose of this definition, principal shall mean any person or entity for whom the above perform work whether voluntary or otherwise;
- any **Director** or senior executive of the **Named Insured** in respect of private work undertaken by the **Named Insured's Employees** for such **Director** or senior executive;
- any student enrolled at a university or college of advanced education or a TAFE college, other Tertiary institution or Registered Training Organisation and assigned to and under the supervision of the **Insured**;
- any person undertaking work experience;
- any entity specified in the **Schedule** as an additional **Insured**, but only for their vicarious liability arising out of the **Named Insured's Business**; and
- any **Joint Venture** or partnership if the **Named Insured** is part of that **Joint Venture** or partnership, provided that:
 - no indemnity shall be available to the other **Joint Venture Partners** or partners of any partnership; and
 - indemnity is limited to the percentage share the **Named Insured** has in the **Joint Venture** or partnership; and
 - the **Proposal** form for this insurance indicates the **Insured's** interest in the **Joint Venture** or partnership and the **Insured** has requested that its interest in the **Joint Venture** or partnership be included in the **Policy**; and
 - the name of the **Joint Venture** or partnership and the **Business** of the **Joint Venture** or partnership is specified in the **Schedule**; and
 - the **Insurer** shall not be liable in respect of any **Claim** against the **Insured** bought or maintained by partners in any such **Joint Venture** or partners of any such partnership against the **Insured**.

Insured's Product

any commodity, article or thing (after it has ceased to be in the possession or under the control of the **Insured**) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the **Insured** or by others trading under the name of the **Insured**, including any container thereof (other than a **Vehicle**) in the course of the **Business**.

Occurrence

- An event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** neither expected nor intended from the standpoint of the **Insured**. All exposure to substantially the same general conditions shall be deemed one **Occurrence**.
- With respect to **Advertising Liability** all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used, and the number of claimants shall be deemed to arise out of the one occurrence.

Vehicle

any type of machine on wheels (other than a motorised wheelchair/Scooter) or self-laid track made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.

3.2 INSURING CLAUSE - POLICY SECTION 1

The **Insurer** will pay to or on behalf of the **Insured** all amounts which the **Insured** shall become legally liable to pay for compensation in respect of **Personal Injury, Property Damage** and **Advertising Liability** happening during the **Period of Insurance** and caused by an **Occurrence** in connection with the **Business**.

A) LIMIT OF LIABILITY

The **Insurer's** liability to pay compensation and/or claimant's costs and expenses shall not exceed the **Limit of Liability** shown on the **Schedule** for each **Occurrence**.

B) COSTS AND EXPENSES

With respect to the indemnity provided by 3.2 Insuring Clause - Policy Section 1 the **Insurer** will:

- defend any suit against the **Insured** claiming compensation for **Personal Injury; Property Damage; Advertising Liability** and seeking damages on account thereof, even if such suit is groundless, false or fraudulent and the **Insurer** may investigate, defend, negotiate and settle any action or suit as the **Insurer** deems expedient and subject to the General **Claims** Conditions in this **Policy**;
- pay all expenses incurred by the **Insured**, including all interest accruing after entry of any judgement until the **Insurer** has paid, tendered, or deposited in court such part of the judgement as does not exceed the **Insurer's Limit of Liability**;
- reimburse the **Insured** for all reasonable expenses in connection with the action or suit, (other than **Loss** of earnings), incurred by the **Insured** with the **Insurer's** consent;
- pay reasonable expenses incurred by the **Insured** for first aid to others at the time of any **Personal Injury** or reasonable expenses to make safe property so as to prevent **Personal Injury** or damage to **Third Party** property for which the **Insured** is or would be entitled to indemnity under this **Policy**. The total amount payable under this clause is limited to the **Sublimit** specified in the **Schedule**.

The **Insurer's** liability under this clause is in addition to the **Limit of Liability**, provided that if a payment exceeding the **Insurer's Limit of Liability** must be made to dispose of the legal action or suit, the **Insurer's** liability to pay costs and expenses under this section shall be limited to such proportion of the costs and expenses as the **Limit of Liability** bears to the amount paid to dispose of the legal action or suit. The **Insurer** will not be obliged to pay any settlement or judgment or defend any suit or legal action after the **Limit of Liability** has been exhausted.

3.3 POLICY EXTENSIONS AND OPTIONAL EXTENSIONS - POLICY SECTION 1

A) STANDARD EXTENSIONS

I. CHILDCARE SERVICES FOR EMPLOYEE CHILDREN

The **Insurer** will extend the definition of **Business** to include the provision of childcare services for **Employee** children or children of contract workers whilst the parents or guardians of the child are engaged in work for the **Named Insured**.

II. DAMAGE TO OR ARISING FROM VEHICLES OWNED BY EMPLOYEES OR VOLUNTEERS

The **Insurer** will indemnify the **Insured** in respect of third-party **Property Damage** arising out of the use by **Employees** and/or volunteers of their own **Vehicle** on the **Business** of the **Insured** which would otherwise be excluded by this **Policy**, coverage is subject to the following:

- The **Employee** and/or volunteer has unintentionally failed to effect or renew a **Vehicle** insurance **Policy** covering **Third Party Property Damage**; or
- Any **Claim** under the **Employees** and/or volunteers motor **Vehicle** insurance **Policy** is rendered invalid or not **Insured** due to reasons beyond the **Employee's**, volunteer's or the **Insured's** control.

The **Insurer** also agrees to pay:

- At the first renewal of the **Employee** and/or volunteer **Vehicle** insurance, the difference between the **Premium** which would have been paid had the accident not occurred and the **Premium** payable as a result of the accident to a maximum **Sublimit** of \$5,000; and

- For repairs to the **Employee** and/or volunteer **Vehicle** if the **Employee** and/or the volunteer have a valid comprehensive **Vehicle Policy** in place and the **Insurer** of that **Policy** declines a **Claim** under that **Policy** and such declinature is beyond the control of the **Employee**, volunteer or **Insured** to a maximum **Sublimit** of \$10,000.

There is no cover under this **Extension** if the **Vehicle** is being used by a person under the influence of drugs, intoxicating liquor or by a person not holding a valid or appropriate licence.

III. EMPLOYEE ESCORTING RESIDENT/CLIENT ON OVERSEAS TRAVEL

The **Insurer** will indemnify the **Insured** in respect of an **Employee** escorting and/or caring for a resident or **Client** whilst such resident or **Client** of the **Business** specified in the **Schedule** is visiting or vacationing in the United States of America or the Dominion of Canada or their territories or protectorates.

For the purpose of this **Extension** only, the term manual worker or a supervisor of work in 3.4.O) Territorial Limits does not refer to an **Employee** escorting and/or caring for such resident or **Client**.

IV. RESIDENTS AS INSURED

The **Insurer** agrees to extend the definition of **Insured** to include any resident of a residential aged care facility owned or operated by the **Insured**.

Provided that indemnity under this **Extension** shall only apply in excess of any other indemnity available to such a person under another **Policy** of insurance.

This **Extension** does not apply to residents of retirement units or any other persons residing in any other type of facility owned or operated by the **Insured**.

V. WELLBEING SUPPORT WORKERS

The **Insurer** agrees to extend the definition of **Insured** to include any person in their capacity as a service provider engaged by the **Named Insured** to provide social support including exercise or grooming to residents of a residential aged care facility and the total remuneration for such services pursuant to engagement by the **Named Insured** is less than \$5,000 per annum.

Provided that indemnity under this **Extension** shall only apply in excess of any other indemnity available to such a person under another **Policy** of insurance.

B) OPTIONAL EXTENSION

I. COMMUNICABLE DISEASE

Notwithstanding 7.D) Communicable Disease:

- The **Insurer** agrees to provide indemnity in respect of any **Claim** (as defined in Policy Section 3 for the purposes of this **Extension**) brought against the **Named Insured** and notified to the **Insurer** during the **Period of Insurance** as a result of **Personal Injury** in respect of any disease determined to be a listed human disease under the *Biosecurity Act 2015* (Cth) or any pandemic (including COVID 19) or epidemic as declared by the World Health Organisation.
- The **Insurer's** total liability in respect of all **Claims** covered by this **Extension**, including **Defence Costs** is specified as a **Sublimit** in the **Schedule**.
- This **Extension** will not provide cover in relation to any **Personal Injury** happening prior to the **Retroactive Date** specified in the **Schedule**.

3.4 EXCLUSIONS - POLICY SECTION 1

In addition to the general exclusions, the **Insurer** shall not be liable under this **Policy Section** to provide indemnity, including under any **Extension** in respect of any **Claim**, **Loss** or other payment under this **Policy Section** arising directly or indirectly from, based upon, attributable to, or in consequence of:

A) ADVENTURE ACTIVITIES OR DISPLAY

Personal Injury or **Property Damage** resulting from any person actually participating in any motor sports, contact sport, marathons or walkathons, adventure activity, cycling events, or display involving athletic, acrobatic, military or

equestrian skill or the use of firearms, fireworks or pyrotechnics, missiles of any kind, explosives or combustibles, unless the **Insurer** has agreed to include such activities in writing and endorsed the **Policy** accordingly.

This exclusion shall not apply to any adventure activity or display involving athletic, acrobatic or equestrian skill if a qualified **Third Party** engaged by the **Insured** facilitates and supervises the activity or display.

B) ADVERTISING LIABILITY

- resulting from breach of contract, other than misappropriation of advertising ideas under an implied contract; or
- the wrong description or price of the **Insured's Product** or services; or
- the failure of the **Insured's Product** to conform with advertised performance or quality.

C) CONSTRUCTION

- **Personal Injury** or **Property Damage** caused by or in connection with any land or site development and/or the erection, demolition, alteration and/or addition to buildings by or on behalf of the **Insured**;
- except such erection, demolition, alteration, addition, or development which does not exceed \$500,000 in total contract value for the entire project and regardless of the **Insured's** contribution to the total contract value.

D) DEFAMATION, LIBEL, AND SLANDER

Liability resulting from the publication or utterance of a defamation, libel or slander:

- prior to the commencement date of this **Policy**; or
- made by or at the direction of the **Insured** with the knowledge of the falsity.

E) EMPLOYER'S LIABILITY

Liability for **Personal Injury**:

- for which the **Insured** is or would be entitled to indemnity under a fund, scheme, or **Policy** of insurance pursuant to or required by any worker's compensation law and whether or not such insurance has been taken out;
- imposed by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement; or
- arising out of or in respect of any **Employment Practices Liability**.

F) FAULTY WORKMANSHIP

The cost of performing, completing, correcting, or improving any work undertaken by the **Insured**.

G) FINES AND PENALTIES

Punitive, aggravated or exemplary damages, fines or penalties, or any additional damages resulting from the multiplication of compensatory damages.

H) LOSS OF USE

Loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- a delay in or lack of performance by or on behalf of the **Insured** of any of its obligations assumed under a contract agreement, guarantee or warranty; or
- the failure of the **Insured's Product** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the **Insured**, but this Exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the **Insured's Product** after such products have been put to use.

I) MECHANICAL AMUSEMENT DEVICES

Personal Injury or **Property Damage** in connection with the use of mechanical amusement devices.

This exclusion shall not apply to the **Insured's** vicarious liability arising from the hire of such devices if such devices are operated by an operator qualified to operate such devices and provided that the **Insured** has obtained a certificate of currency confirming such parties hold a valid liability insurance **Policy** with a minimum limit of \$5,000,000.

J) MEDICAL SERVICES

the provision of or failure to render **Medical Services**, advice, treatment to any person admitted to the **Insured's** care or in the **Insured's** care, **Good Samaritan Acts** or the provision of first aid.

however, if Policy Section 3 is not taken up this exclusion does not apply to **Good Samaritan Acts** and/or provision of first aid to persons who are not residents of a facility owned or operated by the **Named Insured** or any person who is not a **Client** of the **Named Insured**.

K) POLLUTION

Personal Injury or **Property Damage** in connection with the discharge, dispersal, release, seepage, migration or escape of **Pollutants** into or upon land, the atmosphere or any watercourse or body of water. The **Insurer** shall also not be liable to pay any costs and expenses incurred in the prevention, removal, testing, monitoring, treating, detoxifying, neutralising or clean-up of such **Pollutants**.

This exclusion shall not apply if such discharge, dispersal, release, seepage, migration or escape is caused by a sudden, unexpected and unintended happening that takes place in its entirety at a specific time and place during the **Period of Insurance**.

L) PROFESSIONAL ADVICE

Liability in connection with:

- rendering or the failure to render professional service, advice or any connected act error or omission; and
- professional services, treatment, advice or any act error or omission of a **Medical Practitioner**.

M) PROPERTY IN THE INSURED'S PHYSICAL OR LEGAL CONTROL

Property Damage to:

- Property owned or leased or rented by the **Insured**; or
- Property in the physical or legal control of the **Insured**,

This **Exclusion** shall not apply to liability for **Property Damage** to:

- property in the physical or legal control of the **Insured** up to the **Sublimit** specified in the **Schedule** any one **Occurrence** and in the aggregate during any one **Period of Insurance**. However, the **Insurer** shall not be liable for **Property Damage** for or to that part of any Property upon which the **Insured** is or has been working where such **Property Damage** arises from such work;
- premises which are leased or rented to the **Insured**;
- **Employee** personal property; or
- **Vehicles** (not belonging to or used by or on behalf of the **Insured**) in the physical or legal control of the **Insured** where such **Property Damage** occurs whilst any such **Vehicle** is in a car park owned or operated by the **Insured**, provided that the **Insured** as part of its **Business** does not own or operate a car park for reward.

N) RECALL OF PRODUCTS

Damages, costs or expenses claimed:

- for the withdrawal, inspection, repair, replacement or **Loss** of use of the **Insured's Product** or of any property of which such products form a part; and
- if such **Insured's Product** or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

O) TERRITORIAL LIMITS

Personal Injury, Property Damage or Advertising Liability:

- in the United States of America or Canada. This exclusion shall not apply to **Claims** arising from the presence of any person who is normally resident in Australia or New Zealand and who is not a manual worker or a supervisor of work;
- caused by or arising out of the **Insured's Product** knowingly exported by the **Insured** or his agents to the United States of America or Canada;
- where a **Claim** is made upon the **Insured** outside Australia or New Zealand in any country where the **Insured** is represented by a branch or company or firm or individual holding the **Insured's** power of attorney; and
- where such **Claim** is based on or attributable to, or in consequence of any contract entered into by the **Insured** under the terms of which work is to be performed outside Australia or New Zealand to the extent that such liability exceeds the liability the **Insured** would have incurred in the absence of such contract.

The **Limit of Liability** for **Claims** in the territorial limits of the United States of America or Canada are inclusive of all costs and expenses as set out in 3.2.B) Costs and Expenses of this **Policy Section**.

P) VEHICLES

Personal Injury or Property Damage resulting from the ownership, maintenance, operation or use by the **Insured** of any **Vehicle**:

- which is registered; or
- in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation.

However, this exclusion shall not apply to **Personal Injury** or **Property Damage** arising from:

- the delivery or collection of goods to or from any **Vehicle** where such **Personal Injury** or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare; or
- the loading of goods or unloading of goods from any **Vehicle**.

Personal Injury where:

- the compulsory liability insurance or statutory indemnity does not provide indemnity, and
- the reason or reasons why the compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach of legislation relating to any **Vehicle**.

3.5 CONDITIONS - POLICY SECTION 1

A) BEST ENDEAVOURS

The **Insured** shall use their best endeavours to preserve any products or property to which no alteration or repair shall be made without the **Insurer's** consent which shall not be unreasonably withheld, or until the **Insurer** shall have had an opportunity of inspection.

B) REASONABLE PRECAUTIONS

In the event of an **Occurrence**, the **Insured** shall at its expense (other than for expenses covered by 3.2.B) Costs and Expenses) take all reasonable steps to:

- prevent **Personal Injury** and **Property Damage**;
- prevent manufacture, sale or supply of any defective **Insured's Product**;
- comply and ensure that the **Insured's Employees**, servants and agents comply with all statutory obligations, by-laws or regulations imposed by a public authority in respect thereof for the safety of persons or property; and
- trace or recall or modify any of the **Insured's Products** containing any defect or deficiency of which the **Insured** has knowledge or has reason to suspect.

C) INSPECTION OF PROPERTY

The **Insurer** shall be permitted but not obligated to inspect the **Insured's** property and operations at any time.

Neither the **Insurer's** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **Insured** or others, to determine or warrant that such property or operations are safe.

D) CROSS LIABILITY

In respect of Policy Section 1, where the **Insured** is comprised of more than one party each of the parties shall be considered as a separate legal entity and the word **Insured** shall apply to each party as if a separate **Policy** had been issued to each party.

Nothing contained in this condition shall result in an increase to the **Limit of Liability**.

4. POLICY SECTION 2 - ABUSE LIABILITY

4.1 DEFINITIONS - POLICY SECTION 2

The following words have the following meaning for Policy Section 2 only.

Word or term	Meaning
Claim	<ul style="list-style-type: none">any written or verbal demand made by a Third Party upon the Insured for compensation, however conveyed, including a writ, statement of Claim, summons, application, crossclaim, counterclaim or other legal or arbitral process served upon the Insured by a Third Party;for the purpose of cover under <u>4.3.E) Official Investigation or Inquiry</u>, Claim means receipt of notice to attend or respond to an Official Investigation or Inquiry.
Insured	as defined in <u>3.1 Definitions – Policy Section 1</u> and <u>5.1 Definitions – Policy Section 3</u> of this Policy , but only for each Policy Section included as taken up in the Schedule .
Investigation Costs and Expenses	the reasonable legal costs (excluding any fine, Penalty or order for the payment of monetary compensation) incurred by the Insured with the Insurer's prior consent in relation to a legally compellable attendance by the Named Insured at any Official Investigation or Inquiry .
Official Investigation or Inquiry	any official investigation, examination or inquiry including but not limited to coronial inquiries in relation to the provision by the Insured of Care Service where such investigation, examination or inquiry may lead to a Claim being made against the Insured which may be indemnified under <u>4.2.A) Insuring Clause A</u> .
Perpetrator	a person who commits: <ul style="list-style-type: none">an act which causes Personal Injury by any means including the use of violent or aggressive behaviour, ora sexual offence or assault by any means including but not limited to sexual violence in person, online, through technology, posting or sharing sexual images without the recipients' consent or non-consensual sexting.

4.2 INSURING CLAUSES - POLICY SECTION 2

A) INSURING CLAUSE A

The **Insurer** agrees to indemnify the **Insured** for civil liability for any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** arising directly or indirectly based upon, attributable to, or in consequence of any **Abuse** occurring in connection with the **Business** or in the course of providing **Care Services**.

B) INSURING CLAUSE B - DEFENCE COSTS

The **Insurer** agrees to pay the **Defence Costs** incurred in the defence or settlement of any **Claim** covered under Insuring Clause A.

Where an **Insured** is the alleged **Perpetrator** of the **Abuse**, the subject of any **Claim** covered under Insuring Clause A, the **Insurer** will not pay **Defence Costs** until such time as it is reasonably satisfied that the alleged **Perpetrator** can or is likely to successfully defend the **Claim**.

Defence Costs will be inclusive of any **Limit of Liability** or **Sublimit of Liability** whichever applies.

C) RETROACTIVE DATE

This **Policy Section** shall provide indemnity only in respect of **Abuse** committed or alleged to have been committed after the **Retroactive Date** specified in the **Schedule**.

If the **Retroactive Date** is specified as Unlimited, then this section of the **Policy** shall provide indemnity irrespective of when the **Abuse** was committed or alleged to have been committed.

D) LIMIT OF LIABILITY

The **Insurer's** liability to pay compensation and/or claimant costs and expenses shall not exceed the **Limit of Liability** shown on the **Schedule** in respect of any **Claim** or series of **Claims** arising from an act of **Abuse** and is the maximum the **Insurer** will pay for all acts of **Abuse** during the **Period of Insurance**.

If an act of **Abuse** giving rise to a **Claim** under Policy Section 2 is alleged against the same **Perpetrator** on more than one occasion, then all such acts shall be deemed to have occurred on the date of the first act of **Abuse** and be treated as one act of **Abuse** regardless of the date on which the subsequent acts occurred.

4.3 EXTENSIONS - POLICY SECTION 2

A) ADVANCEMENT OF DEFENCE COSTS

If the **Insurer** has not denied indemnity under this **Policy Section**, the **Insurer** agrees to advance **Defence Costs** that have been incurred with the consent of the **Insurer** within a reasonable time frame following receipt of invoices specifying such **Defence Costs** and prior to determining the entitlement of the **Insured** to indemnity for a **Claim**.

Provided that:

- the advancement of **Defence Costs** does not constitute an acceptance of indemnity under this **Policy** for any **Claim**, and at its sole discretion the **Insurer** may cease to advance **Defence Costs**.
- if the **Insurer** denies indemnity under this **Policy Section**, the **Insured** shall refund **Defence Costs** advanced by the **Insurer** within a reasonable time frame but no later than sixty (60) days.

B) CONTINUOUS COVER

Notwithstanding 7.J) Prior or Pending, the **Insurer** agrees to indemnify the **Insured** under the insuring clauses in this **Policy Section** for any **Claim** first made against the **Insured** during the **Period of Insurance** arising from facts, matters or circumstances which the **Insured** was aware of prior to the **Period of Insurance**.

Provided that:

- at the time the **Insured** first became aware of the facts, matters or circumstances, the **Insured** held a similar **Policy** and has maintained uninterrupted insurance of a similar type since;
- the **Insurer's** liability to indemnify the **Insured** is reduced to the extent of any prejudice suffered by the **Insurer** as a result of the late notification;
- such indemnity shall not apply to any **Claim** where the **Insured's** failure to notify such **Claim** is fraudulent;
- the **Insured** makes every reasonable effort to seek indemnity under the earlier **Policy**;
- such indemnity shall be subject to the terms, conditions, **Limit of Liability** and **Deductible** applicable to this **Policy Section** but no broader terms and conditions or higher limit of indemnity than the earlier **Policy**; and
- the **Insured** first became aware of the fact, matter or circumstance giving rise to the **Claim** after the **Continuity Date** specified in the **Schedule** of this **Policy Section**.

C) LIBEL, SLANDER AND DEFAMATION

The **Insurer** agrees to provide indemnity in respect of any **Claim** made against the **Insured**, by any person, for unintentional libel, unintentional slander and unintentional defamation in respect of any **Abuse** committed or alleged to have been committed in the conduct of the **Business** or **Care Services** and after the **Retroactive Date** as noted in the **Schedule**.

D) NEWLY CREATED OR ACQUIRED ENTITY OR SUBSIDIARY

The **Insurer** agrees to provide indemnity to any entity or **Subsidiary** acquired or created by the **Insured** or in respect of any facility acquired during the **Period of Insurance** for a period of up to sixty (60) days (but never beyond the **Expiry Date** of the **Period of Insurance**) from the date of such acquisition or creation.

The **Insurer** may, at its discretion, agree to provide further indemnity beyond a period of sixty (60) days (but never beyond the **Expiry Date** of the **Period of Insurance**) where:

- the **Insured** has notified the **Insurer** of the acquisition or creation of the entity or **Subsidiary** and has provided all information requested by the **Insurer**; and
- any terms imposed by the **Insurer** including the charging of any additional **Premium** considered appropriate, have been agreed by the **Insured**.

Notwithstanding the **Retroactive Date** or **Continuity Date** any indemnity under this **Extension** clause will only apply in respect of the first known instance of **Abuse** of a particular **Perpetrator** committed or alleged to have been

committed in the conduct of the **Business** or **Care Services** as noted in the **Schedule** and always subsequent to the date of acquisition or creation.

E) OFFICIAL INVESTIGATION OR INQUIRY

The **Insurer** agrees to pay **Investigation Costs and Expenses** arising out of or in connection with an **Official Investigation or Inquiry**. Provided that:

- the **Insurer** shall be entitled, at its discretion, to appoint legal representation to represent the **Insured** in the **Official Investigation or Inquiry**;
- the **Official Investigation or Inquiry** is directly or indirectly based upon, attributable to, or in consequence of any **Abuse** happening in connection with the **Business** or in the course of providing **Care Services**;
- the **Insured** receives written notification compelling its attendance or participation in the **Official Investigation or Inquiry** during the **Period of Insurance** and notifies the **Insurer** during the **Period of Insurance**;
- in the event that a **Claim** for payment of **Investigation Costs and Expenses** is withdrawn or indemnity under Policy Section 2 is subsequently withdrawn or denied, the **Insurer** shall cease to advance **Investigation Costs and Expenses** and the **Insured** shall refund any **Investigation Costs and Expenses** advanced by the **Insurer** to the extent that the **Insurer** is satisfied that the **Insured** was not entitled to such **Investigation Costs and Expenses**, unless the **Insurer** agrees in writing to waive recovery of such **Investigation Costs and Expenses**; and
- the **Insurer's** total liability in respect of **Investigation Costs and Expenses** for all **Claims** made under this **Extension** shall not exceed the **Sublimit** specified in the **Schedule** and in the aggregate per **Period of Insurance** for 4.3.E) Official Investigation or Inquiry, and 5.3.A) XV) Official Investigation or Inquiry, combined.

F) REPLACEMENT WAGES FOR STOOD DOWN STAFF

The **Insurer** agrees to reimburse the **Named Insured** the salary/wages of any **Employee** stood down for the alleged **Abuse** of a resident of a residential aged care facility owned or operated by the **Insured** or **Client** whilst such allegations are being investigated.

Provided that:

- the **Employee** remains on the **Named Insured's** payroll; and
- reimbursement will be for a maximum period of three months; and
- the maximum the **Insurer** will pay under this **Extension** is as specified in the **Schedule**.

G) RUN-OFF COVER INSURED ENTITY OR SUBSIDIARY

The **Insurer** agrees that if an **Insured** entity or **Subsidiary** ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the cover provided under this **Policy** with respect to such **Insured** entity or **Subsidiary** shall continue until the **Expiry Date** of the **Period of Insurance**.

Provided that such indemnity shall only apply in respect of any **Abuse** committed or alleged to have been committed prior to the effective date that such **Insured** entity or **Subsidiary** ceased to exist or operate or was consolidated with, merged into or acquired by another entity, unless otherwise agreed in writing by the **Insurer**.

4.4 EXCLUSIONS- POLICY SECTION 2

In addition to the general exclusions, the **Insurer** shall not be liable under this **Policy Section**, including under any **Extension** in respect of any **Claim**, **Loss** or other payment under this **Policy Section** arising directly or indirectly from, based upon, attributable to, or in consequence of:

A) FAMILY MEMBERS

Any **Abuse** committed or alleged to have been committed by a **Family Member**.

B) FINES AND PENALTIES

Any fines or penalties imposed by law, liquidated damages, or punitive, aggravated or exemplary damages or any additional damages resulting from the multiplication of compensatory damages.

C) KNOWN OFFENDERS

Liability:

- attributable to or in connection with any act of **Abuse** committed with the **Insured's** consent or knowledge;
- to pay compensation and/or **Defence Costs** where the **Insured** or any of its **Officers** knew or ought reasonably to have known that the actual or alleged **Perpetrator** of the **Abuse** had previously:
 - Committed **Abuse**;
 - been convicted of committing **Abuse**;
 - been charged with any offence relating to **Abuse**;
 - been the subject of a prior complaint in respect of **Abuse** while being a representative, member, **Employee**, volunteer, or service provider of the **Insured**, which had not been dealt with by the **Insured** in accordance with its prevention and reporting of **Abuse Policy**.

D) OBLIGATIONS TO EMPLOYEES

Any **Abuse** happening to any **Employee** of any **Insured** in the course of their employment.

E) TERRITORIAL LIMIT

Any act or alleged act of **Abuse** which gives rise to the **Claim** committed within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

F) THE PERPETRATOR

Where an **Insured** is the actual **Perpetrator** of the subject **Abuse** either admitted by the **Perpetrator** or established by a judgment of a court or tribunal with jurisdiction to finally determine the matter.

4.5 CONDITIONS - POLICY SECTION 2

A) REASONABLE PRECAUTIONS

In the event of **Abuse** having been committed or alleged to have been committed, the **Insured** shall at its expense take all reasonable steps to:

- prevent further **Abuse**; and
- follow the mandatory reporting obligations as set down by the Aged Care Quality and Safety Commission.

5. POLICY SECTION 3 - PROFESSIONAL INDEMNITY (INCLUDING MALPRACTICE)

5.1 DEFINITIONS - POLICY SECTION 3

The following words have the following meaning when used in Policy Section 3 only.

Word or term	Meaning
Claim	<ul style="list-style-type: none">any written or verbal demand made by a Third Party upon the Insured for compensation, however conveyed, including a writ, statement of claim, summons, application, crossclaim, counterclaim or other legal or arbitral process.for the purpose of cover under <u>5.3.A) XV) Official Investigation or Inquiry</u>, Claim means receipt of notice to attend an Official investigation or Inquiry as covered by this Policy Section.for the purpose of cover under <u>5.3.A) III) Civil Penalties</u>, Claim means a prosecution of the Insured brought under occupational health and safety or Environmental Legislation.
Health Care	any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person.
Health Care Incident	any act, error, omission or circumstance occurring, or alleged to have occurred, in the course of, or in connection with, the provision of Health Care by a Medical Practitioner .
Insured	<ul style="list-style-type: none">a) the Named Insured;b) any person who is, during the Period of Insurance, a Principal, Partner, Director or Employee of the Named Insured;c) any former principals, partners, Directors or Employees of the Named Insured;any current or former, volunteer worker authorised by an Insured designated in a), b) and c) above of this Policy Section to provide Care Services;any current or former student of a university or college of advanced education or a T.A.F.E. college, other Tertiary institution or Registered Training Organisation and assigned to and under the supervision of the Insured where such Claim arises from civil liability incurred on the part of the student in the provision of the Care Services;any principal for their vicarious liability arising from any act, error or omission committed or alleged to have been committed by the Insured, subject always to the Limit of Liability provided in the Schedule. For the purpose of this definition, principal shall mean any person or entity for whom the above perform work whether voluntary or otherwise;any Joint Venture or partnership if the Named Insured is part of that Joint Venture or partnership, provided that:<ul style="list-style-type: none">no indemnity shall be available to the other Joint Venture Partners or partners of any partnership; andindemnity is limited to the percentage share the Named Insured has in the Joint Venture or partnership;you have requested that your interest in the Joint Venture or partnership be included in the Policy; andthe name of the Joint Venture or partnership and the Care Services of the Joint Venture or partnership is specified in the Schedule;the Insurer shall not be liable under this Policy Section in respect of any Claim against the Insured bought or maintained by partners in the Joint Venture or partners of the partnership against the Insured.
Investigation Costs and Expenses	the reasonable legal costs (excluding any fine, Penalty or order for the payment of monetary compensation) incurred by the Insured with the Insurer's prior written consent in relation to a legally compellable attendance by the Insured at any Official Investigation or Inquiry .
Official investigation or Inquiry (other than routine regulatory or compliance review)	any official investigation, examination or inquiry including but not limited to coronial inquiries and inquiries conducted by a parliament or any disciplinary committee of any association or professional body of which the Insured is a member, in relation to the provision by the Insured of Care Service where such investigation, examination or inquiry may lead to a Claim being made against the Insured which may be indemnified under <u>5.2.A) Insuring Clause A</u> .

Privacy Costs and Expenses

legal costs and expenses reasonably and necessarily incurred by the **Insured** with the written consent of the **Insurer** arising out of:

- **Insured's** defence or investigation of any **Claim** or written complaint made against the **Insured** for the unintentional breach of any duty of confidentiality owed to any resident or **Client** arising at law or any unintentional breach of the Privacy Act 1988 (Cth), My Health Records Act 2012 (Cth) and privacy legislation in any state or territory of the Commonwealth of Australia or the Dominion of New Zealand; and
- the **Insured's** attendance or representation before any Privacy Commissioner, Private Code Adjudicator, Administrative Tribunal or Court in relation to the unintentional breach of any of the above legislation.
- **Privacy Costs and Expenses** does not mean or include any overhead expenses of the **Insured** or the salaries, wages or **Benefits** of any **Insured**, **Employee** or in-house lawyers or other in-house **Professional Advisers** of the **Insured**.

5.2 INSURING CLAUSES - POLICY SECTION 3

A) INSURING CLAUSE A

I. CIVIL LIABILITY INSURING CLAUSE

The **Insurer** agrees to indemnify the **Insured** for civil liability for any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** or **Extended Reporting Period**, (if applicable) arising from a breach of professional duty or the provision of **Medical Services** in the conduct of providing **Care Services**.

The **Insurer's** liability under this Insuring Clause shall not exceed the **Limit of Liability** shown on the **Schedule** in respect of any **Claim** or series of **Claims** arising from a single event, act, error or omission or which arise from causally connected or interrelated conduct, acts, errors or omissions and in the aggregate for the **Period of Insurance**.

B) INSURING CLAUSE B

I. DEFENCE COSTS INSURING CLAUSE

The **Insurer** agrees to pay the **Defence Costs** incurred with the written consent of the **Insurer**, which shall not be unreasonably withheld, in the defence or settlement of any **Claim** covered under Insuring Clause A.

Defence Costs will be paid in addition to the **Limit of Liability** or **Sublimit**, whichever applies, but only up to a maximum of 100% of the **Limit of Liability** or **Sublimit**.

II. RETROACTIVE DATE

Unless a **Retroactive Date** is specified in the **Schedule** this **Policy Section** shall provide cover in respect of breach of professional duty or the in provision of **Medical Services** in the conduct of providing **Care Services**, committed or alleged to have been committed irrespective of when such breach was committed or alleged to have been committed.

If a **Retroactive Date** is specified in the **Schedule**, then this **Policy Section** shall only provide cover in respect of breach of professional duty or in the provision of **Medical Services** in the conduct of providing **Care Services**, committed or alleged to have been committed after the **Retroactive Date**.

5.3 STANDARD AND OPTIONAL EXTENSIONS - POLICY SECTION 3

A) STANDARD EXTENSIONS

I. ADVANCEMENT OF DEFENCE COSTS

If the **Insurer** has not denied indemnity under this **Policy Section**, the **Insurer** agrees to advance **Defence Costs** that have been incurred with the consent of the **Insurer** within a reasonable time frame following receipt of invoices specifying such **Defence Costs** prior to determining the entitlement of the **Insured** to indemnity for a **Claim**.

The advancement of **Defence Costs** does not constitute an acceptance of indemnity under this **Policy** for such **Claim**.

In determining the entitlement of the **Insured** to indemnity under this **Policy Section** in respect of such **Claim**, the **Insurer** agrees that it will not rely on 5.4.B) Fraud and Dishonesty unless and until:

- an **Insured** makes an admission of any conduct described in 5.4.B) Fraud and Dishonesty; or
- it has been established through a judicial process that such **Insured** has committed conduct described within 5.4.B) Fraud and Dishonesty.

Where the **Insurer** relies on 5.4.B) Fraud and Dishonesty:

- the **Insurer** may cease to advance **Defence Costs** for any such **Insured**, unless the **Insurer**, at its sole discretion, continues to pay **Defence Costs** resulting from such **Claim**; and
- such **Insured(s)** (for their respective rights and interests) shall, within 60 days, refund **Defence Costs** advanced by the **Insurer**, unless the **Insurer** agrees in writing to waive recovery of such **Defence Costs**.

II. BOARD OF MANAGEMENT AND COMMITTEES

The **Insurer** agrees to pay the **Insured's** civil liability for **Loss** arising from any **Claim** made against any member of any board of management of the **Insured** or any disciplinary, ethics, **Business** practice, examining or research body or committee, which includes but is not limited to a consumer advisory body and/or quality care advisory body established by the **Insured** relating to the provision of **Medical Services** in the conduct of providing **Care Services**.

III. CIVIL PENALTIES

The **Insurer** agrees to indemnify the **Insured** against legal liability, which would otherwise be excluded by reason of 5.4.A) Fines and Penalties or 5.4.G) Pollutants only, for any **Penalty** arising from the conduct of the **Care Services** and first imposed against the **Insured** during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance** or (**Extended Reporting Period** if applicable) as a result of:

- a **Penalty** imposed upon the **Insured** by any **Regulatory Authority** arising from any actual or alleged breach of any occupational health and safety or **Environmental Legislation**; and
- any **Defence Costs** incurred with the written consent of the **Insurer** in the defence or settlement of any **Penalty** indemnified by this **Extension**.

Provided that:

- the **Insured** first became aware of the existence of such **Penalty** during the **Period of Insurance**; and
- the act, error or omission giving rise to the **Penalty** did not arise from gross negligence or an intentional, wilful, reckless, or deliberate act, error, or omission; and
- the **Insurer's** total liability under this **Extension** shall not exceed the **Sublimit** specified in the **Schedule**, including all **Defence Costs**.

IV. COMPETITION AND CONSUMER ACT AND RELATED LEGISLATION

The **Insurer** agrees to pay the **Insured's** civil liability for **Loss** arising from any **Claim** made against the **Insured** under the Australian Consumer Law or state or territory consumer protection legislation of the Commonwealth of Australia or the Dominion of New Zealand.

V. CONTINUOUS COVER

Notwithstanding 7.J) Prior or Pending, the **Insurer** agrees to indemnify the **Insured** under the insuring clauses for any **Claim** first made against the **Insured** during the **Period of Insurance** arising from facts, matters or circumstances of which the **Insured** was aware prior to the **Period of Insurance**. Provided that:

- at the time the **Insured** first became aware of the facts, matters or circumstances, the **Insured** held a similar **Policy** and has maintained uninterrupted insurance of a similar type since;
- the **Insurer's** liability to indemnify the **Insured** is reduced to the extent of any prejudice suffered by the **Insurer** as a result of the late notification;
- such indemnity shall not apply to any **Claim** where the **Insured's** failure to notify such **Claim** is fraudulent;
- the **Insured** makes every reasonable effort to seek indemnity under the earlier **Policy**;
- such indemnity shall be subject to the terms, conditions, **Limit of Liability** and **Deductible** applicable to this **Policy Section** but no broader terms and conditions or higher limit of indemnity than the earlier **Policy**; and

- the **Insured** first became aware of the fact, matter or circumstance giving rise to the **Claim** after the **Continuity Date** specified in the **Schedule** of this **Policy Section**.

VI. EMPLOYEE ESCORTING RESIDENT/CLIENT ON OVERSEAS TRAVEL

5.4.1) **Territorial Limit** shall not apply to **Claims** in connection with an **Employee** escorting and/or caring for a residential aged care resident or **Client** whilst such resident or **Client** is visiting or vacationing in the United States of America or the Dominion of Canada or their territories or protectorates.

VII. ESTATES AND LEGAL REPRESENTATIVES

The **Insurer** agrees to indemnify the estate, heirs, legal representatives or assigns of any **Insured Persons** in the event of the death or incapacity of such **Insured Persons**.

Provided that such persons shall observe and be subject to all the terms of this **Policy** insofar as they can apply.

VIII. GOOD SAMARITAN ACTS

The **Insurer** agrees to pay the **Insured's** civil liability for **Loss** arising from a **Claim** made against any **Employee** assisting at the scene of a medical emergency, accident or disaster whether being present either by chance, or in response to an S.O.S. call following a disaster or accident whilst at or in transit to or from the address of the **Business** provided however, that the **Insurer** shall not be liable where the **Employee** was acting at the time under a contract of employment with any employer other than the **Insured**.

IX. INTELLECTUAL PROPERTY

The **Insurer** agrees to indemnify the **Insured** in respect of any **Claim** made against **Insured** for any unintentional infringement of copyright, trademarks, registered designs or patents, or any unintentional plagiarism or unintentional breach of confidentiality.

X. LIBEL, SLANDER AND DEFAMATION

The **Insurer** agrees to indemnify the **Insured** in respect of any **Claim** made against the **Insured**, by any person, for unintentional libel, unintentional slander and unintentional defamation.

XI. LOSS OF DOCUMENTS

The **Insurer** agrees to provide indemnity arising from the **Loss** of any **Documents** which have been destroyed, damaged, lost or mislaid and, after diligent search, cannot be found:

- which were in the physical custody or control of the **Insured** or any other person to whom the **Insured** entrusted, lodged or deposited such **Documents** in the ordinary course of **Business**; and
- which occurred within the territorial limits of the Commonwealth of Australia or the Dominion of New Zealand.

Provided that:

- the discovery of such **Loss of Documents** occurred during the **Period of Insurance** and was notified in writing to the **Insurer** within thirty (30) days after the date of such discovery but during the **Period of Insurance** (or **Extended Reporting Period** if applicable);
- such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the **Insured** in replacing and/or restoring such **Documents** and any **Claim** for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by the **Insurer** with the approval of the **Insured**;
- the **Insurer's** aggregate liability in respect of all **Claims** under this **Extension** shall not exceed the **Sublimit** for this **Extension** specified in the **Schedule**.
- This **Sublimit** for this **Extension** noted in the **Schedule** is inclusive of **Defence Costs**.

XII. MALPRACTICE LIABILITY

The **Insurer** agrees to indemnify the **Insured** under the insuring clauses of this **Policy Section** for the **Insured's** liability for:

- the conduct of any nurse, **Employee** or volunteer worker; or

- the vicarious liability that arises out of the conduct of a consultant or contractor

in the provision of **Medical Services**.

XIII. NEWLY ACQUIRED BUSINESS

The **Insurer** agrees to extend the definition of **Insured** to include any facility or **Business** acquired or created by the **Named Insured** during the **Period of Insurance** of the same type already **Insured** by this Policy Section 1 prior to its acquisition or creation.

Provided that:

- cover is only available for a period of up to sixty (60) days (but never beyond the **Expiry Date** of the **Period of Insurance**) from the date of its acquisition or creation; and
- the **Insurer** may, at its discretion, agree to provide further indemnity beyond a period of sixty (60) days (but never beyond the **Expiry Date** of the **Period of Insurance**) where:
 - the **Named Insured** has notified the **Insurer** of the acquisition or creation of the entity or **Subsidiary** or acquisition and has provided all information requested by the **Insurer**; and
 - any terms imposed by the **Insurer** including the charging of any additional **Premium** considered appropriate, have been agreed by the **Named Insured**; and
- notwithstanding the **Retroactive Date** or **Continuity Date** any indemnity under this **Extension** will only apply in respect of any act, error or omission committed or alleged to have been committed in the conduct of the **Business** as noted in the **Schedule** and always after the date of acquisition or creation.

XIV. NOSOCOMIAL INFECTIONS OR INFECTIOUS AGENT

The **Insurer** will pay to or on behalf of the **Named Insured** the reasonable costs and expenses with the **Insurer's** prior written consent to engage a **Third Party** to clean and/or disinfect the section of the **Named Insured's** facility affected by contamination because of:

- any outbreak due to nosocomial infections or infectious agents such as influenza, gastroenteritis, Coronavirus disease (COVID19), scabies and norovirus; and
- any increase or unexpected morbidity or mortality associated with practices or procedures resulting in significant infections, that require reporting to the Commonwealth Department of Health and Aged Care or other Government healthcare oversight agency or authority.

The maximum payable including **Defence Costs** under this **Extension** is the **Sublimit** stated in the **Schedule**.

XV. OFFICIAL INVESTIGATION OR INQUIRY

The **Insurer** agrees to pay **Investigation Costs and Expenses** arising out of or in connection with an **Official Investigation or Inquiry**. Provided that:

- the **Insurer** shall be entitled, at its discretion, to appoint legal representation to represent the **Insured** in the **Official Investigation or Inquiry**;
- the **Official Investigation or Inquiry** is directly related to the provision of **Care Services** and commences during the **Period of Insurance** and is notified to the **Insurer** during the **Period of Insurance**;
- in the event that a **Claim** for payment of **Investigation Costs and Expenses** is withdrawn or indemnity under this **Policy Section** is subsequently withdrawn or denied, the **Insurer** shall cease to advance **Investigation Costs and Expenses** and the **Insured** shall refund any **Investigation Costs and Expenses** advanced by the **Insurer** to the extent that the **Insurer** is satisfied that the **Insured** was not entitled to such **Investigation Costs and Expenses**, unless the **Insurer** agrees in writing to waive recovery of such **Investigation Costs and Expenses**; and
- the **Insurer's** total liability in respect of **Investigation Costs and Expenses** for all **Claims** made under this **Extension** shall not exceed the **Sublimit** specified in the **Schedule** and in the aggregate per **Period of Insurance** for Policy Section 2 and 5.3.A) XV) Official Investigation or Inquiry.

XVI. ONLINE MEDICARE BENEFIT FRAUD

The **Insurer** agrees to provide indemnity to the **Insured** against:

- civil liability for compensation; and

- **Defence Costs** incurred with the written consent of the **Insurer**

arising from any **Claim** made against the **Insured** based upon or attributable to the Commonwealth Health Insurance Commission having transferred or paid any benefit or funds to any person (other than the **Insured**) who had no legal entitlement to such benefit or funds as the direct result of the dishonest or fraudulent input, deletion, or modification of **Data** on HIC Online by an **Employee**. Provided that:

- such **Claim** is first made against the **Insured** during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance** or **Extended Reporting Period** (if applicable); and
- the **Insurer** shall not be liable for any **Loss of Money**, negotiable instruments, bearer bonds, coupons, stamps, bank or currency notes belonging to the **Insured** or for which the **Insured** is legally liable; and
- the **Insurer** shall not be liable to indemnify any **Insured** who committed, participated in or condoned such dishonest or fraudulent conduct; and
- the **Insurer** shall not be liable for any **Loss**, cost or expense sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable suspicion of, dishonest or fraudulent conduct on the part of the **Employee** concerned; and
- the **Insurer's** total liability under this **Extension** shall not exceed the **Sublimit** specified in the **Schedule**.

XVII. PREVIOUS BUSINESS

The **Insurer** agrees to provide indemnity in respect of any **Claim** made against any person who is a partner, **Director**, principal of the **Insured** for civil liability incurred on the part of such person in the conduct of the same **Care Services** as specified in the **Schedule** before that person joined the **Insured**. Provided that:

- such indemnity shall be subject to the terms, conditions, **Limit of Liability** and **Deductible** applicable to this **Policy** but no broader terms and conditions or higher limit of indemnity than the earlier **Policy**; and
- after making every reasonable effort to seek indemnity under such earlier **Policy**, indemnity is granted to the **Insured** under the earlier **Policy**, then this **Extension** does not apply.

XVIII. PRIVACY COMPLAINTS AND CLAIMS

The **Insurer** agrees to provide indemnity to the **Insured** in respect of:

- liability for compensation and any **Defence Costs** arising from any **Claim** or written complaint made against the **Insured** for unintentional breach of any duty of confidentiality owed to any resident or **Client** arising at law or any unintentional breach of any privacy legislation in any state or territory of the Commonwealth of Australia; and
- provided that such **Claim** or complaint is first made against the **Insured** during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance** or (**Extended Reporting Period** if applicable);
- however, the **Insurer** shall not be liable for:
 - any civil or criminal fines or penalties;
 - non-compensatory damages, including punitive or exemplary damages; or
 - the costs of compliance with any regulatory, administrative, Court or Tribunal directives or with any injunctive or non-compensatory relief; or
 - any liability, **Loss**, cost, or expense that is uninsurable under the laws of Australia or New Zealand; and
 - the **Insurer's** total liability under this **Extension** shall not exceed the **Sublimit** specified in the **Schedule**.

XIX. REINSTATEMENT OF LIMIT OF LIABILITY

The **Insurer** agrees to increase the **Limit of Liability** of this **Policy Section** as specified in the **Schedule** by increasing the **Limit of Liability** to its original limit if the **Limit of Liability** has been reduced or exhausted by payments made under this **Policy Section**.

Provided that the **Insurer's** total liability under this **Policy Section** shall not exceed:

- in respect of any one **Claim**, the **Limit of Liability** as specified in the **Schedule**; and
- in respect of all **Claims**, an amount equal to the aggregate **Limit of Liability** as specified in the **Schedule**.

XX. RUN-OFF COVER INSURED ENTITY OR SUBSIDIARY

The **Insurer** agrees that if an **Insured** entity or **Subsidiary** ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the indemnity provided under this **Policy Section** with respect to such **Insured** entity or **Subsidiary** shall continue until the **Expiry Date** of the **Period of Insurance**.

Provided that such indemnity shall only apply in respect of liability incurred prior to the effective date that such **Insured** entity or **Subsidiary** ceased to exist or operate or was consolidated with, merged into or acquired by another entity, unless otherwise agreed in writing by the **Insurer**.

B) OPTIONAL EXTENSION

I. COMMUNICABLE DISEASE

Notwithstanding general exclusion 11 - Communicable Disease:

- the **Insurer** agrees to indemnify the **Insured** for any **Claim** brought against the **Insured** and notified to the **Insurer** during the **Period of Insurance** in respect of any disease determined to be a listed human disease under the *Biosecurity Act 2015* (Cth) or any pandemic (including COVID 19) or epidemic as declared by the World Health Organisation;
- the **Insurer's** total liability under this **Extension**, shall not exceed the **Sublimit** specified in the **Schedule**.

II. EXTENDED REPORTING PERIOD

In the event that this **Policy Section** is not renewed or is cancelled for any reason other than non-payment of **Premium** then the **Insured** has until such time that the **Named Insured** effects another professional indemnity insurance **Policy** with another **Insurer** or a period of thirty (30) days immediately after the **Period of Insurance** designated in the **Schedule** of this **Policy Section** whichever is the lesser, during which **Claims** may be notified to the **Insurer** as if notification had occurred during the **Period of Insurance** designated in the **Schedule**. Provided that:

- the **Named Insured** has requested the purchase of the extended reporting period in writing during the **Period of Insurance** designated in the **Schedule**;
- the **Named Insured** pays an additional **Premium** of 25% of the annual **Premium**;
- cover under this extended reporting period will only apply to **Claims** first made against the **Insured** during the **Period of Insurance** specified in the **Schedule**;
- cover under this extended reporting period will not apply to any act, error or omission committed or allegedly committed after the **Period of Insurance** specified in the **Schedule**;
- the **Insurer's** total liability under this **Extension** shall not exceed the balance of the **Limit of Liability** available to the **Insured** at the time this **Policy Section** was otherwise due to expire or \$2,000,000, inclusive of all **Defence Costs**, whichever is the lesser.

5.4 EXCLUSIONS - POLICY SECTION 3

In addition to the general exclusions, the **Insurer** shall not be liable under this **Policy Section**, including under any **Extension** in respect of any **Claim**, **Loss** or other payment under this **Policy Section** arising directly or indirectly from, based upon, attributable to, or in consequence of:

A) FINES AND PENALTIES

Punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law.

B) FRAUD AND DISHONESTY

- any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of any **Insured** or their consultants, sub-contractors, or agents; or
- any act or omission of any **Insured** or their consultants, sub-contractors, or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof; or
- wilful breach of any statute, contract, or duty by any **Insured** or their consultants, sub-contractors, or agents.

C) INTOXICANTS AND DRUGS

Services rendered by any **Insured** while under the influence of intoxicants or drugs if the rendering of such service took place with the knowledge of a **Director**, partner, administrator, supervisor, manager or proprietor of the **Insured**.

D) MEDICAL PRACTITIONERS

Any **Claim** made against an **Insured** that is a **Medical Practitioner**:

- in relation to **Medical Services** and/or **Health Care Incidents**;
- in relation to the **Insured** acting in their capacity as a **Medical Practitioner**; or
- brought or maintained by or on behalf of a **Medical Practitioner** in relation to **Health Care Incidents** (including but not limited to any **Claim** in respect of the enforcement of any indemnity between the **Insured** and a **Medical Practitioner**).

E) OBLIGATIONS TO EMPLOYEES

- bodily injury, mental injury, sickness, disease or death of any **Employee** of the **Insured**; or
- damage to or destruction of any property of any **Employee**, including **Loss** of use, arising out of, or in the course of, their employment.

F) OCCUPIERS LIABILITY AND PROPERTY DAMAGE

- any liability incurred or alleged to have been incurred as a result of any occupation or ownership of any real property by the **Insured**.
- physical **Loss** of, damage to, or destruction of, any tangible property (other than any **Document**), including **Loss** of use thereof or any consequential **Loss**.

G) POLLUTANTS

- the actual or alleged discharge, release or escape of **Pollutants**; or
- any enforcement action or proceeding in connection with the containment, clean up, removal or treatment of such **Pollutants**.

H) RELATED OR ASSOCIATED ENTITIES

- brought or maintained by or on behalf of any **Insured**, **Subsidiary**, or parent company of the **Insured**; or any person who, at the time of the act, error or omission giving rise to the **Claim**, is a **Family Member** unless such **Family Member** is acting without any prior direct or indirect solicitation or co-operation of any **Insured**; and
- provided that the **Insurer** is not required to prove that such **Family Member** is acting with prior direct or indirect solicitation or co-operation by any **Insured** for this exclusion to apply, that burden rests with the **Insured**.

I) TERRITORIAL LIMIT

Any act, error or omission giving rise to the **Claim** committed within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

J) TRADING DEBTS

Any trading debt incurred by the **Insured** or any guarantee given by the **Insured** for a debt.

6. POLICY SECTION 4 - MANAGEMENT LIABILITY INSURANCE

6.1 DEFINITIONS - POLICY SECTION 4

The following words have the following meaning for Policy Section 4 only.

Word or term	Meaning
Auditor	an Officer who is authorised under Commonwealth, State or Territory legislation to carry out a tax audit of the Corporation's taxation or financial affairs or Return on behalf of the Australian Taxation Office.
Business Crisis Consultant Fees	the reasonable costs, charges, fees, and expenses of an independent management consultant engaged to minimise the effect of a Business Crisis Event .
Business Crisis Event	any unforeseen event which, in the reasonable opinion of the Chief Executive Officer (or equivalent) of the Corporation , if left unmanaged has the potential to lead to an imminent decrease of 20% or more of the Corporation's consolidated annual revenues.
Benefits	fringe Benefits and perquisites; or amounts due or payments made in connection with superannuation or an Employee benefit plan or pension scheme; or any severance, redundancy or statutory entitlements (including paid or unpaid leave entitlements); or any share or stock options or any other right to purchase, acquire, sell or transfer shares or stock; or bonuses or incentive payments.
Claim	a) subject to b) through d) below of this <u>Policy Section 4</u> : <ul style="list-style-type: none">• a written allegation communicated to any Insured of a Wrongful Act;• a civil proceeding commenced by the service on the Insured of a complaint, summons, statement of Claim, Third Party notice, cross Claim or similar pleading alleging any Wrongful Act; b) for Insuring Clauses A (Directors and Officers Insuring Clause) and B (Corporate Entity Insuring Clause) a criminal proceeding commenced by a summons or charge alleging any Wrongful Act ;
	c) for the purposes of <u>6.3.B) IV) Statutory Penalties</u> any written notice received by an Insured which alleges a Wrongful Breach and alleges that an Insured is liable to pay a Penalty ;
	d) for the purposes of <u>6.2.C) Insuring Clause C - Corporate Entity Liability Insuring Clause</u> and <u>6.3.A) VI) Defamation and Intellectual Property</u> : <ul style="list-style-type: none">• a written allegation communicated to any Insured by a Third Party of a right to compensation because of a Wrongful Act; or• a civil proceeding commenced by the service of a complaint, summons, statement of Claim, Third Party notice, cross Claim or similar pleading alleging by a Third Party of a right to compensation as a result of a Wrongful Act. e) for the purposes of <u>6.2.E) Insuring Clause E - Official Investigation and Inquiry Claim</u> means receipt of a notice to attend an Official Investigation or Inquiry as covered by this Policy Section .
Client	a customer of the Corporation to whom the Corporation provides goods or services under a contract.
Corporate Manslaughter Proceeding	a formal criminal proceeding brought against an Insured Person for involuntary manslaughter (including constructive manslaughter or gross negligence manslaughter) in their capacity as an Insured Person and directly related to the business of the Corporation .
Corporation	the entity specified in the Schedule for this Policy Section and shall be deemed to include any Subsidiary of the Corporation .
Covered Property	tangible property other than Money and Securities .
Crime Investigation Expenses	<ul style="list-style-type: none">• reasonable expenses, including the cost of third-party accounting or forensic services, incurred by the Corporation with the Insurer's prior written consent, solely to investigate and substantiate the amount of a Crime Loss; and• does not include regular, or overtime wages, salaries, fees or Benefits earned in the normal course of employment.

Crime Loss	<ul style="list-style-type: none"> • the direct financial or physical Loss of Money, Securities and Covered Property belonging to, leased by or in the care, custody, or control of the Corporation, sustained by the Corporation caused by: <ul style="list-style-type: none"> ○ any dishonest, fraudulent or malicious act committed by an Employee, Officer, or Third Party (whether acting alone or in collusion with any other person); or ○ the use of the Corporation's or an Insured Person's Business identify information to access the Corporation's records. • includes the direct financial or physical Loss of Money, Securities and Covered Property suffered by a Client caused by any dishonest, fraudulent or malicious act committed by an Employee not being in collusion with such Client's Directors or Employees; • includes Crime Investigation Expenses; • does not include: <ul style="list-style-type: none"> ○ regular or overtime wages, salaries, fees, or Benefits earned in the normal course of employment; or ○ damages of any type, including but not limited to punitive, exemplary, aggravated or multiplied damages; • is calculated by means of the 'Basis of valuation of Crime Loss' Claims condition.
Director	any natural person who was prior to the Period of Insurance or is during or after the Period of Insurance a validly appointed Director (as defined in the <i>Corporations Act 2001</i> or any equivalent provision in the jurisdiction in which the Corporation is incorporated) of the Corporation .
Discovered	when any Director, Officer or senior manager of the Corporation , not in collusion with an Employee committing any dishonest or fraudulent act, first becomes aware of facts which would cause a reasonable person in the circumstances to believe that Crime Loss has occurred, or is likely to occur, regardless of when the act or acts causing or contributing to such Crime Loss occurred and even though the exact amount or details of Crime may not then be known.
Insured	<ul style="list-style-type: none"> • the Corporation, resident's association, or resident committee if such association or committee is formed with the consent of the Corporation; and • any Insured Person.
Insured Person	<ol style="list-style-type: none"> a) any past, present, or future Director, secretary, Officer, office bearer or Employee of the Corporation, including any natural person who is deemed to be a Director or Officer by virtue of any applicable legislation; b) any advisory board member or member of the Quality Care Advisory Board; c) any past, present, or future secretary, Officer, office bearer, member, committee member or Employee of the resident's association if such association or committee is formed with the consent of the Corporation. d) Insured Person shall however not include: <ul style="list-style-type: none"> • a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made between the Corporation and any other person or persons; or • any company, organisation, or other body corporate; or • a person acting in the capacity as a trustee.
Investigation Costs and Expenses	the reasonable legal costs and expenses incurred by the Insurer or by the Insured with the Insurer's written consent in connection with the Insured Person's attending at or responding to a written request from an Official Investigation or Inquiry . It does not mean: <ul style="list-style-type: none"> • regular or overtime wages, salaries, or fees of any Insured Person; or • other costs and expenses incurred by or on behalf of the Corporation.
Joint Venture	any enterprise undertaken jointly by the Corporation with a Third Party or parties.
Joint Venture Partner	any non- Insured who jointly participates with the Corporation in any Joint Venture .
Officer	any natural person who was prior to the Period of Insurance , or is during or after the Period of Insurance : <ul style="list-style-type: none"> • a company secretary of the Corporation; or • a person:

- who makes, or participates in making, decisions that affect the whole, or a substantial part of the business of the **Corporation**; or
- who has the capacity to significantly affect the **Corporation's** financial standing; or
- in accordance with whose instructions or wishes the **Directors** are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the **Directors** or the **Corporation**),
- other than a receiver, or receiver and manager; an administrator or an administrator of a deed of company arrangement; a liquidator; or a trustee or other person administering a compromise or arrangement made between the **Corporation** and someone else.

Official Investigation or Inquiry

an official investigation, examination or inquiry conducted by a **Regulatory Authority** or Coroners Court in relation to the affairs of the **Corporation**.

Official Investigation or Inquiry does *not* include:

- any industry-wide investigation or inquiry or Royal Commission; or
- routine regulatory supervision, inspection or compliance review or hearing, investigation or examination or inquiry or general industry wide violation reviews;
- any investigation, examination or inquiry conducted by a parliament, or any committee of a parliament, or
- any disciplinary committee of any association or professional body of which the **Insured** is a member.

Money

without limitation, legal tender including bank notes, coins, bullion, cheques, bills of exchange, promissory notes, and **Claims** on bank deposits and accounts.

Outside Directorship

the position of **Director**, secretary, **Officer**, office bearer, or committee member held by an **Insured Person** in an **Outside Entity**, which position is held:

- with the knowledge and consent of the **Corporation**; and
- for the purpose of representing the **Corporation**.

Outside Entity

any entity which is not the **Corporation** or a **Subsidiary**, and in which an **Outside Directorship** is held by an **Insured Person**.

Professional Adviser

- an accountant who is a member of a nationally recognised accounting body, a registered tax agent or tax consultant; and
- any other professional person or consultant engaged by or at the recommendation of the person referred to in 6.1 Insured Person a) of this **Policy Section** but does not mean the **Corporation** or any person working for the **Corporation** under a contract of employment.

Return

any **Return**, legally required to be, and actually, lodged with, a government or government authority or agency by the **Corporation** or on its behalf.

Securities

shares, stocks, bearer instruments, derivatives, bonds, warrants, debentures, units in shares, units in trusts (including any evidence of indebtedness or other equity or debt security), rights under a depositary receipt or other **Securities** (or interests therein) of whatever nature.

Third Party

any natural person other than any **Insured Person**.

Wrongful Act

- for the purposes of Insuring Clauses, A and B in respect of **Insured Persons**, any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement or other act committed or allegedly committed or attempted by any **Insured Person** in the course of their duties for or on behalf of the **Corporation**. It does not include conduct as a trustee. For the purpose only of 6.3.A) X) Not-For-Profit Outside Directorship, it also includes such actual or alleged conduct in the course of their duties to the **Outside Entity**.
- for the purposes of 6.2.C) Insuring Clause C in respect of the **Corporation**, any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or allegedly committed or attempted by any **Insured** in the course of undertaking the business of the **Corporation**. It does not include conduct as a trustee.
- for the purposes of 6.3.A) IX) Intellectual Property, any unintentional infringement of copyright, trademarks, registered designs or patents, or any plagiarism or breach of confidentiality; and
- for the purposes of 6.3.A) VI) Defamation, any actual or alleged conduct referred to therein.

Wrongful Breach

any conduct by an **Insured** which results in a contravention of:

- any occupational, health, or safety legislation enacted by the Commonwealth of Australia or any state or territory of Australia; or
- the *Corporations Act 2001*.

6.2 INSURING CLAUSES - POLICY SECTION 4

A) INSURING CLAUSE A - DIRECTORS AND OFFICERS INSURING CLAUSE

The **Insurer** agrees to pay to or on behalf of the **Insured Person** all **Loss** arising from a **Claim** against the **Insured Person(s)** alleging a **Wrongful Act** where the **Insured Person** is not provided indemnification by the **Corporation**.

B) INSURING CLAUSE B - CORPORATE ENTITY INSURING CLAUSE

The **Insurer** agrees to pay to or on behalf of the **Insured** all **Loss** arising from a **Claim** against the **Insured Person(s)** alleging a **Wrongful Act** which the **Corporation** is legally permitted or required by law to pay.

C) INSURING CLAUSE C - CORPORATE ENTITY LIABILITY INSURING CLAUSE

The **Insurer** agrees to pay to or on behalf of the **Insured** all **Loss** arising from a **Claim** against the **Corporation** alleging a **Wrongful Act**.

D) INSURING CLAUSE D – EMPLOYMENT PRACTICES LIABILITY INSURING CLAUSE

The **Insurer** agrees to pay to or on behalf of the **Insured** all **Loss** arising from a **Claim** against the **Insured** arising from **Employment Practices Liability** arising as a result of actual or alleged conduct by a **Named Insured** in the course of their duties to the **Corporation** or the **Corporation**.

Provided that:

- such **Claim** is first made during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance** or Extended Reporting period (if applicable); and
- the **Insurer's** aggregate liability for all **Loss** under this Insuring Clause shall not exceed the **Sublimit** shown in the **Schedule**.

E) INSURING CLAUSE E – OFFICIAL INVESTIGATION OR INQUIRY

The **Insurer** agrees to pay **Investigation Costs and Expenses** in relation to any **Official Investigation or Inquiry** commenced during the **Period of Insurance** and which is notified to the **Insurer** during the **Period of Insurance**.

Provided that the **Insurer's** aggregate liability for all **Loss** under this Insuring Clause shall not exceed the **Sublimit** shown in the **Schedule**.

F) INSURING CLAUSE F - CRIME

Notwithstanding 6.4.D) Fraud and Dishonesty, the **Insurer** will provide indemnity to the **Insured** for **Crime Loss** first **Discovered** and notified to the **Insurer** during the **Period of Insurance**.

Provided that:

- the **Insurer's** total liability under this Insuring Clause shall not exceed the **Sublimit** stated in **Schedule** for any one **Crime Loss** and in the aggregate for all **Crime Loss**;
- separate **Sublimits** apply to:
 - **Crime Investigation Expenses**; and
 - **Client** crime costs covered by the 6.1 Definitions – Policy Section 4 definition of **Crime Loss**

as specified in the **Schedule**.

G) RETROACTIVE DATE

If no **Retroactive Date** is specified in the **Schedule** or if the **Retroactive Date** is specified in the **Schedule** as "Unlimited", this **Policy Section** shall provide indemnity in respect of **Wrongful Act(s)** committed (or alleged to have

been committed) or **Crime Loss** occurring irrespective of when such **Wrongful Act(s)** were committed (or were alleged to have been committed) or **Crime Loss** occurred.

If a **Retroactive Date** is specified in the **Schedule**, then each insuring clause of this **Policy Section** shall only provide cover in respect of **Wrongful Act(s)** committed (or alleged to have been committed) or **Crime Loss** occurring after the **Retroactive Date**.

6.3 STANDARD AND OPTIONAL EXTENSIONS - POLICY SECTION 4

A) STANDARD EXTENSIONS

I. ADVANCEMENT OF DEFENCE COSTS

If the **Insurer** has not denied indemnity under this **Policy Section**, the **Insurer** agrees to advance **Defence Costs** that have been incurred with the consent of the **Insurer** within a reasonable time frame following receipt of invoices specifying such **Defence Costs** prior to determining the entitlement of the **Insured** to indemnity for a **Claim**.

The advancement of **Defence Costs** does not constitute an acceptance of indemnity under this **Policy** for such **Claim**.

In determining the entitlement of the **Insured** to indemnity under this **Policy Section** in respect of such **Claim**, the **Insurer** agrees that it will not rely on 6.4.D) Fraud and Dishonesty unless and until:

- an **Insured** makes an admission of any conduct described in 6.4.D) Fraud and Dishonesty; or
- it has been established through a judicial process that such **Insured** has committed conduct described within 6.4.D) Fraud and Dishonesty.

Where the **Insurer** relies on 6.4.D) Fraud and Dishonesty:

- the **Insurer** may cease to advance **Defence Costs** for any such **Insured**, unless the **Insurer**, at its sole discretion, continues to pay **Defence Costs** resulting from such **Claim**; and
- such **Insured(s)** (for their respective rights and interests) shall, within 60 days, return **Defence Costs** advanced by the **Insurer**, unless the **Insurer** agrees in writing to waive recovery of such **Defence Costs**.

II. CONTINUOUS COVER

Notwithstanding 7.J) Prior or Pending, the **Insurer** agrees to indemnify the **Insured** under the insuring clauses for any **Claim** first made against the **Insured** during the **Period of Insurance** arising from facts, matters or circumstances of which the **Insured** was aware prior to the **Period of Insurance** provided that:

- at the time the **Insured** first became aware of the facts, matters or circumstances, the **Insured** held a similar **Policy** and has maintained uninterrupted insurance of a similar type since;
- the **Insurer** may reduce the indemnity entitled by the monetary equivalent of any prejudice which the **Insurer** suffer because of the delay;
- such indemnity shall not apply to any **Claim** where the **Insured's** failure to notify such **Claim** is fraudulent;
- the **Insured** makes every reasonable effort to seek indemnity under the earlier **Policy**;
- such indemnity shall be subject to the terms, conditions, **Limit of Liability** and **Deductible** applicable to this **Policy Section** but no broader terms and conditions or higher limit of indemnity than the earlier **Policy**;
- the **Insured** first became aware of the fact, matter or circumstance giving rise to the **Claim** after the **Continuity Date** specified in the **Schedule** of this **Policy Section**;
- Coverage under this **Extension** does not apply to 6.2.F) Insuring Clause F - Crime.

III. CONTRACTUAL LIABILITIES, ASSUMED DUTY OR OBLIGATION

The **Insurer** agrees to extend cover under Insuring Clauses A and B to any **Claim** against an **Insured Person** for breach or alleged breach of any contract, other than a breach or alleged breach of a contract for the provision of professional services and/or professional advice which would otherwise be excluded by reason of 7.E) Contractual Liabilities, Assumed Duty or Obligation.

IV. CORPORATE MANSLAUGHTER

Insuring Clauses, A, B and E are extended to cover any **Corporate Manslaughter Proceeding**.

V. CRISIS MANAGEMENT

The **Insurer** will pay on behalf of the **Corporation**, any **Business Crisis Consultant Fees** incurred by the **Corporation** during the first thirty days immediately following a **Business Crisis Event** that occurs during the **Period of Insurance**.

The **Insurer's** aggregate liability for all **Claims** under this **Extension** shall not exceed the sub-limit shown in the **Schedule** for Crisis Management.

VI. DEFAMATION

The **Insurer** agrees to provide indemnity under Insuring Clauses A and B in respect of any **Claim** made against an **Insured Person** for defamation by reason of words written or spoken by an **Insured Person**.

VII. ESTATES AND LEGAL REPRESENTATIVES

The **Insurer** agrees to indemnify the estate, heirs, legal representatives or assigns of any **Insured Person** in the event of the death or incapacity of such **Insured Person**, but only where the **Claim** is made against them solely because of their status as such and is only in respect of a **Wrongful Act** of such **Insured Person** which would otherwise be covered under this **Policy**.

Provided that such persons shall observe and be subject to all the terms of this **Policy** insofar as they can apply.

VIII. EXTENDED PERIOD OF INSURANCE FOR RETIRED DIRECTORS

The **Insurer** agrees that a current **Director** of the **Corporation** or a current committee member of an incorporated association may (in accordance with 9.B) **Reporting and Notice** notify under Insuring Clauses A or B a **Claim** made on them as an **Insured Person** in an extended reporting period of 84 months immediately following the **Period of Insurance** shown in the **Schedule**.

Provided that:

- no **Policy** insuring **Directors'** and **Officers'** or committee members' legal liability on or after expiry of the **Period of Insurance** has been affected by the **Insured** with the **Insurer** or any other **Insurer** (whether as a replacement **Policy** or otherwise); and
- indemnity will only be provided in respect of **Directors**, **Officers**, or committee members of an incorporated association who, prior to the expiry of the **Policy**, have permanently retired from all appointments and positions (including and not only with the **Corporation** or an association **Insured** under this **Policy**), other than from any 'not for profit' organisation directorship which was held by an **Insured Person** at the commencement of the **Period of Insurance** or which was assumed by an **Insured Person** during the **Period of Insurance**; and
- the **Insurer's** liability in respect of all **Claims** under this **Extension**, including **Defence Costs**, shall not exceed the amount specified as a **Sublimit** in the **Schedule**.

IX. INTELLECTUAL PROPERTY

The **Insurer** agrees to provide indemnity under Insuring Clauses A and B in respect of any **Claim** made against an **Insured Person** for infringement of copyright, trademarks, registered designs or patents, or any plagiarism, or breach of confidentiality.

X. NOT-FOR-PROFIT OUTSIDE DIRECTORSHIP

The **Insurer** agrees to provide indemnity under Insuring Clauses A and B in respect of a **Claim** arising from any **Outside Directorship** in a Not-For-Profit organisation which is held by an **Insured Person** at the commencement of the **Period of Insurance**, or which is assumed by an **Insured Person** during the **Period of Insurance**.

Provided that:

- such indemnity shall not be available to the **Outside Entity** in which such **Outside Directorship** is held or to any other **Director**, **Officer**, office bearer, or **Employee** of such **Outside Entity** who is not also an **Insured Person** under this **Policy Section**; and

- such indemnity shall be specifically excess of any other indemnity available to such **Insured Person** by reason of serving in such **Outside Directorship**; and
- this **Extension** shall only apply in respect of a **Wrongful Act** occurring during the period for which such **Outside Directorship** was held;
- this **Extension** shall not apply to any **Claim** bought or maintained by or on behalf of the Not-For-Profit Organisation in which the **Outside Directorship** is held.

XI. NOT FOR PROFIT OUTSIDE DIRECTORSHIP RUN-OFF COVER

If an **Insured Person** ceases to hold an **Outside Directorship** in a Not-For-Profit organisation during the **Period of Insurance** the **Insurer** agrees:

- to provide indemnity with respect to such **Outside Directorship** under Insuring Clauses A and B of this **Policy**.

Provided that:

- this optional **Extension** shall not apply to any **Claim** bought or maintained by or on behalf of the organisation in which the **Outside Directorship** is held and may be subject to additional terms and conditions; and
- such indemnity shall be subject to the conditions of 6.3.A) X) Not-For-Profit Outside Directorship.

XII. POLLUTION LIABILITY

The **Insurer** agrees to indemnify the **Insured** under Insuring Clauses A, B and C for **Defence Costs** in respect of any **Claim** brought or maintained by a **Regulatory Authority**, which would otherwise be excluded by reason of 6.4.I) Pollutants, where such **Claim** alleges a breach of **Environmental Legislation**.

Provided that:

- such indemnity shall not extend to any **Claim** brought by a **Regulatory Authority** on behalf of, in the name of or as a representative of any other person(s), **Corporation** or other entity; and
- the **Insurer's** aggregate liability for all **Claims** under this **Extension** shall not exceed the **Sublimit** shown in the **Schedule**.

XIII. REINSTATEMENT OF LIMIT OF LIABILITY

The **Insurer** agrees to increase the **Limit of Liability** of this **Policy Section** as specified in the **Schedule** by increasing the **Limit of Liability** to its original limit if the **Limit of Liability** has been reduced or exhausted by payments made under this **Policy Section**.

Provided that the **Insurer's** total liability under this **Policy Section** shall not exceed:

- in respect of any one **Claim**, the **Limit of Liability** as specified in the **Schedule**; and
- in respect of all **Claims**, an amount equal to the aggregate **Limit of Liability** as specified in the **Schedule**.

XIV. RUN-OFF COVER - PRIOR OWNED SUBSIDIARIES

The **Insurer** agrees that:

- if an entity ceases to be a **Subsidiary** during the **Period of Insurance**, indemnity with respect to such **Subsidiary** shall continue until the **Expiry Date** of the **Period of Insurance**.
- if an entity ceased to be a **Subsidiary** prior to the commencement of the **Period of Insurance**, indemnity with respect to such **Subsidiary** shall be granted under this **Policy Section**. Provided that:
 - such indemnity shall only apply in respect of a **Wrongful Act** occurring between the date of creation or acquisition by the **Corporation** and the date such entity ceased to be a **Subsidiary**;
 - the **Insured** has requested the interests of the previously owned **Subsidiary** be included; and
 - the **Insured** shall not be liable for **Claims** against the **Insured** bought or maintained by the previously owned **Subsidiary**.

XV. SPOUSAL LIABILITY

The **Insurer** agrees to provide indemnity under Insuring Clauses A and B in respect of any **Claim** made against the lawful spouse, civil partner, domestic partner or de facto of any **Insured Person** solely because of his or her status as spouse, civil partner or de facto which seeks damages recoverable from:

- marital community property; or
- property jointly held by any **Insured Person** and the spouse, civil partner, domestic partner or de facto; or
- property transferred from any **Insured Person** to the spouse, civil partner or de facto, but only where such **Claim** is based on a **Wrongful Act** of the **Insured Person** which would otherwise be covered under this **Policy**. It does not provide cover in respect of any act of the spouse, civil partner, domestic partner or De facto.

XVI. SUBSIDIARY CREATED OR ACQUIRED

The **Insurer** agrees the definition of **Insured** shall be extended to include any entity or **Subsidiary** acquired or created by the **Corporation** during the **Period of Insurance** for a period of up to sixty (60) days (but never beyond the **Expiry Date** of the **Period of Insurance**) from the date of such acquisition or creation.

The **Insurer** may, at its discretion, agree to provide further indemnity beyond a period of sixty (60) days (but never beyond the **Expiry Date** of the **Period of Insurance**) where:

- the **Insured** has notified the **Insurer** of the acquisition or creation of the entity or **Subsidiary** and has provided all information requested by the **Insurer**; and
- any terms imposed by the **Insurer** including the charging of any additional **Premium** considered appropriate, have been agreed by the **Insured**;
- notwithstanding the **Retroactive Date** or **Continuity Date** any indemnity under this **Extension** will only apply in respect of **Wrongful Acts** committed or alleged to have been committed in the conduct of the **Business** and always after the date of acquisition or creation.

XVII. TAX AUDIT

Following completion of a tax audit of the **Corporation** or an **Insured Persons'** financial affairs in respect of the **Corporations** business by the Australian Taxation Office or by another Commonwealth, State or Territory Department the **Insurer** will pay the **Insured** for a **Claim** for **Professional Adviser** fees incurred by the **Corporation** or **Insured Person** in connection with a tax audit commenced and notified during the **Period of Insurance** of this **Policy Section**; and

Provided that the **Corporation** and/or **Insured Persons**:

- lodges taxation and other **Returns** and pays all taxes within 90 days of the time limit prescribed by statute, or an **Extension** is granted by the **Auditor**, in which case then within the further period granted; and
- responds to letters, requests, and enquiries from the **Auditor** within a reasonable time; and
- makes full and complete declarations of all relevant liabilities due to be paid or remitted by it and of all Commonwealth, State or Territory taxation liabilities due to be paid or remitted by it during each year of income covered by this **Policy**, and all deductions including capital **Losses** or other amounts claimed by it in respect of the same period.

For the purpose of this **Extension**, a tax audit commences at the time the **Corporation**, or its **Professional Adviser** first receives notice that the **Auditor** proposes to conduct a tax audit and completed when:

- a) the **Auditor** has given written notice to that effect; or
- b) the **Auditor** notifies the **Corporation** that it has made a concluded decision; or
- c) the **Auditor** has issued an assessment or an amended assessment of the **Corporation's Returns**; or
- in the absence of a), b) and c) above, where the **Corporation's Professional Adviser** declares in writing that such an audit has been concluded.
- The **Insurer's** total liability in the aggregate for all **Claims** under this **Extension** will not exceed the **Sublimit** shown in the **Schedule** for tax audit.

B) OPTIONAL EXTENSIONS

I. EXTENDED REPORTING PERIOD

In the event that this **Policy Section** is not renewed or is cancelled for any reason other than non-payment of **Premium** then the **Insured** has until such time that the **Named Insured** effects another similar insurance **Policy** with another **Insurer** or a period of 30 days immediately after the **Period of Insurance** designated in the **Schedule** of this **Policy Section** whichever is the lessor, during which **Claims** may be notified to the **Insurer** as if notification had occurred during the **Period of Insurance** designated in the **Schedule**.

Provided that:

- the **Named Insured** has requested the purchase of the extended reporting period in writing during the **Period of Insurance** designated in the **Schedule**;
- the **Named Insured** pays an additional **Premium** of 25% of the annual **Premium**;
- insurance under this extended reporting period will only apply to **Claims** first made against the **Insured** during the **Period of Insurance** specified in the **Schedule** of this **Policy Section**;
- insurance under this extended reporting period will not apply to any **Wrongful Act** committed or allegedly committed after the **Period of Insurance** specified in the **Schedule**;
- the **Insurer's** total liability under this **Extension** shall not exceed the balance of the **Limit of Liability** available to the **Insured** at the time this **Policy Section** was otherwise due to expire or \$2,000,000 (inclusive of all **Defence Costs**), whichever is the lessor.

II. OUTSIDE DIRECTORSHIP COVER (OTHER THAN NOT-FOR-PROFIT ORGANISATION)

The **Insurer** agrees to provide indemnity under Insuring Clauses A and B in respect of a **Claim** arising from any **Outside Directorship** which is held by an **Insured Person** at the commencement of the **Period of Insurance**, or which is assumed by an **Insured Person** during the **Period of Insurance**.

Provided that:

- such indemnity shall not be available to the **Outside Entity** in which such **Outside Directorship** is held or to any other **Director**, **Officer**, office bearer, or **Employee** of such **Outside Entity** who is not also an **Insured Person** under this **Policy Section**; and
- such indemnity shall be specifically in excess of any other indemnity available to such **Insured Person** by reason of serving in such **Outside Directorship**; and
- this **Extension** shall only apply in respect of a **Wrongful Act** occurring during the period for which such **Outside Directorship** was held; and
- this optional **Extension** shall not apply to any **Claim** bought or maintained by or on behalf of the organisation in which the **Outside Directorship** is held and may be subject to additional terms and conditions and additional **Premium**.

III. OUTSIDE DIRECTORSHIP RUN-OFF COVER (OTHER THAN NOT-FOR-PROFIT ORGANISATION)

If an **Insured Person** ceases to hold an **Outside Directorship** for which insurance was provided under this **Policy Section** during the **Period of Insurance**, the **Insurer** agrees:

- to provide indemnity with respect to such **Outside Directorship** under Insuring Clauses A and B of this **Policy**.

Provided that:

- this optional **Extension** shall not apply to any **Claim** bought or maintained by or on behalf of the organisation in which the **Outside Directorship** is held and may be subject to additional terms and conditions; and
- such indemnity shall be subject to the conditions of 6.3.B) II) Outside Directorship Cover (Other than Not-For-Profit Organisation).

IV. STATUTORY PENALTIES

The **Insurer** agrees to indemnify the **Corporation** and the **Insured Person** for pecuniary fines and penalties awarded against them by a **Regulatory Authority** which would otherwise be excluded by 6.4.C) Fines and Penalties.

Provided that the **Insurer** shall not be liable to indemnify the **Insured** in respect of any **Penalty** or **Defence Costs** in respect of any such **Claim** arising directly or indirectly from or which is based upon, attributable to, or in consequence of or in connection with any:

- dishonest, wilful, intentional, or deliberate **Wrongful Breach**; or
- wilful, intentional, or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act; or
- gross negligence or recklessness of an **Insured**; or
- requirements to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost; or
- breach of Sections 182 or 183 of the *Corporations Act 2001* and any amendment, consolidation, or re-enactment of any of these sections; or
- substandard care to, or mistreatment of any person; or
- discrimination against any person; or
- exploitation, violence or **Abuse** of any person; or
- failure to comply with any notice issued by any **Regulatory Authority**, or
- governance or compliance failures that may have resulted in any matters set out in subclauses (i) and (ix) of this **Extension** clause.

The **Insurer's** aggregate liability for all **Claims** under this **Extension** shall not exceed the **Sublimit** shown in the **Schedule** for Statutory Penalties.

6.4 EXCLUSIONS - POLICY SECTION 4

In addition to the general exclusions, the **Insurer** shall not be liable under this **Policy Section**, including under any **Extension** in respect of any **Claim**, **Loss** or other payment under this **Policy Section** arising directly or indirectly from, based upon, attributable to, or in consequence of:

A) BREACH OF PROFESSIONAL DUTY

The rendering or failure to render **Care Service** or any other professional services and/or professional advice.

B) CAPITAL RAISING DISCLOSURE DOCUMENT

Any capital raising disclosure document including but not limited to a prospectus, short-form prospectus, profile statement, offer information statement or information memorandum or similar document providing information to potential investors.

C) FINES AND PENALTIES

Any punitive, aggravated, multiple, or exemplary damages, or fines or penalties imposed by law including but not limited to civil penalties. This Exclusion does not apply to any cover afforded by 6.3.A) XII) Pollution Liability or 6.3.B) IV) Statutory Penalties.

D) FRAUD AND DISHONESTY

Any:

- actual or alleged deliberately fraudulent or dishonest act or omission of an **Insured** or
- actual or alleged act or omission by an **Insured** with a reckless disregard for the consequences thereof; or
- actual or alleged act or omission by an **Insured Person** within Section 199B (1)(a) and/or Section 199B(1)(b) of the *Corporations Act 2001* or any legislation which supersedes or replaces this section of the *Corporations Act 2001*; or
- actual or alleged improper use of position or information to gain, or attempt to gain, any profit or advantage or cause, or attempt to cause, detriment to the **Corporation**; or

- wilful violation or wilful breach of any statute or regulation, or any wilful breach of any contract.

E) INSOLVENCY

Insolvency, receivership, administration or liquidation of:

- the **Corporation**; or
- any **Outside Entity** in which an **Insured Person** holds a directorship.

F) INSURED V INSURED

Any action or suit brought or maintained by or on behalf of an **Insured**, however this exclusion shall not apply to:

- any **Claim** brought by an **Insured Person** against another **Insured Person** for contribution or indemnity if such **Claim** directly results from another **Claim** covered under Insuring Clause A (**Directors** and **Officers** Insuring Clause);
- any **Claim** brought or maintained against an **Insured Person** in the name of the **Corporation**; or
- a shareholder derivative action, provided that such shareholder is not also an **Insured** and is acting without any prior direct or indirect solicitation or enticement or with any other **Insured**; or
- any **Claim** pursuant to Section 50 of the *Australian Securities and Investment Commission Act 1989*; or at the instigation of a receiver, a receiver and manager, an administrator or liquidator formally appointed by the court.

G) JOINT VENTURE

Any **Claim** brought or maintained by or on behalf of any **Joint Venture Partner**.

H) PERSONAL INJURY

Any physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any natural person, but this Exclusion shall not apply to **Penalties** and **Defence Costs** resulting from a **Claim** by a **Regulatory Authority**.

I) POLLUTANTS

Any:

- actual, alleged or threatened discharge, release, escape, containment, or disposal of **Pollutants** into or upon land, the atmosphere, or any watercourse or body of water; or
- enforcement action or proceeding in connection with the containment, clean up, removal, or treatment of such **Pollutants**.

J) PRODUCTS

Any goods or products manufactured, produced, processed, packaged, sold, supplied, marketed, distributed, advertised or developed by the **Corporation** or any **Outside Entity**.

K) PROPERTY DAMAGE

Physical **Loss** or damage to or destruction of any property including **Loss** of use thereof or any consequential **Loss**.

This Exclusion shall not apply to indemnity for Crisis Management pursuant to 6.3.A) V) Crisis Management.

L) STATUTORY PAYMENTS LIABILITY

Any amounts owing or allegedly owing to the Australian Taxation Office or any State revenue office, including but not limited to tax, duties, levies, penalties, interest and costs.

M) SUBSTANTIAL SHAREHOLDERS

Any **Claim** brought or maintained by any person, body corporate or other entity entitled to fifteen percent (15%) or more of the share capital or voting shares in the **Corporation**.

For the purposes of this exclusion:

- a person, body corporate or other entity shall be taken to be entitled to a voting share if that person, body corporate or other entity has any direct or indirect, legal or beneficial interest in the share or any direct or indirect power to vote the share or to dispose of the share and whether or not the interest or power is held through any interposed body corporate or other entities or held jointly with others.
- where 6.3.A) X) Not-For-Profit Outside Directorship and 6.3.A) XI) Not-For-Profit Outside Directorship Run-Off Cover have been included, then the definition of **Corporation** shall be deemed to include any **Outside Entity**.

N) TAX AUDIT

Under 6.3.A) XVII) Tax Audit, in relation to the following:

- amended notices/additional tax/fine/legal costs for any:
 - amounts sought by any amended notice of assessment; or
 - additional tax, duty, government impost or the like; or
 - fine or **Penalty** imposed; or
 - costs in legally pursuing or defending any legal actions against the **Corporation** or the **Insured Persons**;
- any audit conducted by the Australian Prudential Regulation Authority
- any criminal prosecution/foreign **Return** or entity/tax **Return** for **Professional Adviser Fees**:
 - arising directly or indirectly from or in respect of any criminal prosecution; or
 - arising directly or indirectly from or in respect of any **Return** lodged outside Australia, its States or Territories; or
 - arising directly or indirectly from or in respect of any person or organisation ordinarily resident outside Australia, its States or Territories; or
 - incurred, that should have been incurred and that ordinarily would have been incurred for work done prior to or as part of the preparation of the **Corporation's** accounts, **Returns**, taxation and financial records prior to or as part of the preparation of the **Corporation's Returns**, taxation and financial records, or any document required by the relevant legislation in connection with its **Returns**.

6.5 ADDITIONAL EXCLUSIONS INSURING CLAUSE D - EMPLOYMENT PRACTICES LIABILITY

The **Insurer** shall not be liable under 6.2.D) Insuring Clause D of this **Policy** in respect of any **Claim**, **Loss** or other payments arising directly or indirectly from, based upon, attributable to, or in consequence of:

A) BENEFITS AND ENTITLEMENTS

Actual or alleged obligation of any **Insured**:

- to pay ordinary salary, wages and employment entitlements;
- arising from any judgment, court order or settlement for the reinstatement of an **Employee**, including any future **Employee** entitlements;
- pursuant to any workers' compensation, disability **Benefits**, redundancy or unemployment **Benefits** or compensation, unemployment insurance, superannuation, retirement **Benefits**, social security **Benefits**, or similar law;
- for or in respect of employment entitlements such as but not limited to **Employee** share or equity plans, bonuses, or incentives of any kind, leave or similar entitlements, severance or redundancy, superannuation contributions and similar alleged entitlements or amounts.
- This Exclusion does not apply to **Defence Costs**.

B) BUILDING MODIFICATIONS

Costs incurred by the **Insured** to modify any building or property in order to make such building or property more accessible or accommodating to any disabled person. This exclusion does not apply to **Defence Costs**.

C) CONTINUITY OF EMPLOYMENT BENEFITS

Employment-related **Benefits** to which the claimant would have been entitled as an **Employee** had the **Insured** provided the claimant with a continuance, reinstatement or commencement of employment.

D) CRIMINAL PROCEEDINGS

Criminal, administrative or other disciplinary proceeding against any **Insured**.

E) INDUSTRIAL RELATIONS

Any industrial dispute, including any strike, picket, lockout, go slow or work to rule.

F) NON-PECUNIARY RELIEF

Cost of compliance with any order for, grant of, or agreement to provide injunctive or non-pecuniary relief. This exclusion does not apply to **Defence Costs**.

G) UNFAIR CONTRACT

Actual or alleged unfair contract of employment, including but not limited to any **Claim** or proceeding brought under industrial relations legislation in any State, Territory, or jurisdiction.

6.6 ADDITIONAL EXCLUSIONS - INSURING CLAUSE F - CRIME

The **Insurer** shall not be liable under Insuring Clause F of this **Policy** in respect of any **Claim**, **Loss** or other payments arising directly or indirectly from, based upon, attributable to, or in consequence of:

A) CRIME LOSS

- the accessing or disclosure of any confidential information, including but not limited to trade secret information, computer programs, confidential processing methods or other confidential information of any kind except where such accessing, or disclosure enables the commission of any act otherwise covered.
- damage or destruction to the **Corporation's** premises
- first **Discovered** prior to the commencement of the **Period of Insurance** or after the expiry of the **Period of Insurance**.
- any dishonest or fraudulent act committed by:
 - a **Director**; or
 - an **Employee**, **Officer** or **Third Party** acting in collusion with a **Director**; or
 - an **Employee** or **Officer** having at any time more than five per cent control of or interest in the **Corporation**.
- any authorised or unauthorised trading in **Money**, **Securities** or **Covered Property** by an **Employee** or **Officer**, whether acting alone or in collusion with any other person and whether or not such trading is in the name of the **Corporation** and whether or not such trading is in a genuine or fictitious account.
- any part of such **Crime Loss**, caused by an **Employee** or **Officer**, which is sustained after **Discovery** of any dishonest or fraudulent act committed by such **Employee** or **Officer**.
- any part of such **Crime Loss**, the proof of which is dependent solely upon:
 - a profit and **Loss** computation or comparison; or
 - a comparison of inventory records with an actual physical count, provided that where the **Corporation** establishes wholly apart from such computation or comparison that it has sustained **Crime Loss** caused by an identified an **Employee** or **Officer**, then it may offer its inventory records and actual physical count of inventory in support of the amount of **Crime Loss** claimed.

- indirect or consequential **Loss** of any kind, including but not limited to **Loss** of income, potential income, interest, profits, or dividends, whether or not earned or accrued.
- **Loss** of or damage to records, manuscripts, accounts, microfilms, tapes or other records or the cost of reproducing any information contained in such lost or damaged records.

For the purposes of this Exclusion, when it is possible that a person may be construed to be both a **Director** and an **Officer**, such person shall be deemed to be a **Director** only.

6.7 CLAIMS CONDITIONS - POLICY SECTION 4

A) OFFICIAL INVESTIGATIONS AND INQUIRIES – COSTS AND EXPENSES

In relation to any cover afforded under 6.2.E) Insuring Clause E - Official Investigation and Inquiry, the following provisions apply:

- the **Insurer** shall be entitled, at its discretion, to appoint legal representation to represent the **Insured** in the **Official Investigation or Inquiry**; and
- in the event that a **Claim** for payment of **Investigation Costs and Expenses** is subsequently withdrawn or denied, the **Insurer** shall cease to advance **Investigation Costs and Expenses** and the **Insured** (for their respective rights and interests) shall refund any **Investigation Costs and Expenses** advanced by the **Insurer**, unless the **Insurer** agrees in writing to waive recovery of such **Investigation Costs and Expenses**; and
- the **Deductible** shall apply to each and every **Official Investigation or Inquiry**.

B) BASIS OF VALUATION OF CRIME LOSS

In respect of **Crime Loss** of **Securities**, the **Insurer** will be liable for the actual market value of the **Securities** at the close of **Business** on the **Business** day immediately preceding the day on which the **Crime Loss** was **Discovered** or the actual cost of replacing the **Securities**, whichever is less, plus the cost of posting any required lost instrument bond (which cost will be paid by the **Insurer** on behalf of the **Corporation**). The indirect or consequential **Loss** exclusion forming part of 6.6 Additional Exclusions – Insuring Clause F – Crime, does not apply to the calculation of **Crime Loss** of **Securities**.

In respect of **Crime Loss** of **Covered Property**, the **Insurer** will be liable for the actual cash value of **Covered Property** at the time of **Crime Loss** or the actual cost of repairing or replacing the **Covered Property** with property of similar quality or value, whichever is the lesser.

7. GENERAL EXCLUSIONS ALL POLICY SECTIONS

These exclusions apply to all **Policy Sections** of this **Policy** unless expressly stated otherwise. The **Insurer** shall not be liable under this **Policy** in respect of any **Claim, Loss** or any other payments under this **Policy** arising directly or indirectly from, based on or attributable to or in consequence of:

A) ABUSE

- **Abuse** as defined in this **Policy**.
- This exclusion shall not apply to coverage afforded in Policy Section 2 and 6.2.D) Insuring Clause D – Employment Practices Liability and 6.2.E) Insuring Clause E - Official Investigation and Inquiry.

B) AIRCRAFT AND WATERCRAFT

- the ownership, maintenance, lease, operation or use of any **Aircraft** or **Watercraft/Hovercraft** by an **Insured**;
- the ownership of any **Aircraft** landing area or **Aircraft** hangar or airport; or
- Products that are **Aircraft** component parts where such component parts affect the safety, flight controls or take-off or landing of an **Aircraft**.

C) ASBESTOS

Contributed to or aggravated by asbestos, or material containing asbestos, in whatever form or quantity.

D) COMMUNICABLE DISEASE

- any highly pathogenic avian or animal influenza in humans.
- Cholera, Rabies and or any pandemic or epidemic as declared by the World Health Organisation; or
- any disease determined to be a “listed human disease” under the Biosecurity Act 2015 (Cth) as amended from time to time or any disease that is determined, listed or otherwise specified in an equivalent manner under any legislation that either replaces the Biosecurity Act 2015 (Cth) or has an equivalent object or objects.

E) CONTRACTUAL LIABILITY, ASSUMED DUTY, OR OBLIGATION

Any duty, liability or obligation assumed by an **Insured** by way of any contract, agreement, warranty, guarantee or indemnity to the extent that such liability exceeds the liability the **Insured** would have incurred in the absence of such contract or agreement.

This exclusion shall not apply to indemnity afforded under Policy Section 1 for:

- those written contracts, agreements or indemnities designated in the **Schedule**; or
- liability assumed by the **Insured** under a warranty of fitness or quality as regards the **Insured’s Products**; or
- liability assumed by the **Insured** under any lease agreement for real or personal property other than a provision which obliges the **Insured** to effect insurance or provide indemnity in respect of the subject matter of that contract.

This exclusion shall not apply to indemnity afforded under 6.2.D) Insuring Clause D – Employment Practices Liability in relation to a contract of employment.

F) CYBER AND DATA

- any **Cyber Act** or **Cyber Incident** including, but not limited to, any action taken in controlling, preventing, suppressing, or remediating any **Cyber Act** or **Cyber Incident**; or
- **Loss** of use, reduction in functionality, repair, replacement, restoration, reproduction, **Loss** or theft of any **Data**, including any amount pertaining to the value of such **Data**, regardless of any other cause or event contributing concurrently or in any other sequence thereto.
- In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- If **Insurers** allege that by reason of this endorsement that **Loss** sustained by the **Insured** is not covered by this **Policy**, the burden of proving the contrary shall be upon the **Insured**.

G) DAMAGE TO THE INSURED'S PRODUCT (PRODUCT DEFECT)

Property Damage to the **Insured's Product** if such damage is attributable to any defect, harmful nature or unsuitability or inherent vice or inefficiency or ineffectiveness of the **Insured's Products**.

H) LEGAL JURISDICTION

- any **Claim** brought or compensation sought against the **Insured** in any country outside the Commonwealth of Australia;
- any **Claim** brought or compensation sought in a court of law outside the territorial limits of the Commonwealth of Australia; or
- the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of any country other than the Commonwealth of Australia.

I) NUCLEAR

Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel.

J) PRIOR OR PENDING

- any **Claim, Loss** or other matter which may be subject to indemnity under this **Policy**, made, threatened, or intimated against the **Insured** prior to the **Period of Insurance**; or
- any fact, incident, matter, or circumstance:
 - of which written notice has been given, or ought reasonably to have been given, under any previous **Policy**; or
 - of which the **Insured** first became aware prior to the **Period of Insurance**, and which the **Insured** knew or ought reasonably to have known had the potential to give rise to a **Claim**.

K) SANCTIONS

Where payment of such **Claim** or **Loss** or provision of such benefit would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the United Kingdom, the United States of America, or Australia.

L) TERRORISM

Any act of **Terrorism** including, but not limited to any actually, or any threat of, force, violence or intimidation committed by any person or persons for any ideological, religious, political or similar purpose including with the intention to overthrow, influence or disrupt any government and or any **Policy** of any government.

This exclusion operates in connection with any act of **Terrorism** regardless of any other cause or event and regardless of the sequence of the act of **Terrorism** and the other cause or event.

This **Policy** also excludes **Personal Injury, Property Damage**, death, injury, illness, **Loss**, damage, liability, cost or expense directly or indirectly caused by, contributed to or by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.

M) WAR

War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the order of any government or public local authority.

8. GENERAL CONDITIONS ALL POLICY SECTIONS

A) ALTERATION TO RISK

This insurance has been accepted by the **Insurer** on the basis of information the **Named Insured** has provided prior to the **Insurer** agreeing to provide this insurance cover.

It is agreed that the **Named Insured** shall give to the **Insurer** written notice as soon as practicable of any material alteration to the risk during the **Period of Insurance** including but not limited to:

- Voluntary bankruptcy, receivership, liquidation or any other form of external administration or if the **Named Insured** fails to pay debts or breaches any other obligation which gives rise to the appointment of a receiver or any pending bankruptcy or winding-up proceedings; or
- any material changes in the nature of the **Business or Care Services** as specified in the **Schedule** which form part of this **Policy**.
- Where such notice is given and/or where there is any material alteration to the risk, than in consultation with the **Named Insured**, the **Insurer** is entitled to alter the terms and conditions of the **Policy** including an additional **Premium** or to cancel this **Policy** in accordance with the *Insurance Contracts Act 1984*.

B) AUTHORISATION

The **Named Insured** agrees to act on behalf of every **Insured** under this **Policy** and each **Insured** agrees that the **Named Insured** shall act on its behalf with respect to the giving and receiving of notice of any **Claim**, the giving and receiving of notice of cancellation or expiry of this **Policy**, the payment of **Premium** and the return of any **Premium** that may become due under this **Policy**, the negotiation, agreement to and acceptance of endorsements, and the giving and receiving of a notice provided for in this **Policy**.

C) CANCELLATION

The **Named Insured** may cancel this **Policy** at any time by notifying the **Insurer** in writing, and the **Insurer** will allow a pro-rata refund of **Premium** for the unexpired **Period of Insurance**, but such refund will never be greater than 50% of the **Premium**, any fee charged is not refundable.

The **Insurer** may cancel this **Policy** in any of the circumstances permitted by law by informing the **Named Insured** in writing. The **Insurer** will give the **Named Insured** notice in person or send it to the **Named Insured's** address (including by email address) last known to the **Insurer**. The cancellation shall be effective within 5 **Business** days of the notification to **Named Insured** in accordance with the relevant provisions of the *Insurance Contracts Act 1984*, and if **Premium** has been paid in advance, the **Insurer** will provide a pro-rata refund of **Premium** for the unexpired **Period of Insurance**, fees charged are not refundable.

D) SEVERABILITY AND NON-IMPUTATION

The **Insurer** agrees that where this **Policy** insures more than one **Insured**, where an **Insured Person**:

- failed to comply with the duty of disclosure; or
- made a misrepresentation to the **Insurer** before the **Policy** was entered into;

this shall not prejudice the right of any other **Insured Person** to indemnity as may be afforded by this **Policy**.

Provided that:

- the **Insured Person** was not aware of the failure or misrepresentations;
- as soon as is reasonably practicable upon becoming aware of any such conduct, the **Insured Person** advises the **Insurer** in writing of all known facts in relation to such conduct; and
- the conduct of an executive **Officer** is imputed to the **Insured**.

E) NON-ACCUMULATION

In the event of a **Claim**, series of **Claims** arising out of the one source or originating cause or **Occurrence** as defined in Policy Section 1, in respect of which the **Insured** is entitled to indemnity under more than one **Policy Section** then:

- the **Insured** is only entitled to indemnity under one **Policy Section** for each **Loss**;

- notwithstanding the separate **Policy Sections**, the maximum liability of the **Insurer** under all **Policy Sections** shall be limited to the highest **Limit of Liability** under any one of the **Policy Sections**; and
- in no event shall the **Limit of Liability** under any one of the **Policy Sections** be cumulative across more than one **Policy Section**.

The **Insurer's** liability under 3.3.B) I) Communicable Disease and the **Insurer's** liability under 5.3.B) I) Communicable Disease are not cumulative, and the total **Limit of Liability** under this **Policy** is as specified in the **Schedule** for any one **Claim** and all **Claims** in the aggregate for any one **Period of Insurance**.

The **Insurer's** liability under 4.3.E) - Official Investigation or Inquiry, and the **Insurer's** liability under 5.3.A) XV) Official Investigation or Inquiry are not cumulative and the total **Limit of Liability** under this **Policy** is as specified in the **Schedule** for any one **Claim** and all **Claims** in the aggregate for any one **Period of Insurance**.

F) ADJUSTMENT OF PREMIUM

Where **Premium** has been calculated on estimates furnished by the **Insured**, the **Insured** shall within 30 days after the expiry of each **Period of Insurance** furnish to the **Insurer** such information as the **Insurer** may require adjusting the **Premium** for the expired **Period of Insurance**.

Any difference in **Premium** shall be paid by or allowed to the **Insured**. The **Insured** shall allow the **Insurer** to inspect the **Insured's** records of such information.

9. CLAIMS CONDITIONS ALL POLICY SECTIONS

A) ALLOCATION

Where a **Claim, Loss** or any other payments made under this **Policy** are covered only in part by this **Policy** the **Insurer** and the **Insured** will use their best efforts to agree a fair and proper allocation of amounts that are covered and those that are not covered under this **Policy**. If the **Insurer** and the **Insured** cannot agree on a fair and proper allocation then the matter will be referred to **Senior Counsel** (to be mutually agreed upon by the **Insured** and the **Insurer**, or in the absence of agreement, appointed by the President of the relevant state or territory Law Society in the state or territory in which the **Claim** was made) whose opinion will be binding. In formulating their opinion, **Senior Counsel** shall take into consideration the respective legal exposures between the covered and uncovered elements, as well as the economics of the matter, including the likely **Defence Costs** and the prospects of the **Insured** successfully defending the **Claim**. The **Insurer** and the **Insured** shall each have the opportunity, but not the obligation, to make a submission to **Senior Counsel** on the reasons for their respective position.

The cost of **Senior Counsel's** opinion will be regarded as **Defence Costs** or costs and expenses under Policy Section 1.

Where the amounts covered under this **Policy** remain unagreed or undetermined, the **Insurer** shall only be liable to pay the proportion of any **Claim, Loss** or other payment which it considers covered under the **Policy** after a fair and proper allocation. Once such fair and proper allocation is agreed or determined, such allocation shall be retrospectively applied to all amounts incurred prior to such agreement or determination.

B) REPORTING AND NOTICE

The **Insured** shall give to the **Insurer** written notice as soon as practicable of any **Claim** made against an **Insured** under **Policy Sections 2, 3 or 4** or happening of an **Occurrence** under Policy Section 1. Provided that for **Policy Sections 2, 3 or 4** such written notice is given to the **Insurer** during the **Period of Insurance** in which the **Claim** is made or **Discovered**.

Notice of any **Claim**, or any fact, incident, matter, or circumstance that could lead to a **Claim** or the happening of an **Occurrence** shall be given in writing to the **Insurer** and delivered to the address stated in the **Schedule**.

C) MITIGATION AND CO-OPERATION

If the **Insured**, either prior to or during the **Period of Insurance**, becomes aware of a situation which could, if not rectified, lead to a **Claim, Loss** or payment under this **Policy** or increase the quantum of a **Claim, Loss** or payment, the **Insured** must use due diligence and do all things reasonably practicable to avoid or diminish any **Loss**.

The **Insured** must provide the **Insurer** with all reasonable assistance the **Insurer** requires when the **Insured** deals with the **Insurer** and the **Insured** will:

- be truthful and frank;
- not behave in a way that is abusive, dangerous, hostile, improper or threatening;
- co-operate fully with the **Insurer**, even after the **Insurer** has paid a **Claim**.

D) DEFENCE AND SETTLEMENT

The **Insurer** may:

- instruct the **Insured** to conduct the defence of a **Claim**, matter or proceeding indemnified by this **Policy** if the **Insurer** believes that it will not exceed the **Deductible**, in which case the **Insured** will be responsible for the **Insured's** own **Defence Costs**, costs and expenses and any settlement up to the amount of the **Deductible**. In the event that any reasonable **Defence Costs**, costs and expenses or payment made to dispose of the **Claim** exceeds the **Deductible** the **Insurer** will reimburse the **Insured** those reasonable **Defence Costs** or costs and expenses;
- take over and conduct, in the **Insured's** name, the defence or settlement of any **Claim**, matter or proceeding indemnified by this **Policy** at any time, in which case the **Insurer** will then have sole control.

The **Insured** agrees:

- not to negotiate or settle any **Claim**, incur any **Defence Costs** or costs and expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **Claim, Loss** or payment without the **Insurer's** written consent, provided that the **Insurer** shall not unreasonably withhold such consent;

- that any information that is received by the **Insurer's** external lawyers in the course of investigating, defending or settling any **Claim** matter or proceeding indemnified by this **Policy** and made against the **Insured** can be provided to the **Insurer** and relied upon by the **Insurer** in relation to any issue that may arise regarding the **Insurer's** liability to indemnify the **Insured**.

E) INSURED'S RIGHT TO CONTEST

In the event that the **Insurer** recommends a settlement in respect of any **Claim** matter or proceeding indemnified by this **Policy** and the **Insured** does not agree, then the **Insured** may elect to contest, provided that the **Insurer's** liability in connection with such **Claim**, matter or proceeding shall not exceed the amount for which it could have been settled plus the **Defence Costs** or costs and expenses incurred with the **Insurer's** written consent up to the date of such election, less the **Deductible**.

Nothing contained in this clause shall result in an increase to the **Limit of Liability**.

F) SENIOR COUNSEL CLAUSE

The **Insurer** shall not require you to contest any **Claim** matter or proceeding indemnified by this **Policy** unless a **Senior Counsel** (to be mutually agreed upon by you and the **Insurer**) shall advise that it should be contested.

In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely **Defence Costs** or costs and expenses and the prospects of the **Insured's** defence.

The cost of such **Senior Counsel's** opinion shall be regarded as part of the **Defence Costs** or costs and expenses under Policy Section 1.

G) SUBROGATION

In respect of any **Claim**, **Loss** or other payment covered by this **Policy**, and without limiting the **Insurer's** rights at law, the **Insurer** shall be subrogated to all your rights of recovery, and you shall execute all papers reasonably required and shall do everything reasonably necessary to secure and preserve such rights, including the execution of **Documents** necessary to enable the **Insurer** effectively to bring suit in your name.

You shall not, without first obtaining the written consent of the **Insurer**, do anything or fail to do anything which excludes, limits, or prejudices the **Insurer's** rights of subrogation.

H) CONFIDENTIALITY

The **Insured** agrees not to disclose the existence of this **Policy**, the nature of the liability indemnified, the **Limit of Liability** or the amount of the **Premium** paid, to any **Third Party**, except to the extent that:

- there is requirement by law to do so; or
- the **Insurer** consents, in writing, to such disclosure.

I) POLICY INTERPRETATION

The headings in this **Policy** do not form part of the **Policy** wording and are for descriptive purposes only.

A reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes all consolidations, amendments, re-enactments and replacements.

A word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender.

Bolded terms in the **Policy** may refer to a defined term in a definition section, or to a term stated in the **Schedule**, or both.

J) GOVERNING LAW

This **Policy** is governed by the law of the Australian State or Territory in which this **Policy** is issued.

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