Combined Liability Insurance
Policy Wording
LLOYD’S CERTIFICATE OF INSURANCE

Effected through
Professional Risk Underwriting Pty Ltd
ABN 80 103 953 073 AFSL 308076
(hereinafter called the Coverholder)

THIS CERTIFICATE OF INSURANCE confirms that in return for payment of the Premium shown in the Schedule, certain Underwriters at Lloyd’s have agreed to insure You, in accordance with the wording attached to this Certificate.

You or Your representative can obtain further details of the syndicate numbers and the proportions of this Insurance for which each of the Underwriters at Lloyd’s is liable by requesting them from the Coverholder shown above. In the event of loss, each Underwriter (and their Executors and Administrators) is only liable for their own share of the loss.

In accepting this Insurance, the Underwriters have relied on the information and statements that You have provided on the Proposal Form (or Declaration) the date of which is stated in the Schedule. You should read this Certificate carefully and if it is not correct contact the Coverholder. It is an important Document and You should keep it in a safe place with all other papers relating to this Insurance.

APODA PODIATRISTS COMBINED LIABILITY INSURANCE

Attaching to and forming part of Policy No: APODA/PCLP/2019

Insured: Australian Podiatry Association
Warranted Insured is suitably qualified to the generally accepted standards of the modalities provided

Business: Podiatry
Warranted Insured Member is suitably qualified to the generally accepted standards of the Business provided

Period of Insurance:
From: 16th March 2019 at 4:00pm Local Standard Time
To: 30th June 2020 at 4:00pm Local Standard Time

Limit of Liability:
Medical Malpractice
$20,000,000 any one Claim, Inquiry or Loss of Documents inclusive of Costs and Expenses per Insured Member

Public Liability
$20,000,000 any one Claim inclusive of Costs and Expenses per Insured Member

Aggregate Limit of Indemnity for Medical Malpractice Insurance: $60,000,000 in the aggregate inclusive of Costs and Expenses per Insured Member

Aggregate Limit of Indemnity for Public Liability Insurance: $60,000,000 in the aggregate inclusive of Costs and Expenses per Insured Member
Maximum Aggregate Limit of Indemnity for the Policy:

$60,000,000 in the aggregate inclusive of Costs and Expenses per Insured Member

Sub Limits of Liability Inquiries:

Policy Limit

Compensation for Court Attendance:

Up to $250 per person per day up to $10,000 per Claim

Public Relations Expenses:

$100,000

Statutory Liability:

$50,000

Excess:

Nil

IMPORTANT NOTICE:

This Policy is written on a Claims made and notified basis

COVERAGE:

Insuring Clause A: Medical Liability

Included

Insuring Clause B: Public Liability and Goods Sold or Supplied

Included

Insuring Clause C: Confidentiality

Defamation, Libel and Slander

Included

Dishonesty

Included

Intellectual Property

Included

Competition and Consumer Act

Included

AUTOMATIC EXTENSIONS:

Loss of Documents Included

Inquiries

Included

Run-off Cover

Included

Unlimited Run-off Cover

Included

Students

Included

Mergers and Acquisitions

Included

Vicarious Liability for Employed or Contracted Doctors

Included

Liability for Contractors and Locums

Included

Compensation for Court Attendance

Included

Public Relations Expenses

Included

Sixty Day Reporting Period

Included

Continuous Cover

Included

Spousal Liability

Included

Statutory Liability

Included

Reinstatement of Limit of Liability

Included

Free Legal Consultation

Included
### OPTIONAL EXTENSIONS:

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### Retroactive Date:
- **Unlimited excluding known Claims and circumstances**

### Agreement Number:
- **B1201J180201**

### Territorial Limits:
- **Worldwide excluding USA and Canada**

### Jurisdiction:
- **Worldwide excluding USA and Canada**

### Governing Law:
- **Australia**

### Premium:
- **As agreed**

### Policy:
- **ProRisk Medical Malpractice Combined Liability Insurance Policy – V02.14**

### ENDORSEMENTS:

- Product Liability & Workmanship Amendment
- Surgeons Exclusion
- Unlimited Run Off Cover
- Civil Liability Endorsement
- Continuous Cover Endorsement
- Cyber Liability Endorsement
- Free Legal Consultation
- Insured Member Definition Amendment
- Activities Endorsement – SWIFT Technology
- Sexual Molestation Defence Costs and Inquiry Costs
- Member Therapy and Counselling Expenses
- Allocation

This Certificate is Insurance Council of Australia’s General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd’s proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

This Certificate is issued by Professional Risk Underwriting Pty Ltd in accordance with the authority granted to them by certain Underwriters at Lloyd’s under the Agreement referred to in the Schedule.

### Several Liability Notice

The subscribing Underwriters obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

IN WITNESS WHEREOF this Certificate has been signed at Melbourne this **26th day of April 2019**

[Signature]

**Authorised Signatory**
PODIATRIST ENDORSEMENTS

The following is inserted into the Policy:

Product Liability and Workmanship – Podiatrist Amendment

Section 6: Exclusions. Point 6.19 is deleted in its entirety and replaced with the following:

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

• the relabelling of any Product; or
• or any book, brochure, CD, DVD or downloadable item which is produced by You;
• the provision, manufacturing, installation, alteration, repair and servicing of foot orthotic inserts.

In all other respects the Policy remains unaltered.

Surgeons Exclusion

We will not cover You for any Claim arising directly or indirectly from or in connection with orthopaedic work on the bones of the feet or reconstructive plastic operations.

This Exclusion does not apply to nail procedures performed under local anaesthesia, wart curettage and ulcer debridement.

In all other respects the Policy remains unaltered.

Unlimited Run Off Cover

The following is inserted into the Policy:

Section 4: Automatic Extensions. Clause 4.8 is deleted in its entirety and replaced with the following:

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

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

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

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

In all other respects the Policy remains unaltered.

Civil Liability

The following is inserted into the Policy:

Section 1: Insuring Clause A – Medical Liability. Clause 1.1 is deleted in its entirety and replaced with the following:

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

a) first made against You and notified to Us during the Period of Insurance; and
b) arising from the provision of Health Care Services in the conduct of the Business; and

for civil liability from Personal Injury to any of Your patients or clients caused by:

i. an act, error or omission committed or allegedly committed by You or on Your behalf; or

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

In all other respects the Policy remains unaltered.
Continuous Cover

The following is inserted into the Policy:

Section 4: Automatic Extensions. Clause 4.21 is deleted in its entirety and replaced with the following:

4.21 Notwithstanding exclusion clause 6.15, We will indemnify You under insuring clauses A, B and C for any Claim first made against You during the Period of Insurance arising from circumstances of which You were aware prior to the Period of Insurance provided that:

a) We or Guild Insurance Limited (ABN 55 004 538 863) were Your medical malpractice insurer at the time that You first became aware of the circumstance and We have continued to be Your medical malpractice insurer; and

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

In all other respects the Policy remains unaltered.

Cyber Liability

The following definitions are applicable to this Endorsement only:

1. Computer System means Your own computer network, including any third party software programs and portable media/computer devices.

2. Hacker means anyone who specifically targets You and gains access to the Your website via the internet or other external electronic link, solely by electronically circumventing the security systems in place to protect against such access.

3. Programme means a set of instructions written in a computer language that tells a computer how to process data or interact with ancillary equipment.

4. Virus means Programmes that are secretly introduced without Your permission or knowledge including but not limited to malware, worms, trojans, rootkits, spyware, dishonest adware, crimeware and other malicious unwanted software.

5. Website means any website(s) where You have full control over the content and which You operate for the promotion of the Your own Business.

It is hereby understood and agreed that We will indemnify You for amounts You become liable to pay as compensation if during the Period of Insurance and as a result of Your Business, any party brings a Claim against the You arising from:

1. the content of the Your email, intranet, or website including alterations or additions made by a Hacker due to:
   a) Your unintentional infringement of any intellectual property rights, including any copyright, trademark, passing off;
   b) any defamatory statement on Your website or in the Your email, concerning Your client or Business competitor;
   c) Your unintentional breach of confidence or infringement of any right to privacy;

2. Your negligent transmission of a computer Virus, worm, logic bomb or trojan horse to anyone with whom You transact Business with, or who uses Your website in the course of their Business;

3. Your unauthorised collection or misuse of any data concerning any customer or Potential customer of Yours which is either confidential or subject to statutory restrictions on its use and which You obtained through the internet or website and hold electronically.

First Party Hacker Damage

We will pay the reasonable and necessary Costs and Expenses that You incur with Our prior written consent if, during the Period of Insurance, a Hacker damages, destroys or alters the Your website or Computer System. Such Costs and Expenses are to be payable to repair or replace the affected part of the website or Computer System to the same or equivalent standard and with the same contents or as near as reasonably possible as immediately before such website or Computer System was damaged, destroyed or altered.

Continuous Cover

Automatic Extension 4.21 Continuous Cover shall not be available under this Endorsement.
Exclusions

We will not cover You for any Claim arising directly or indirectly out of or in connection with:

1. any Virus, worm, logic bomb or trojan horse written or created by any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date;
2. any self replicating or malicious code that was not specifically targeted to any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date system;
3. the infringement of any patent;
4. the use or provision of any games, or any gaming, gambling, lottery or auctioneering facilities or services;
5. the failure or interruption of the service provider by an internet service provider or any telecommunications or other utility provider;
6. any pornographic, sexually explicit or obscene material unless arising directly from the activities of a Hacker;
7. Your liability under any contract which is greater than the liability that You would have at law without the contract;
8. Your supply, manufacture, sale, installation or maintenance of any product;
9. any statement that You knew or ought reasonably to have known was defamatory at the time of publication;
10. any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date;
11. any trading loss or trading liability including those arising from the loss of any client, account or Business;
12. any liability arising from any user generated content;
13. any Claim, including arbitration, brought outside Australia or New Zealand. This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts;
14. fines and contractual penalties, punitive or exemplary damages;
15. any act, breach, omission or infringement that You deliberately, dishonestly or recklessly committed, condoned or ignored;
16. any prior pending litigation, known Claims or Known Circumstances.

We will not make any payment under this Endorsement if You have failed to:

1. take reasonable steps to use, maintain and upgrade any program which protects against computer viruses or any unauthorised use of or access to Your Computer System, electronic link or website; and/or
2. make backup copies of any data, file or program at reasonably frequent intervals of no less than weekly basis; and/or
3. cancel any user name, password or other security protection after You knew or had reasonable grounds to suspect that it had been made available to any unauthorised person or parties.

Limit of Liability

The cover provided under this Endorsement is limited to $50,000 any one Claim and in the aggregate inclusive of defence costs which shall be part of and not in addition to the Limit of Liability stated in the Schedule.

In all other respects the Policy remains unaltered.

Free Legal Consultation

The following is inserted into the Policy:

During the Period of Insurance You are entitled to up to 30 minutes of free legal advice from Our appointed legal firm on any matter relating to Your Health Care Services subject always to the following:

1. The Schedule must be presented to the appointed legal firm when requesting legal advice under this Endorsement. If the Schedule is not presented then no legal advice can be sought under this section;
2. Entitlement to legal advice is limited to a maximum of 30 minutes per year and any unused hours or part thereof cannot be aggregated from one Period of Insurance to another;
3. **We** reserve the right to change the appointed legal firm at any time. Changes to the appointed firms will be notified to **You** on request;

4. **You** may not seek legal advice on this **Policy** or other indemnity issues concerning insurance policies issued by **Us**;

5. If cover under this **Policy** is sought by **You** in respect of any matter on which **You** have sought legal advice under this Endorsement from the appointed legal firm, **You** authorise **Us** (at Our discretion) to engage the appointed legal firm to represent **You** and authorise the appointed firm when engaged to disclose to **Us** any information obtained in the course of tendering advice to **You**. To the extent necessary, **You** waive all **Claims** to legal professional privilege with **Us**;

6. Contacting the appointed legal firm for free legal advice does not constitute a **Claim** notification under Clause 7 of the **Policy**. **You** must still comply with the **Policy** terms and conditions in relation to a **Claim** and give immediate written notice or written notice as soon as practically possible to **Us** within the **Period of Insurance**.

In all other respects the **Policy** remains unaltered.

### Insured Member Definition Amendment

The following is inserted into the **Policy**:

Section 9: Definitions. Clause 9.14 is deleted in its entirety and replaced with the following:

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

- a) the person or entity named as the **Insured** in the **Schedule**; or
- b) any person who is, has been or may become during the **Period of Insurance**, a **Principal** or **Employee** of the person or entity named as the **Insured** in the **Schedule** but only in respect of **Claims** arising from activities undertaken on behalf of the **Insured** and in the conduct of the **Business** and excluding **Medical Practitioners** acting in such capacity; or
- c) any person who is, has been or may become during the **Period of Insurance**, a **Principal** or **Employee** of the person or entity named as the **Insured** in the **Schedule** but only in respect of their attendance at an **Inquiry**; or
- d) any person who, during the **Period of Insurance**, a volunteer or member at any fundraising, social or ethics committee of the person or entity named as the **Insured** in the **Schedule**, but only in respect of **Claims** arising from activities undertaken on behalf of the **Insured** and in the conduct of the **Business**; or
- e) the estate or legal representatives of any person who would otherwise be indemnified under this **Policy**; or
- f) Each **Insured** Member.

The following additional definition is inserted into the **Policy**:

9.36 **Insured** Member means a legal entity or natural person who is at all times during the **Period of Insurance** a current member of the Australian Podiatry Association and who has opted into, paid and been accepted to be covered under the **Policy** for the Australian Podiatry Association.

In all other respects the **Policy** remains unaltered.

### Activities Endorsement – SWIFT Technology

The following is inserted into the **Policy**:

For the avoidance of doubt the definition of **Business** shall extend to the use of SWIFT technology by qualified and trained practitioners for non-podiatric in respect of arms below and including the elbow and legs below the knee and including the knee only.

In all other respects the **Policy** remains unaltered.

**SEXUAL MOLESTATION DEFENCE COSTS AND INQUIRY COSTS ENDORSEMENT – AFTER THE DEFENCE MOLESTATION** – sublimit $2,000,000

The following is inserted into the **Policy**:

Notwithstanding exclusion 6.2 Abuse and 6.6 Dishonest or wilful acts, **We** will reimburse an **Insured** for **Costs and Expenses**, incurred and paid by them, for **Claims** and attendance at any **Inquiry** in respect of any alleged sexual molestation of, interference with, mental abuse of or physical abuse of a patient or client by an **Insured** provided that in respect of **Cost** and **Expenses**:
i. the notice requiring the Insured’s attendance at the Inquiry or hearing is first received by the Insured and notified to Us during the Period of Insurance; and

ii. such attendance arises directly from alleged conduct or omissions committed by the Insured in carrying on the Health Care Services; and

iii. regular or overtime wages, salaries or fees are excluded from any reimbursement.

Nothing in this extension shall require Us to reimburse any Insured who has perpetrated any such act of molestation, interference, mental abuse or physical abuse or any Insured who by act or omission is found guilty of any criminal offence in any way related to any such act. If it is found by way of an admission by an Insured, judgment or adjudication that such Insured was in fact guilty of a criminal offence in any way related to such molestation, interference, mental or physical abuse then any Costs and Expenses reimbursed under this extension must be repaid by such Insured within thirty days following a request by Us for such repayment.

Our total liability under this extension will not exceed $2,000,000. All payments under this extension will be part of and not in addition to the Limit of Liability.

In all other aspects the Policy remains unaltered.

MEMBER THERAPY AND COUNSELLING EXPENSES

Section 4 (Automatic Extensions) is amended by the addition of the following clause.

We will pay on Your behalf, any Gap Payment for Therapy and Counselling Expenses incurred by You following Your notification to Us of an Inquiry into the performance of Your Health Care Services; and provided that:

(a) the Inquiry was notified to Us during the Period of Insurance;
(b) We have agreed to indemnify you for your costs and expenses resulting from Your response or attendance at the Inquiry;
(c) We will not cover You for any pre existing mental disorder prior to the Period of Insurance; and
(d) coverage is always subject to Our prior consent.

(e) We accept no liability for any Gap Payment for Therapy and Counselling Expenses incurred by You without Our prior consent, which shall not be unreasonably withheld.

For the purpose of this endorsement:

1. Therapy And Counselling Expenses means therapy and counselling fees incurred by you in a Mental Health Treatment Plan.

2. Mental Health Treatment Plan means Your receipt of mental health services for an assessed mental disorder pursuant to a referral under the Medicare Benefits Schedule (Better Access) Initiative by:
   (a) a GP managing You under a GP Mental Health Treatment Plan; or
   (b) under a referred psychiatrist assessment and management plan; or
   (c) a psychiatrist.

3. Gap Payment means the amount in excess of the Medicare rebate for which you are liable.

Our total liability under this extension will not exceed $1,000 each claim and in the aggregate for all claims. All payments under this extension will be part of and not in addition to the Limit of Liability.

In all other aspects the Policy remains unaltered.

ALLOCATION

The following is inserted into the Policy:

Our liability under this Policy is limited to the proportion of Loss and Costs and Expenses, which is a fair and equitable allocation as between:

a) covered and uncovered parties; and/or

b) covered and uncovered matters;

having regard to the relative legal and financial exposures attributed to the covered and uncovered matters and/or parties. Only Loss and Costs and Expenses incurred by covered parties in relation to covered matters will be covered by this Policy.

This is subject to the terms and conditions of this Policy.
We will use Our best endeavours to agree upon a fair and equitable allocation of the proportion covered under this Policy, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties.

If an allocation cannot be agreed then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon. Submissions made to the Senior Counsel will be in writing. Pending Senior Counsel’s determination We will meet the Loss and Costs and Expenses on an interim basis at the percentage at which We contend they should be fairly and equitably allocated.

After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior Counsel’s determination. The costs of any referral for determination to a Senior Counsel under this clause will be borne by Us.

Definitions

Loss means:
(a) damages or claimant’s costs or both payable by the Insured pursuant to an award or judgement entered against the insured; or

(b) settlements negotiated by Us and consented to by the insured; or

(c) settlements negotiated by the Insured but only with Our prior written consent.

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

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

Insured, You and Your means the person or entity named as the Insured in the Schedule.

In all other aspects the Policy remains unaltered.
# MEDICAL MALPRACTICE COMBINED LIABILITY INSURANCE POLICY

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IMPORTANT INFORMATION

This Policy

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

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

ProRisk

ProRisk, Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076, is a coverholder for certain Underwriters at Lloyd’s. ProRisk has the authority to bind this Policy on their behalf.

Claims Made Policy

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

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

Your Duty of Disclosure

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

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

• That diminishes the risk to be undertaken by the insurer;
• That is of common knowledge;
• That Your insurer knows, or in the ordinary course of its Business, ought to know;
• As to which compliance with Your duty of disclosure is waived by the insurer.

Non-Disclosure

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

Retroactive Liability

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

Alteration to Risk and Deregistration

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

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

Policy Cancellation

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

Waiver of Rights of Subrogation

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

Privacy Statement

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

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

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

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

General Insurance Code of Practice


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

Complaints Handling

Any enquiry or complaint relating to this insurance should be referred to ProRisk in the first instance. We have a complaints handling and internal dispute resolution process to assist You, and information about Our complaints handling procedures is available upon request.

If this does not resolve the matter or You are not satisfied with the way a complaint has been dealt with, You should write to:

Lloyd’s Underwriters’ General Representative in Australia
Level 9
1 O’Connell Street
Sydney, NSW, 2000
Telephone Number: (02) 8298 0700
E-mail: idraustralia@lloyds.com

If your matter falls within the rules of the Australian Financial Complaints Authority (AFCA), your matter will be reviewed by their office.
If your dispute remains unresolved you will be referred to AFCA.

Australian Financial Complaints Authority  
Post: GPO Box 3, Melbourne VIC 3001  
Phone: 1800 931 678  
Email: info@afca.org.au  
More information can be found on their website www.afca.org.au

The AFCA is an independent body that operates nationally in Australia and aims to resolve disputes between You and your insurer. Your dispute must be referred to the AFCA within 2 years of the date of your final decision.

If your matter falls outside the AFCA rules, you may be referred to the Lloyd’s Complaints team in the United Kingdom.

Definitions

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

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

1. INSURING CLAUSE A - MEDICAL LIABILITY

1.2 We will indemnify You against all sums which You become legally liable to pay for any Claim:
   a) first made against You and notified to Us during the Period of Insurance; and
   b) arising from the provision of Health Care Services in the conduct of the Business; and
   c) for Personal Injury to any of Your patients or clients caused by:
      i. a negligent act, error or omission committed or allegedly committed by You or on Your behalf; or
      ii. a Good Samaritan Act committed or allegedly committed by You or on Your behalf.

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

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

2.1 We will indemnify You against all sums which You become legally liable to pay for any Claim:
   a) first made against You and notified to Us during the Period of Insurance; and
   b) for Personal Injury to any third party or loss or damage to the tangible Property of any third party; and
   c) as a result of an event or an occurrence happening in connection with the Business.

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

3. INSURING CLAUSE C

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

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

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

Dishonesty
c) Actual or alleged dishonest or fraudulent acts or omissions of a Principal or Employee provided that:
   i. We will not indemnify any person who commits or condones any such conduct;
   ii. there is no indemnity for any loss or damage sustained after the date of Your discovery of any such conduct, or the date upon which You had reasonable cause for suspicion of such conduct;
iii. **You** will, at **Our** request and expense take all reasonable steps to obtain reimbursement from any person committing or condoning such conduct;

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

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

**Intellectual property**

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

**Competition and Consumer Act:**

**misleading or deceptive conduct**

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

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

4. **AUTOMATIC EXTENSIONS**

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

4.2 **Loss of Documents**

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

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

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

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

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

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

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

      ii. damage to any **Document** caused by normal wear and tear; or

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

**Inquiries**

4.3 **We** will pay all **Costs and Expenses** incurred with **Our** prior consent for the attendance by **You** at any **Inquiry** provided that:
a) We will have the right to appoint legal representatives to represent You at the Inquiry if We consider it to be necessary and may appoint legal representatives of Our choice for that purpose; and

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

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

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

4.5 The Excess shall apply to each and every Inquiry.

Run-off cover

4.6 If You cease to exist or operate, or are consolidated with, merged into, or acquired by any other entity, We will indemnify You under the insuring clauses and the extensions in respect of any Claim first made against You and notified to Us during the Period of Insurance but only in respect of a Claim arising from events or occurrences, acts, errors or omissions occurring prior to the date that You ceased to exist or operate, or were consolidated with, merged into or acquired by another entity.

4.7 We will indemnify Your former Principals and Employees under the insuring clauses and the extensions in respect of any Claim first made against Your former Principal or Employee and notified to Us during the Period of Insurance but only in respect of a Claim arising from events or occurrences, acts, errors or omissions occurring while the Principal or Employee was employed by or part of Your organisation.

Extended Run off cover

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

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

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

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

Provided that:

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

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

Students

4.9 The definition of Employee in this Policy is extended to include any student who during or prior to the Period of Insurance obtains practical activities experience with You as part of a University, College, including the College of Advanced Education, TAFE, Association or government accredited training course, but only in respect of activities performed for and on Your behalf in the Business and under Your supervision.
Mergers and Acquisitions
4.10 The cover provided by this Policy will extend to any entity that is acquired by You during the Period of Insurance and involved in the same Business as You;

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

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

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

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

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

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

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

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

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

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

Continuous Cover
4.21 Notwithstanding exclusion clause 6.15, We will indemnify You under insuring clauses A, B and C for any Claim first made against You during the Period of Insurance arising from circumstances of which You were aware.
prior to the **Period of Insurance** provided that:

a) We were Your medical malpractice insurer at the time that You first became aware of the circumstance and We have continued to be Your medical malpractice insurer; and

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

### Spousal Liability

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

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

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

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

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

### Statutory Liability

4.25 Notwithstanding exclusion 6.9, We will indemnify You:

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

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

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

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

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

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

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

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

### Reinstatement of the Limit of Indemnity

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

5. **OPTIONAL EXTENSIONS**

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

**Joint Ventures**

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

**Principals’ Prior Business**

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

6. **EXCLUSIONS**

6.1 **We** will not indemnify **You** for:

**Abuse**

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

**Asbestos**

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

**Assumed and proportionate liability**

6.4 Any **Claim**:

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

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

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

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

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

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

**Directors and officers**

6.5 Any **Claim** made against a **Principal** or **Employee** where such **Claim** is made solely by reason of the person holding the position, or having acted in the position, of Director or Officer (as these terms are defined in the Corporations Act 2001 (Cth)) of **Your** organisation or having acted in that capacity.
Dishonest or willful acts
6.6 Subject to Insuring Clause 3.1(c), any Claim or Inquiry directly or indirectly caused by, contributed to by, or arising out of or in connection with any actual or alleged:
   a) dishonest, fraudulent or criminal acts, errors or omissions; or
   b) wilful breach of any statute, contract, agreement or duty; or
   c) any act, error or omission committed or omitted in reckless disregard; of or by You.

Employment liability
6.7 Any Claim:
   a) in relation to, or for, an actual or alleged Employment Practices Breach; or
   b) (for breach of any obligation owed by You in Your capacity as employer to any Employee or in respect of which compensation is available under any Workers’ Compensation Scheme or any similar legislation.

Employers and contractors must be registered
6.8 Any Claim which arose out of Health Care Services provided by You or a person contracted by You to provide Health Care Services where You or the person contracted:
   a) did not hold the requisite qualifications, authorisations or licenses to carry out such Health Care Services; or
   b) Were required to be but were not registered in accordance with the laws of the Commonwealth or of any state or territory in which the Health Care Services were provided.

Excess
6.9 The Excess.

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

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

Jurisdiction and territorial limits
6.12 Any:
   a) Claim arising from any legal proceeding brought in any court of the United States of America or Canada, or their dominions and protectorates, or arising from any judgment registered or lodged in connection with such a legal proceeding or any Inquiry commenced, ordered, commissioned or conducted in the United States of America or Canada, or their dominions and protectorates; or
   b) Claim arising from any activities, acts, errors or omissions by or on behalf of the Insured or events or occurrences in the United States of America or Canada, or their dominions and protectorates; or
   c) loss of or damage to Documents occurring within the United States of America or Canada, or their dominions and protectorates.

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

Other insurance
6.14 Any Claim or Inquiry for which assistance, coverage or indemnity may be available to You by a Medical Defence Organisation or other insurer whether or not such assistance, coverage or indemnity is discretionary and not ultimately provided to You by the Medical Defence Organisation or other insurer. In such a case this Policy will only contribute proportionally to such other Medical Defence Organisation or insurer.
6.15 Any Claim or Inquiry arising, directly or indirectly, from or in connection with:
   a) seepage, subsidence, pollution or contamination; or
   b) the cost of removing, nullifying or cleaning up seeping, polluting, or contaminating substances.

Prior reported or Known Circumstances
6.16 Any:
   a) Claim known by or received by You prior to the Period of Insurance; or
   b) Claim, Known Circumstance or Inquiry noted on the Proposal for the current Period of Insurance or any previous Proposal; or
   c) Claim or Inquiry reported, disclosed or notified, or which ought reasonably to have been reported, disclosed or notified, to Us or any other insurer or Medical Defence Organisation prior to the Period of Insurance as being either:
      i. a Claim or an Inquiry; or
      ii. facts, matters or circumstances which may give rise to a Claim and/or an Inquiry; or
      iii. facts, matters or circumstances which may give rise to an allegation or a liability that is or may be the subject of a Claim or an Inquiry; or
   d) Claim or Inquiry directly or indirectly caused by, contributed to by, or arising out of, or in connection with any Known Circumstance; or
   e) Inquiry that was in progress, pending, commenced, ordered or commissioned prior to the Period of Insurance.

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

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

6.19 For the avoidance of doubt this exclusion does not apply to:
   a) the relabeling of any Product; or
   b) any book, brochure, CD, DVD or downloadable item which is produced by You.

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

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

Related Persons
6.22 Any Claim:
   a) made against You by any Related Persons, unless originally emanating from an independent third party; or
   b) by any Employee for Personal Injury, unless the Personal Injury is caused by the negligent acts, errors or omissions of
You while the Employee is a patient of Yours.

Retroactive Date
6.23 Any Claim or Inquiry directly or indirectly caused by, contributed to by, in connection with or arising from any:
   a) event or occurrence; or
   b) acts, errors or omissions committed or alleged to have been committed; prior to the Retroactive Date.

Terrorism
6.24 Any Claim arising directly or indirectly from, or in connection with any act of Terrorism, or any action taken in controlling, preventing, suppressing or in any way relating to an act of Terrorism.

Refund of Professional Fees and Trading Debts
6.25 Any Claim for refund of professional fees or charges (by way of damages or otherwise); or
6.26 Any Claim for the Costs and Expenses incurred by You or on Your behalf in complying with any contractual obligations or making good any faulty product; or
6.27 Any Claim arising directly or indirectly from the provision of any guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or
6.28 Any Claim arising from a liability to pay trading debts, trade debts or the repayment of any loan.

Vehicles
6.29 Any Claim:
   a) arising from the ownership, possession or use by or on Your behalf of any motor vehicle or trailer for which compulsory insurance is required by law, other than Claims arising from damage to any motor vehicle or trailer temporarily in Your custody or control for the purpose of parking; or
   b) arising from the ownership, possession or use by or on Your behalf of any aircraft, watercraft or hovercraft, other than Claims under the insuring clauses or the extensions, arising from the emergency transportation of any patient accompanied by the Insured.

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

7. CLAIM CONDITIONS

Notification
7.1 This Policy applies only to Claims first made against You during the Period of Insurance and notified to Us during the Period of Insurance.
7.2 A Claim is considered to be first made against You when You:
   a) receive a demand for compensation or damages or any assertion of a financial right made by a third party in writing to You; or
   b) receive any writ, statement of Claim, summons, application or other originating legal or arbitral process, cross-Claim, counter Claim or third or similar party notice served upon You and Claiming compensation, damages or other civil rights or remedies against You.
7.3 In the event of a Claim arising under this Policy You must give immediate written notice or written notice as soon as practically possible to Us, via the broker or agent named in the Schedule, but in any event within the Period of Insurance.
Management of Claims

7.4 You or Your legal representatives must not:

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

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

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

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

a) the defence of any suit, legal proceeding or action the subject of a Claim;

b) the investigation of any Claim or Potential Claim; or

c) the handling of any Inquiry;

and may appoint legal representatives of Our choice for these purposes.

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

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

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

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

7.10 We have the discretion to negotiate the settlement of any Claim or Potential Claim. If We recommend the settlement of a Claim or Potential Claim for a certain amount, and the Claim or Potential Claim can be settled for that amount but You refuse to agree to the settlement and decide to contest the Claim or Potential Claim, then We are only liable under this Policy:

a) for the recommended settlement amount; and

b) Costs and Expenses up to the date of Your refusal to settle.

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

7.12 Any:

a) Costs and Expenses incurred by or on Your behalf in the investigation and conduct of a Potential Claim; or

b) payments made in accordance with Claim Condition 7.10 to settle a Potential Claim; will be subject to the Excess and will be deemed to be Costs and Expenses incurred in respect of a Claim or a payment made to settle a Claim for the purposes of this Policy including for...
the purposes of calculating the Limit of Indemnity.

8. GENERAL CONDITIONS

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

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

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

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

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

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

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

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

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

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

Co-operation and mitigation
8.10 You must give Us such information and assistance as We consider necessary to:
   a) determine an appropriate course of action in relation to any Claim, Potential Claim or Inquiry; and
   b) identify any parties that You may have rights against in connection with any Claim or Potential Claim.

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

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

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

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

8.14 In calculating the Excess which is payable by You for the acquisition of goods, services or other supply including Costs and Expenses, this is net of any input tax credit which You are or may be entitled to receive or Claim under A New Tax System (Goods and Services Tax) Act 1999 (Cth).
8.15 In the event of a Claim by You under this Policy, You shall, if directed by Us, pay to Us (or as directed by Us), the Excess within seven (7) working days. Any delay, failure or refusal by You to pay the Excess will entitle Us to deduct such amount from any amount(s) required to settle any Claim or judgment, order or any other payment to be made by Us under this Policy. In the event that a failure or refusal to grant access to monies for any Excess results in a failure of a settlement or an increase in Costs and Expenses, Our liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs and Expenses incurred with Our written consent up to the date of such failure or refusal, less the Excess.

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

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

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

8.19 The Limit of Indemnity is inclusive of Costs and Expenses indemnified under this Policy.

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

Maintenance of records
8.21 You must at all times:
   a) maintain accurate descriptive records of all professional services and equipment used in medical, clinical or therapeutic consultation, treatments or procedures, which records must be available for inspection and use by Us in the investigation and/or defence of any Claim to which they relate; and
   b) retain all such records for at least seven (7) years from the date of consultation, treatment or procedure and, in the case of a minor, for a period of at least seven (7) years after that minor attains majority.

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

Medical Practitioners
8.23 At all material times after the Retroactive Date, throughout the Period of Insurance and six (6) years after the expiry of the Period of Insurance You must take all reasonable steps to ensure that:
   a) all Medical Practitioners employed by or contracted to You, or otherwise working in or in connection with the Business are licensed and registered with the relevant state and/or territory Medical Registration Board; and
   b) all such Medical Practitioners are fully Insured under their own Policy of insurance for their own malpractice, professional errors, omissions and negligence.

Professional instruments
8.24 Reasonable steps includes obtaining a copy of their license, registration and certificate of insurance at the commencement of their role and annually thereafter.
used in contact with skin tissue, or to penetrate skin tissue (whether human or animal), or to be used in contact with bodily fluid (whether human or animal) must be:

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

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

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

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

Services of Suit
8.28 We agree that:

a) In the event of a dispute arising under this Policy, Underwriters at the request of the Insured will submit to the jurisdiction of any competent court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such court.

b) Any summons notice or process to be served upon Underwriters may be served upon:

Lloyd’s Underwriters’
General Representative in Australia
Level 9 1 O’Connell Street
Sydney NSW 2000

Telephone Number: (02) 8298 0700
Facsimile Number: (02) 8298 0788

who has authority to accept service and to cause an appearance to be filed on behalf of Underwriters, and who is directed at the request of the Insured to give a written undertaking to the Insured that it will cause an appearance to be filed on behalf of Underwriters.

8.28.1 If a suit is instituted against Underwriters, Underwriters will abide by the final decision of any such court or any competent appellate court.

8.28.3 We will not cover You for any Claim for or arising directly or indirectly from or in connection with any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or United States of America

9. DEFINITIONS

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

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

9.3 Business means the Business as stated in the Schedule.
9.4 **Claim** means:
   a) any demand for compensation or damages or any assertion of a financial right made by a third party in writing to You; or
   b) any writ, statement of Claim, summons, application or other originating legal or arbitral process, cross-Claim, counter Claim or third or similar party notice served upon You and Claiming compensation, damages or other civil rights or remedy against You.

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

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

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

9.8 **Employment Practices Breach** means:
   a) wrongful termination of employment whether actual or constructive; or
   b) employment discrimination of any kind; or
   c) sexual or other harassment in the workplace; or
   d) wrongful deprivation of career opportunity, employment related misrepresentations, retaliatory treatment against Your Employee or Principal, failure to promote, demotion, wrongful discipline or evaluation or refusal to hire.

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

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

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

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

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

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

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

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

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

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

a) which You knew; or

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

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

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

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

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

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

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

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

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

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

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

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

9.26 Property means the tangible personal property of third parties.

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

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

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

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

9.31 Spouse means a lawful Spouse, domestic partner (including without limitation same sex partner) or any person deriving similar status by reason of the common law or statute.

9.32 Subsidiary means any entity over which the Insured is in a position to exercise effective direction or control through ownership or control of more than fifty percent of the issued voting shares of that entity, or any Subsidiary at law.

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

9.34 Underwriters means certain Underwriters at Lloyd’s participating in this contract of insurance.

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