

Professional Indemnity and Public Liability Insurance



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Special Notices

This policy is an important document. The policy wording and member 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.

BMS Risk Solutions Pty Ltd [ABN no. 45161187980] is a Coverholder for certain underwriters at Lloyd's, and in these notices a reference to "we", "our" or "us" means BMS Risk Solutions Pty Ltd. BMS Risk Solutions Pty Ltd has the authority to bind this group policy on their behalf for the Australian Podiatry Association [ABN 24 008 488 748]. References to "you" or "your" in these notices means a qualified podiatrist or student who is a member of the Australian Podiatry Association.

The information contained in this section is general information only and does not form part of your contract with us.

Your Duty of Disclosure

Before you enter into a contract of general insurance with us, you have a duty, under the Insurance Contracts Act 1984, to disclose to us every matter which you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms. You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of insurance

Your duty however does not require disclosure of a matter:

- that diminishes the risk to be undertaken by us
- that is common knowledge
- that we know, or in the ordinary course of business as an insurer, ought to know
- as to which compliance with your duty is waived by us.

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 may cancel the contract. If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from the beginning.

Claims Made Policy

This policy is a claims made policy of insurance. This means that the policy covers you for claims made against you and notified to us during the period of insurance. The policy does not provide cover in relation to:

- events that occurred prior to the retroactive date, if any, specified in the policy;
- claims notified or arising out of circumstances notified under any previous policy (whether made or issued by us or any other insurer);
- claims made against you prior to commencement of the period of insurance;
- claims arising out of claims and circumstances noted on the proposal form for the current period of insurance or on any previous proposal form;
- subject to what is said in the next paragraph, claims made after expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance.

Pursuant to section 40(3) of the Insurance Contracts Act 1984 (Cth) where you give notice to us in writing of facts that might give rise to a claim as soon as was reasonably practicable after you become aware of those facts but before the policy expires, you are covered for any claim made against you arising from those facts even if it is not made against you until after the period of insurance has expired.

Privacy

BMS Risk Solutions Pty Ltd (BMS) is committed to protecting the privacy of the personal information you provide us. BMS collects, uses and retains your personal information in accordance with the National Privacy Principles.

We need to collect the personal information on the applicable proposal form to consider your application for insurance and to determine the premium (if your application is accepted) when you are applying for, changing or renewing an insurance policy with us. This information will also be used if you lodge a claim under your policy. We may also need to request additional information from you in connection with your application or a claim. If you do not provide us with this information, or any additional information we request, we may not be able to process your application or offer you insurance cover or respond to any claim.

We may disclose the personal information we collect:

- To our relevant employees involved in delivering our services;
- If your insurance broker collects this form from you, to that broker;
- To facilitators such as legal firms, professional experts such as accountants, actuaries, engineers and technology experts;
- To the insurance companies with whom we transact business;
- To the Lloyd's Syndicates we represent (which are located in the United Kingdom);
- To insurance reference bureau or credit reference bureau;
- To reinsurers or reinsurance brokers (which may include reinsurers located outside of Australia).

Where we do disclose the information as above the recipient may hold the information in accordance with its own privacy statement / policies. Those may include, by way of example, disclosing the information to and storage of that information by its associated entities, which may be located overseas. We may also be required to provide your personal information to others for purposes of public safety and law enforcement and if required by law or by a law enforcement body to do so.

You may request access to your personal information, and where necessary, correct any errors in this information (some restrictions and costs may apply). If you would like to access a copy of your personal information or you wish to correct or update your personal information, please also contact us on 1800 514 933.

By completing and returning a proposal form and/or providing us with any additional information in connection with your application, you agree to us using and disclosing your information as set out above. This consent to the use and disclosure of your personal information remains valid unless you alter or revoke it by giving us written notice.

From time to time, we may use your personal information to send you details of new insurance products or other insurance related information that may be of interest to you. If you do not wish to receive such information, please advise us on 1800 514 933.

Code of Practice

This policy is compliant with the Insurance Council of Australia's General Insurance Code of Practice, apart from any claims adjusted outside of Australia. BMS and underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of Code is to raise standards of practice and service in the general insurance industry. A copy of the code is available from the Insurance Council of Australia's website at www.ica.com.au or from the Code's dedicated website www.codeofpractice.com.au Complaints Procedures.

Any enquiry or complaint relating to this insurance should, in the first instance, be referred to BMS Risk Solutions Pty Ltd. 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 Australia Limited Level 9
1 O'Connell Street
Sydney NSW 2000 Australia
Telephone Number: (02) 8298 0700
Facsimile Number: (02) 8298 0788

who will refer your dispute to Policyholder & Market Assistance at Lloyd's. Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

Your complaint will generally be reviewed by their office if it falls within the Terms of Reference of the Australian Financial Ombudsman. Otherwise, your matter will be referred to the Complaints Team at Lloyd's based in the UK. If your dispute remains unresolved you may be referred to the Australian Financial Complaints Authority Limited (AFCA) under the terms of the General Insurance Code of Practice.

AFCA can be contacted on 1800 931 678 or GPO Box 3 Melbourne, Victoria 3001 or www.afca.org.au.

For other disputes you will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

Your Policy

Introduction

In consideration of payment of the premium, **we** will cover you in accordance with the definitions, terms, conditions, **limit of indemnity, sub-limits of indemnity, deductibles, exclusions and endorsements**, if any, of this policy. The words in bold are specially defined, and can be found in the definitions section.

1. Cover

A. Cover for civil liability and malpractice

We agree to cover **you** against all sums which **you** shall become legally liable to pay as compensation for civil liability, including claimant's costs, for any **claim** made against **you** during the **period of insurance** arising from the **Practice of Your Profession** or **malpractice** within the **territorial limits**.

B. Public Liability

We agree to cover **you** against all sums which **you** shall become legally liable to pay as **compensation** in respect of any **claim** for:

1. **bodily injury**;
2. **property damage**;

arising out of an **occurrence** and happening in the course of **your business**.

Provided always that:

1. such **bodily injury** or **property damage** occurs within the **territorial limits** of this Policy and results in a **claim** first made against **you** and notified to **us** during the **period of insurance**;
2. there shall be no liability under this Insuring Clause 1.B for any **claim** made against **you** for **bodily injury** or **property damage** sustained or alleged to have been sustained prior to the **retroactive date** (if any) specified in the **schedule** or **member schedule**.

C. Products Liability

We agree to cover **you** against all sums which **you** shall become legally liable to pay as **compensation** in respect of any **claim** for:

- a. **bodily injury**;
- b. **property damage**,

arising out of an **occurrence** and happening in connection with **your products**.

Provided always that:

1. such **bodily injury** or **property damage** occurs within the **territorial limits** of this Policy and results in a **Claim** first made against **you** and notified to **us** during the **period of insurance**;

2. there shall be no liability under this Insuring Clause 1.C for any **Claim** made against **you** for **bodily injury** or **property damage** sustained or alleged to have been sustained prior to the **retroactive date** (if any) specified in the **schedule** or **member schedule**.

Defence costs and expenses

We will also pay **defence costs and expenses**, to investigate, defend or settle a **claim**, subject to payment of the **deductible**.

How much we will pay

1. The most **we** will pay for any one **claim** or request for cover and in the aggregate for all **claims** and requests for cover during the **period of insurance**, is the **limit of indemnity** per **member**;
2. Any **sub-limit of indemnity** that applies to cover is the most **we** will pay for that cover in the aggregate for requests for cover during the **period of insurance** per **member**; and the **sub-limit of indemnity** will apply in place of the **limit of indemnity**;
3. The **limit of indemnity** and **sub-limit of indemnity** are exclusive of the **deductible**
4. The **limit of indemnity** is inclusive of **defence costs and expenses**;
5. Nothing in this policy operates to increase the **limit of indemnity** or **sub-limit of indemnity**;
6. All **claims** or requests for cover under this policy which arise from, or are attributable to, a single act, error, omission, or occurrence or series of similar or related single acts, errors, omissions or occurrences will be treated under this policy as one claim or one request for cover.
7. If any loss gives rise to liability under more than one section, **our** total liability for all losses, **claims** or a series consequent upon or attributable to one source or original cause, shall not exceed the single greatest **limit of indemnity** or **sub-limit of indemnity** available under the sections providing cover.

Deductible

Our total liability applies over and above any **deductible**, as set out in the **member schedule**.

2. Automatic Extensions to Your Cover

Abuse

Notwithstanding the Abuse exclusion, **we** agree to cover **you** for **defence costs and expenses**, but excluding salaries or loss of income, **you** incur in defending **claims** made against **you** for allegations of abuse arising from the **practice of your profession** or **malpractice**.

The most **we** will pay **you** under this section is \$500,000 **sub-limit of indemnity** each and every **claim** and in the aggregate and is applicable to any one **period of insurance**.

Advice on goods sold

We will cover **you** in respect of **claims** made against **you** in the **period of insurance** in relation to negligent advice provided by **you** during the sale of any goods or products provided the act, error or omission by **you** arose from **your business**.

The most **we** will pay **you** under this section is the limit shown in the member schedule as the **limit of indemnity** and is applicable to any one **period of insurance**.

Additional insureds cover

Cover under this policy is extended to cover the following, subject to all of the definitions, terms, conditions, **limit of indemnity** and any **sub- limit of indemnity, deductibles** and exclusions of this policy:

- a. in the event that **you** die or become incompetent, **your** estate, heir or legal representatives;
- b. volunteers that **you** engage in **your** business, and
- c. students who are **members** actively studying and that **you** engage in **your business**; and only:
- d. to the same extent that you would have been covered by this policy; and
- e. if they are not acting in their capacity as a **healthcare professional**

The most **we** will pay **you** under this section is the limit shown in the member schedule as the **limit of indemnity** and is applicable to any one **period of insurance**.

Breach of confidentiality

We will cover **you** in respect of **your** civil liability for any **claim** for compensation arising from any breach of confidentiality including any breach or alleged breach of **privacy and health records legislation** arising as a result of **your business**.

The most **we** will pay **you** under this section is the limit shown in the member schedule as the **limit of indemnity** each and every claim and in the aggregate in any one **period of insurance**, however, this extension does not apply to any costs or expenses **you** incur in replacing, reinstating, rectifying or erasing any personal data.

Breaches of consumer protection laws

We will cover **you** in respect of **claims** made against **you** in the **period of insurance** in relation to actual or alleged breaches of Commonwealth consumer protection legislation or similar state or territory fair trading legislation.

Breach of intellectual property

We will cover you against **your** civil liability for compensation arising from any **claim** made against **you** for any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism as a result of **your business**.

The most **we** will pay **you** under this section is \$100,000 **sub-limit of indemnity** each and every **claim** and in the aggregate in any one **period of insurance**.

Contractual liability

We will cover **you** in respect of **claims** made against **you** in the **period of insurance** in relation to contractual liability in connection with **your business**. This clause does not operate to cover any liability assumed by contract, waiver, guarantee or warranty, unless liability would have attached in the absence of such contract, waiver, guarantee or warranty.

The most **we** will pay **you** under this section is the limit shown in the member schedule as the **limit of indemnity** and is applicable to any one **period of insurance**.

Coroners inquests

We agree to provide costs **you** incur arising out of the representation at any Coroner's enquiry following the death of any patient of **yours** and which **you** are legally required to attend.

The most **we** will pay **you** under this section is \$1,000,000 **sub-limit of indemnity** each and every **claim** and in the aggregate in any one **period of insurance**.

Court attendance costs

We agree to provide court attendance costs **you** incur where **you** are legally compelled to attend a civil proceeding as a witness in a **claim** covered by this policy.

The most **we** will pay **you** under this section is \$1,000 per day and up to a maximum of the **limit of indemnity** shown in the **member schedule**, any one **period of insurance**.

Cover for innocent parties

Notwithstanding the Fraud and dishonesty exclusion, **we** will cover all innocent parties insured under this policy who did not commit, contribute to, or condone the act, error or omission or had no prior knowledge of the act, error or omission. This clause does not operate to cover any party who allegedly committed or condoned the act, error or omission.

Criminal defence costs cover

We agree to cover **your defence costs and expenses** incurred with **our** prior written consent in defending criminal actions, suits or proceedings commenced against **you** during the **period of insurance** and notified to **us** in writing, for penal offences in respect of charges, arising out of **your business**.

However, **we** will not cover **you** for any liability including **defence costs and expenses** arising directly or indirectly, caused by, arising from, contributed by or in any way relating to any allegation or **claim** involving **abuse**.

The most **we** will pay **you** under this section is \$1,000,000 **sub-limit of indemnity**, each and every **claim** and in the aggregate.

Cyber liability

We agree to cover **you** in respect of your civil liability for any **claim** for compensation arising from:

- a. the content of **your computer systems** due to:
 - i. your unintentional **infringement** of any **intellectual property**;
 - ii. your unintentional; defamatory statement concerning **your** client or business competitor;
 - iii. your unintentional breach of confidence, **breach of privacy** or **infringement** of any right to privacy;
 - iv. a **security breach**; or
 - v. any of the aforementioned breaches or **infringements** intentionally made by a **hacker**
- b. **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;
- c. **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.
- d. a third party's good faith reliance on a **hacker's** fraudulent use of your encrypted electronic signature, encrypted electronic certificate, email or website where there was a clear intention to cause you loss or obtain a personal gain for the **hacker**.

First Party Hacker Damage

We agree to pay the reasonable and necessary costs and expenses that you incur if a **hacker** damages, destroys or alters **your computer system**. Such costs and expenses paid will be to repair or replace the affected part of the **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.

Advertising expenses

Following a **claim** under this section of the policy and with **our** prior consent **we** agree to pay the reasonable and necessary costs and expenses that **you** incur:

- a. for advertising or publicity;
- b. for broadcast, electronic, printed telecast or telephonic announcements communications or notices;
- c. for credit monitoring services for a period not exceeding twelve (12) months from the date of the **security breach** or **breach of privacy**;
- d. for public relations services; and
- e. to contact the following who attempted to use **your website** during the period it was damaged, destroyed or altered:
 - any individual;
 - those with whom you transact business with, and
 - those who use **your website** in the course of their business;

Exclusions

The following exclusions are applicable to this section only. **We** shall not be liable to indemnify **you** for:

- a. any self-replicating or malicious code that was not specifically targeted to any failure;
- b. the **infringement** of any patent;
- c. the use or provision of any games, or any gaming, gambling, lottery or auctioneering facilities or services;
- d. the failure or interruption of the service provider by an internet service provider or any telecommunications or other utility provider;
- e. any pornographic, sexually explicit or obscene material unless arising directly from the activities of a **hacker**;
- f. **your** liability under any contract which is greater than the liability that **you** would have at law without the contract;
- g. **your** supply, manufacture, sale, installation or maintenance of any product;
- h. any statement that **you** knew or ought reasonably to have known was defamatory at the time of publication;
- i. any loss of income, profit, mark-up or liability for VAT or its equivalent:

Cyber liability
(Continued)

- j. any trading loss or trading liability including those arising from the loss of any client, account or business;
- k. any liability arising from any user generated content;
- l. any **claim**, including arbitration, brought outside of Australia. This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts;
- m. any fines and contractual penalties, punitive or exemplary damages;
- n. any act, breach, omission or **infringement** that **you** deliberately, dishonestly or recklessly committed, condoned or ignored;
- o. any prior pending litigation, known claims or known circumstances;
- p. any actual or alleged bodily injury, mental injury, illness, disease or death of anyone;

We will not make any payment under this section if **you** have failed to:

- i. take reasonable steps to use, maintain and upgrade any **programme** which protects against computer **viruses**;
- ii. install a firewall or other similar configured device to control access to **your computer systems**;
- iii. encrypt and control the access of all **computer systems** and external devices including plug-in devices networked to **your computer systems**;
- iv. control unauthorised access to **your computer systems** by correctly configuring **your** wireless network;
- v. maintain an operational system for logging and monitoring user activity on **your computer systems** where **your computer systems** allows access by multiple users;
- vi. make backup copies of any data, file or program at reasonably frequent intervals of no less than weekly basis;
- vii. change all passwords on **your computer systems** at least every sixty (60) days;
- viii. 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.

Cyber liability
(Continued)

Definitions

The following definitions are applicable to this section only:

Computer system **your** own computer network, including any third party software programs and portable media, **your website**, data or computer devices

Hacker anyone who specifically targets **you** and gains access to **your computer systems** via the internet or other external electronic link, solely by electronically circumventing the security systems in place to protect against such access

Infringement any actual or alleged unauthorised use or violation

Intellectual property any intellectual property, including a trademark (including collective or service mark), a certification mark, trade name, trade dress, trade secret, copyright or passing off or link to or framing of another page. However, this does not apply to any domestic or foreign patent or patent-related rights

Breach of privacy any computer-related unauthorized collection, use or disclosure of non-public personal information as established by the **Privacy & health records legislation**

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

Security breach any actual or alleged failure to prevent unauthorised access to or use of your **computer system**

Virus(es) any **programme** 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

Website any website(s) where **you** have full control over the content and which **you** operate for the promotion of **your business**. Also includes its domain name, metatags and hyperlinks and the marketing and advertising of **your business** contained therein.

The most **we** will pay **you** under this section is \$50,000 **sub-limit of indemnity** each and every **claim** and in the aggregate in any one **period of insurance**.

We will cover **you** in respect of **your** civil liability for any **claim** for compensation arising from unintentional defamation, libel or slander as a result of **your business** but only where, upon **our** reasonable request, **you** issue an apology or expression of regret. **We** will not indemnify **you** in respect of any **claim** for defamation, libel or slander should **you** refuse such request by **us**.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

Defamation, Libel or Slander

**Dishonesty of your
practice staff**

We will cover **you** in respect of **your** civil liability for any **claim** for compensation arising from the dishonesty of **your** employees or self-employed freelancers directly contracted to **you** and working under **your** supervision, but only where **you** did not commit, condone or ignore any such dishonesty

We will also cover **you** against your own direct financial loss where there was a clear intention of an employee to cause **you** loss or damage and to obtain a personal financial gain over and above any salary, bonus or commission.

The most we will pay you under this section is the limit shown in the member schedule as the limit of indemnity and is applicable to any one period of insurance.

**Extended
Continuous cover**

We will cover **you** where:

If, prior to the **period of insurance**, **you** became aware of facts or circumstances that might give rise to a **claim** or request for cover, then, notwithstanding the Prior or pending acts exclusion, and provided you are not covered by any other insurer, **we** will cover **you** where:

- a. **you** notify **us** under this policy; and
- b. **you** have continued, without interruption, to maintain professional indemnity insurance from the time you became aware of the facts or circumstances to the date you actually notified **us**; and
- c. had **you** decided to notify **your** professional indemnity insurer when **you** became aware of the facts or circumstances, **you** would have been covered under the policy in force at that time, except for claims or requests for cover that:
- d. arise out of any matter reported to **you** in writing prior to the **period of insurance**; or
- e. arise out of or are connected with any written statement provided to or requested by a body which has jurisdiction to investigate and determine an outcome for the complaint or investigation, including: an adjudication body; a governmental or quasi-governmental agency; any professional society; a hospital or healthcare organisation; a coronial inquiry or inquest; or a criminal inquiry, investigation or proceeding; or
- f. are derived from the same or essentially the same facts as alleged in any matter that falls within (d) or (e) above and that is made prior to the **period of insurance**; or
- g. were notified to a previous professional indemnity insurer.

**Extended
Continuous cover**
(Continued)

Our liability under this automatic extension for any one **claim** and in the aggregate for all **claims** under this extension shall not exceed the **lesser of the limit** of indemnity under this policy, or the limit of indemnity under the previous policy under which the **claim**, facts, circumstances or **incident** should have been notified.

We may reduce our liability to the extent of any prejudice **we** may suffer in connection with **your** failure to notify **us** as soon as practicable after **you** first knew of the **claim**, facts, circumstances or **incident**.

**Extended notification
period**

If this insurance is not renewed or is cancelled for any reason other than non-payment of **premium** then **you** have until such time that **you** effect another insurance policy or ninety (90) days commencing on the day immediately following the expiry of this policy, whichever is the lesser period, during which to notify us of any **claims** first made against **you** during the **period of insurance**, provided that this extension:

- a. does not reinstate or increase the **limit of indemnity** or extend the **period of insurance**; and
- b. will only apply to acts, errors or omissions committed or alleged to have been committed by **you** before the end of the **period of insurance** or the cancellation date of this policy where this policy has been cancelled.

Good Samaritan acts

We will cover **you** for any **claim** made against **you** for any bodily injury, mental injury, illness, disease or death of any patient arising as a result of a **Good Samaritan act**.

The most **we** will pay **you** under this section is the limit shown in the member schedule as the **limit of indemnity** and is applicable to any one **period of insurance**.

Joint venture liability

We will cover **you** for any **claim** arising from **your** participation in a joint venture in connection with **your business** provided that **your** fee declaration in the proposal includes your proportion of fees from the joint venture.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

Locum cover

We will cover **you** for **business** performed on **your** behalf by locums where this work does not exceed thirty (30) days any one **period of insurance** but only:

- a. where they are employed by **you** to perform **your business** during **your** periods of absence because of sickness or temporary leave;
- b. where they are otherwise insured for their own civil liability, errors, omissions and public liability and products liability; and
- c. where **you** made sufficient checks to ensure that such insurance covers are in place for the work being performed on **your** behalf and is effective throughout the **period of insurance**

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

Loss of documents

Notwithstanding the Documents exclusion, if there has been damage to **documents**, **we** will cover **you** against all reasonable costs and expenses **you** incur in replacing and restoring such **documents** relating to **your business** provided that:

- a. such loss or damage is sustained during the **period of insurance** while the **documents** are either in transit or in **your** custody or any person to whom **you** have entrusted in the course of the normal conduct of **your business**;
- b. where the **documents** are in paper format, **you** ensure that adequate systems are in place for their storage and protection and **you** have taken reasonable steps to ensure that where applicable, copies of such documents are scanned and stored in an electronic format;
- c. where the **documents** are in electronic format, **you**, or any person to whom **you** have entrusted, has in place sufficient and proper procedures for the security and daily back-up of such **documents**; and
- d. the amount of any **claim** under this section shall be supported by invoices or accounts which shall be subject to approval by **us** or a competent person nominated by **us**.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance** and excludes any claims arising out of any infringement of the Privacy Act 1988.

Member Therapy and Counselling Expenses

The following extension clause is added to and forms part of this Policy. It is subject to the exclusions and conditions precedent set out below, as well as to the exclusions, terms and conditions of the Policy which are not inconsistent with those below.

We will pay on **your** behalf, but subject to **our** prior agreement, any **gap payment** for **therapy and counselling expenses** up to the **sublimit**:

- incurred by **you** following **your** notification to **us** of an **inquiry** into the performance of **your professional services**; and
- provided that the **inquiry** was notified to **us** in accordance with this Policy during the **policy period**; and
- provided **we** have agreed to indemnify **you** for **your costs and expenses** resulting from **your** response or attendance at the **inquiry**.

This extension does not give rise to any right or duty to defend **you** or to pay **costs and expenses** on **your** behalf.

Definitions

Wherever the following words or terms appear in bold in this extension, they mean what is set out below:

Therapy And Counselling Expenses

Therapy and counselling expenses means therapy and counselling fees incurred by **you** in a **mental health treatment plan**.

Mental Health Treatment Plan

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 GP managing **you** under a GP Mental Health Treatment Plan; or
- under a referred psychiatrist assessment and management plan; or
- a psychiatrist.

Gap Payment

Gap Payment is the amount in excess of the Medicare rebate for which you are liable

Exclusions

Pre Existing Conditions

We will not cover **you** for any mental disorder that **you** knew **you** had prior to the inception date of this Policy. The most **we** will pay **you** under this section is \$1,000 **sub-limit of indemnity** each and

**Out of country charity
or aid organisation
cover**

every **claim** and in the aggregate and is applicable to any one **period of insurance**.

All other terms, conditions, limitations and exclusions remain unaltered.

Notwithstanding the **Territorial** limits or the **Jurisdiction exclusion**, **we** agree to extend cover when **you** perform **your business** outside of Australia, but only when:

- a. the period **you** were outside of Australia was less than 120 days whether continuously or in aggregate in any **period of insurance**; and
- b. **you** were practising within a recognised charity or aid organisation.

Cover extended under this clause excludes **claims** or requests for cover that arise as a result of the practice of **your business** in the United States of America, including its territories and dominions.

The most **we** will pay **you** under this section is the limit shown in the member schedule as the **limit of indemnity** and is applicable to any one **period of insurance**.

Out of country cover

Notwithstanding the territorial limits shown on the member schedule, **we** agree to extend cover when **you** perform your business outside of the territorial limits on a temporary basis up to a maximum of 110 days in any one period of insurance, however, the jurisdictional limits will remain as stated in the member schedule.

Practice entity and practice staff cover

We will cover **your practice entity** and **practice staff** for **claims** made against them arising from **your business**, provided that:

- a. **practice staff** are acting under **your** supervision or instruction;
- b. the **practice staff** who are podiatrists are **members** at the time of the **incident**;
- c. the **claim** would be covered by the policy as if it had been made against **you**; and
- d. **your practice entity** and **practice staff** do all of the things that **you** would have been required to do if the **claim** had been made against **you**.
- e. **practice staff** hold the requisite qualifications, registration, authorisations, licences; and
- f. **practice staff** hold current professional indemnity insurance covering the types of healthcare they provide.

You must maintain accurate records and obtain copies of such qualifications, registrations, authorisations, licences and insurances mentioned above in the **period of insurance** and retain these records and copies for at least 7 years from the expiry date of this policy.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

Principals' Prior Business Extension

The following extension clause is added to and forms part of this Policy. It is subject to the exclusions and conditions precedent set out below, as well as to the exclusions, terms and conditions of the Policy which are not inconsistent with those below.

We agree to indemnify directors, partners or principals of the **insured** for any **claim** made against them under the insuring clauses or the additional benefits arising out of the conduct by such director, partner or principal of a prior **business**, provided that such **claim** is first made against such director, partner or principal during the **policy period**.

The maximum amount payable under this extension shall be the amount shown in the **sublimit**.

All other terms, conditions, limitations and exclusions remain unaltered.

Public relations expenses

We agree to pay reasonable fees, costs, and expenses incurred by **you** for the appointment of a public relations consultant for the sole purpose of protecting **your** reputation that has been brought into question as a direct result of a **claim** covered by this **policy**, provided always that:

- a. **you** notify **us** on first becoming aware of **your** reputation being brought into question and **you** provide full written details outlining the circumstances surrounding the event; and
- b. **we** have given prior written consent to retain the services of such public relations consultant.

The most **we** will pay **you** under this section is \$200,000 **sub-limit of indemnity** each and every **claim** and in the aggregate in any one **period of insurance**.

Punitive or exemplary damage cover

Notwithstanding the Fines and penalties exclusion, **we** will cover **you** for any **claim** made against **you** during the **period of insurance**, for punitive or exemplary damages or for damages that are a multiple of compensatory damages. **We** will cover **you** in respect of **your** liability for such damages, provided always that any such **claim** made against **you** is in conjunction with a **claim** for compensatory damages.

The most **we** will pay **you** under this section is \$500,000 **sub-limit of indemnity**, each and every **claim** and in the aggregate, however no indemnity shall be provided where such damages are deemed to be uninsurable as a matter of law in the jurisdiction in which such damages are awarded.

Regulatory legal expenses

We agree to pay costs of representing **you** at any properly constituted investigation, first discovered during the **period of insurance**.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

Shockwave Treatment

We cover **you** in respect of in respect of **claims** arising from the use of Shockwave treatments.

Spousal Liability Extension

The following extension clause is added to and forms part of this Policy. It is subject to the exclusions and conditions precedent set out below, as well as to the exclusions, terms and conditions of the Policy which are not inconsistent with those below.

If a **claim** against **you** which is covered under the insuring clauses or additional benefits includes a **claim** against **your** spouse solely by reason of:

- such **spouse's** legal status as **your spouse**; or
- such **spouse's** ownership or interest in property that the claimant seeks to recover as a result of a **claim** made against **you**,

we agree to indemnify **your spouse** for civil liability for **loss** arising out of such **claim**.

No cover is provided to **your spouse** to the extent that the **claim** alleges any act, error or omission by **your spouse**.

The maximum amount payable under this extension shall be the amount shown in the **sublimit**.

Definitions

Wherever the following words or terms appear in bold in this endorsement, they mean what is set out below:

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.

Domestic partner

means any person with whom **you** are co-habiting as a couple at the time of the **claim** and have been for a minimum period of 12 months, and with whom **you** share financial responsibility. A domestic partner cannot be a blood relation to **you**.

All other terms, conditions, limitations and exclusions remain unaltered.

Student cover

We will cover **you** for any **claim** made against **you** during the **period of insurance**, arising from the **Practice of Your Profession** or **malpractice** performed by any student but only where they were performing such **business** on **your** behalf and under **your** full supervision.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

SWIFT Technology

We cover **you, your business** and **practice staff** in respect of **claims** arising from the use of SWIFT technology.

Telehealth activities

We cover **you** in respect of in respect of **claims** made against **you** in the **period of insurance** in relation to providing **telehealth** provided the act, error or omission by **you** arises from **your business**.

The most **we** will pay **you** under this section is the limit shown in the member schedule as the **limit of indemnity** and is applicable to any one **period of insurance**.

Your work as a subcontractor or agent work

We will cover **you** where **you** perform **your business** as a subcontractor or agent of an employer or principal.

The most **we** will pay **you** under this section is the limit shown in the **member schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

3. Automatic Extensions to Your Cover – Part B

Cover B: Public Liability

Car Parking

We will indemnify **you** against all sums which **you** shall become legally liable to pay for **compensation** in respect of **your** obligations as a tenant under any lease agreement to a lessor for actions, suits and demands in respect of:

1. **bodily injury; or**
2. **property damage;**

provided that the **bodily injury** or **property damage** arises out of or is caused by the use of any vehicle in **your** physical or legal control and the injury or damage occurs while that vehicle is in a car park owned by or operated by **you**.

This Additional Extension does not cover any liability:

- a. arising out of or connected with the use of any vehicle belonging to **you**; arising out of or connected with the use of any vehicle used by **you** or on **your** behalf independently of **your** operations as a car park owner or operator; or
- b. arising directly or indirectly out of or caused by or in connection with the servicing, repairing or maintenance of any vehicle.

Tenant's Liability

We will indemnify **you** against all sums which **you** shall become legally liable to pay for **compensation** in respect of **your** obligations as a tenant under any lease agreement to a lessor for actions, suits and demands in respect of:

1. **bodily injury; or**
2. **property damage;**

provided that such **bodily injury** or **property damage** results from an **occurrence** arising from the use by **you**, **your** invitees, sub tenants or licensees of a building at **your** business address/es or of passenger or goods elevators or escalators installed there.

4. Run-Off Cover Extension

Run-Off cover

In the event that during the **period of insurance** you permanently retire or permanently cease for some other reason (including death) to conduct the professional services described in the **member schedule** then provided that the **limit of indemnity** has not been exhausted as at the date of death or permanent cessation of professional services, the insurance cover provided under the policy will continue from such date for:

- a. the period specified in the **member schedule**. Such cover shall be subject to the **limit of indemnity** less all amounts paid and/or to be paid by **us** in respect of any **claim** first made and notified or circumstance or **incident** likely to give rise to a **claim** notified during the **period of insurance**

provided always that **you**:

- a. notify **us** of the permanent cessation of professional services before expiry of the **period of insurance**; and
- b. provide **us** with a completed and signed declaration requesting run-off cover under this extension, in a form to be provided by **us**, confirming:
 - i. have not had any registration or membership with any association or governing body related to the professional services cancelled, withdrawn, revoked or suspended as a result of misconduct during the **period of insurance**; and
 - ii. have not been subject to disciplinary or criminal inquiry, conviction or penalty in relation to the provision of professional services during the **period of insurance**; and
 - iii. **have** not notified any **claim**, circumstances or **incident** during the **period of insurance** or any period prior to this for which **we** provided insurance cover to **you**; and
 - iv. are not aware of any **claim**, circumstances or **incident** that has not been notified to **us**.

We will not be liable to indemnify **you** in respect of any act, error or omission occurring after the cessation of business. **You** agree that when this extension applies, this policy becomes nonrenewable and is not “renewable insurance cover” within the meaning of Section 58(1) Insurance Contracts Act 1984.

If at any time during the run off period identified in the **member schedule** you resume any form of work, paid or unpaid, which would have attracted cover under this policy, then this run off extension is deemed to be cancelled from the date of resumption of such work.

5. What We Do Not Cover

We will not pay for any claim made under any section of this policy including any **defence costs and expenses** or **compensation**, directly or indirectly, caused by, arising from or contributed to by:

Abuse

Actual or alleged **abuse**, unless **you** seek cover under the Abuse extension, but our liability will be limited to the **sub- limit of indemnity** stated.

Advice, design and specification

The provision of advice, design or specification where **you** manufacture, design, construct, erect, install or supply materials or equipment. This exclusion shall not apply in respect of advice, design or specification for products that are specifically manufactured or designed by you in the course of **your business**, and **you** had no knowledge, of or had reason to suspect at the time when the **product** passed from **your** control and physical custody of the existence of any defect or deficiency.

Asbestos

Any claim directly or indirectly based upon, attributable to, or in consequence of asbestos, asbestos fibres or derivatives of asbestos in whatever form or quantity.

Assumed duty or obligation

Any claim arising out of a specific liability assumed by **you** under any contract which goes beyond the duty to use such skill and care as is usual in the exercise of **your business** unless our prior written agreement has been obtained and such specific liability is endorsed upon the policy and where applicable, with your acceptance of any additional terms and conditions **we** have imposed.

Bodily injury elsewhere

Bodily injury, mental injury, illness, disease or death to any person or loss of or damage to tangible property of any person unless arising out of the **Practice of Your Profession** or **malpractice**.

Breach of Registration, unregistered practice or lack of qualifications

The **Practice of Your Profession** where **You**:

- a. are in breach of terms, conditions, undertakings or limitations on Your registration as a podiatrist; or
- b. were not registered as a podiatrist and were required to be registered; or
- c. have not completed the recognised training or lack the qualification to practice.

Except where cover applies to students under this policy.

Business interruption

Any trading loss or trading liability including that arising from the loss of any client, account or **business**.

Clinical trials

Your involvement in **clinical trials**.

Debt/financial obligation

Any debt or financial obligation incurred by **you** whether or not in connection with **your business**.

Directors and officers	Any claim made against any director or officer of yours where such claim is made solely by reason their holding the position of director or officer and having acted in that capacity.
Discrimination	Actual or alleged discrimination.
Documents	<p>Loss or damage to documents caused by:</p> <ul style="list-style-type: none"> a. riot or civil commotion; b. fading, mould, vermin, pest infestation, wear, tear or any other gradually operating cause; c. any computer virus; <p>interference with electronically stored data by any person who is not a current principal, partner, director or employee of yours.</p>
Employers liability	Any claim by any person for bodily injury, mental injury, illness, disease or death incurred, contracted or occurring whilst in the course of employment with you and for which any compensation is available under any Workers' Compensation Scheme and or similar legislation unless such bodily injury, mental injury, illness or death is caused by any negligent act, error or omission by you in the performance of your business and where such employee was in the capacity of a client.
Euthanasia	Euthanasia.
Fines and penalties	Any award of punitive or exemplary damages, or any fines or penalties, whether contractual, or other similar.
Fraud and dishonesty	Any claim directly or indirectly caused or contributed to by a violation of any law, dishonest, fraudulent or criminal act by you , or any deliberate or reckless act which could with reasonable foresight result in a claim for damages. This does not apply to any claim covered under Dishonesty of Employees but we will not in any event provide cover to any party who actually commits, condones or ignores any dishonesty.
Gender reassignment	The performance or provision of any gender reassignment work.
Hepatitis, HIV or Aids	Any claim arising from Hepatitis Non A or any condition directly or indirectly caused by, or associated with, the human immunodeficiency syndrome (HIV) initially named as either HTLV III or LAV or the mutants, derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome (AIDS) or AIDS related complex (ARC) or any syndrome or condition of a similar kind howsoever it may be named.
Industrial action	Any delays, strikes, industrial action or labor disturbances.

Insolvency, bankruptcy or liquidation

Any **claim** directly or indirectly based upon, attributable to, or in consequence of **your** insolvency, bankruptcy or liquidation. This also applies to **your** subcontractors or freelancers whose work has been disclosed to and accepted by **us**.

Intoxication

Business you performed whilst under the influence of intoxicants or narcotics.

Jurisdiction

Any **claim** brought or any judgement, award, or settlement made outside Australia, unless **you** seek further extended coverage under the Out of country coverage.

Land, buildings, animal, aircraft, motor vehicles and watercraft

The possession, ownership or use of any land or building, any animal, any aircraft, watercraft or any motor vehicle.

Loss of profits

Any **claim** arising from **your** lost profit or liability for GST or its equivalent.

Maternity and obstetrics

The performance or provision of any maternity and/or obstetric services, however, this exclusion shall not apply to any procedures or services carried out in respect of **your business** where **you** are registered (where required to be registered) or have completed the recognised training or qualification to do so.

Nuclear, chemical and biological

Any **claim** directly or indirectly caused by, contributed to, or arising from ionising radiations 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.

Organ transplant

The performance or provision of any organ transplant work.

Other indemnity

Any claim which is the subject of indemnity or assistance provided by any other insurer or entity which indemnifies or otherwise provides an indemnity for **you** or would ordinarily do so in respect of such claim.

Pension and securities

Your operation or administration of any pension or employee benefit scheme or trust fund or the purchase or any dealing in stocks, shares or other securities or the misuse of any information relating to them or for **your** breach of any legislation or regulation relating to these activities.

Pollutant removal

Any claim for the costs of removing, nullifying or cleaning-up seeping, polluting or contaminating substances.

Pollution

Any claim arising from personal injury or bodily injury or loss of or damage to, or loss of the use of property directly or indirectly caused by seepage, subsidence, pollution or contamination.

Prior or pending acts

Any **claim** or circumstance or any matter arising out of the **Practice of Your Profession** or **malpractice**, negligence, breach of a duty of care or any liability covered occurring prior to the inception date of this policy (or **retroactive date**, if stated in **your member schedule**) if you knew or could have reasonably foreseen that such civil liability, **malpractice**, negligence, breach of a duty of care or any liability covered might be expected to form the basis of a claim. This exclusion applies unless **you** satisfy the terms and conditions in the Extended continuous cover extension.

Products supplied

The manufacture, or the construction, alteration, formulation, repackaging, repair, servicing or treating of any product supplied sold, used or supplied by or distributed by **you** in the course of **your business** (including containers, labelling instructions or packaging) and any claim arising out of the failure of any products supplied to fulfil the purpose for which it was designed, or to perform as specified, warranted or guaranteed once such product has ceased to be under **your** custody or control.

The exclusion shall not apply to the **products** that are specifically manufactured, materially altered or formulated by **you** in the course of **your business** (rather than just sold, used, supplied by or distributed by **you**), and **you** had no knowledge, of or had reason to suspect at the time when the **product** passed from **your** control and physical custody of the existence of any defect or deficiency.

Property damage

Damage to property:

- a. belonging to **you** ; or
- b. in **your** custody or under **your** control, other than personal effects (including vehicles and their contents) of any of **your** visitors, directors, partners; or
- c. being that part of any property on which **you** are or has been working, where the damage arises out of such work.

Property owners

Any defect in or use of any buildings, premises or land owned or occupied by **you**.

Related parties

Any **claim** brought by any party falling within the definition of **you** or any party with a financial, executive or managerial interest in **you**, including any parent company or any party in which you have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a **claim** based on a liability to an independent third party directly arising out of the performance of **your business**.

Sanctions	We shall not be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit under this policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose us or that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.
Surgery	Any claim arising out of the performance of surgical activities involving general anaesthesia. 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.
Suspended licence	The performance of your business during any period that your licence to practice was suspended by any regulatory or governing body.
Tax, restraint of trade and anti-trust	Your breach of any taxation competition, restraint of trade or anti-trust legislation or regulation.
Territorial limits	Any work or activities undertaken by you outside the territorial limits save in respect of good samaritan acts where cover is worldwide.
Terrorism and riot	Any terrorism regardless of any other cause or event contributing to any liability or any action taken in controlling, preventing or suppressing terrorism , or riot.
Trading debts	Any claim directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by you or any guarantee given by you for a debt.
United States of America	Any claim directly or indirectly based upon, attributable to, or in any respect arising in the United States of America including its territories and possessions. Further, any judgement, award, payment or settlement made within countries which operate under the laws of the United States of America including its territories and possessions (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part).
War	Any legal liability of whatsoever nature directly or indirectly caused by or contributed to or arising from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, 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 including any action taken in controlling, preventing, suppressing or in any way relating to the above.

6. How to Notify us of a Claim or Incident

What you need to tell us

You must tell **us** in writing as soon as practicable of any **incident** or **claim** including, but not limited to:

- a. a patient suffering a major complication; or
- b. there is an error made, causing harm; or
- c. an adverse outcome results in significant anger in **your** patient or their family; or **you** receive a letter from a solicitor indicating dissatisfaction or requesting a patient record; or
- d. **you** are concerned that an **incident** has occurred (including a **complaint**, investigation or inquiry) which **you** think may lead to a **claim**.

If **you** do not tell **us** of an **incident** or **claim** as soon as practicable, **you** may not be covered under this policy and **your** right to any cover may be significantly reduced by **us**.

To report an **incident** or **claim** **you** must notify **us** in writing or on the BMS hotline 1800 514 933 or email podiatry@bmsgroup.com

Your notification must include **your** details, the details of the **incident** or **claim** including the date of the **incident** giving rise to the **claim**, the patient's name and details of any allegations.

Telling us about prosecutions, inquiries, complaints or investigations

You must notify **us** in writing as soon as practicable of any matter that will lead **you** to request cover under this policy including (but not limited to) any prosecution, inquiry, inquest, investigation or **complaint**, judgment, appeal, dispute that may be covered by this policy which relates to **your business** as a podiatrist.

If **you** do not notify **us** of the matters set out above as soon as practicable, **you** may not be covered under the policy and **your** right to any cover may be significantly reduced by **us**.

How we handle claims, complaints and other matters

You agree that **we** are entitled to have the conduct of any claim, **complaint** or matter covered under this policy including its investigation, pursuit, defence, avoidance, reduction or settlement and we may do so in **your** name. **We** may defend or settle a **claim**, **complaint** or any matter as **we** think fit.

Your conduct

No admissions without our consent

You must not make any admission of liability, offer or compromise in relation to any **claim, complaint** or matter covered by this policy without **our** prior written consent.

You must be reasonable in relation to settlement

You must not act unreasonably in rejecting a settlement or an offer of settlement, which the **lawyer or we** recommend to **you**. **You** may defend any **claim, complaint** or matter which **we** believe should be settled but we will not pay any more in relation to that claim, complaint or matter than we would have been required to pay if it had been settled or resolved as we believed it could or should have been.

We may decide not to continue

We may decide not to incur any further **defence costs and expenses** for pursuing, defending or responding to a **complaint, matter or prosecution** if **we** believe that there are no reasonable grounds for pursuing, defending or responding to the **complaint, matter or prosecution**. **We** will take account of the **lawyer's** advice in making that decision.

If **we** do that, **we** will notify **you** in writing. **We** will pay the **defence costs and expenses** incurred prior to the date on which **we** write to **you** notifying **you** of **our** decision. **You** may continue pursuing, defending or responding to the **complaint, matter or prosecution** at **your** own cost.

If **we** subsequently decide to assist **you**, **we** will appoint the **lawyer** to act on **our** behalf. After **we** cease paying the **defence costs and expenses**, **we** will only pay **you** thereafter for **defence costs and expenses** (not including the GST component if you are registered for GST) that **you** have incurred if **you** are successful in pursuing, defending or responding to a **complaint, matter or prosecution**.

Your duty to cooperate

You must cooperate with the lawyer in resolving the matter in a satisfactory, timely and cost-effective way. In particular, you must:

- a. give the lawyer a full and truthful account of the relevant facts;
- b. give the lawyer any relevant information or documents in your possession that they ask for;
- c. obtain any other relevant information or documents that you can;
- d. execute any documents the **lawyer** reasonably asks **you** to execute; and

- e. attend any meetings the **lawyer** reasonably asks **you** to attend. **You** agree at **your** expense to give **us, our** investigators and the **lawyer** all information, documents and assistance **we** reasonably require, and fully cooperate with **us, our** investigators and the **lawyer**.

We are not liable if you do not cooperate

We will not be liable for **defence costs and expenses** if **you** do not give **us** or the **lawyer** adequate instructions, or **you** do not follow the advice of the **lawyer** or **you** cause a delay which, in our or the **lawyer's** reasonable opinion, prejudices the outcome of the case.

Appointing lawyers and experts

We will appoint the lawyer or expert. When we appoint the lawyer or expert, we do so in our own capacity and not as an agent for you. The lawyer or expert appointed by us supplies services to us and not to you for the purposes of the Goods and Services Tax (GST). We are entitled to claim a GST input tax credit on services supplied by the lawyer or the expert.

Appeals

How to appeal

If you are dissatisfied with any decision made in a claim, complaint or matter against you by a court or other decision making body and wish to appeal against that decision, you must seek our consent to the appeal within seven (7) business days after the date of the decision, or such shorter period as may be reasonable having regard to the time limit for an appeal.

The application must be in writing and must fully set out the reasons for bringing an appeal. **We** will inform **you** in writing if **we** consent to the appeal. If **we** do not consent to the bringing of an appeal, **you** may conduct the appeal at **your** own expense.

If **we** wish to appeal against any decision made in a **claim, complaint** or matter against **you** by a court or other decision making body, **you** must reasonably cooperate with **us** in the bringing of such an appeal.

Appeals without our consent

If **you** appeal from a decision in a **claim, complaint** or matter without **our** consent:

after **we** cease paying the **defence costs and expenses**, **we** will only pay **you** thereafter for **defence costs and expenses** (not including the GST component if **you** are registered for GST) that **you** have incurred if **you** are successful in the appeal, and; if the appeal is successful and **you** are entitled to a refund of any money that **we** paid to the claimant, then **we** are entitled to recover that amount after deduction of the costs **you** have incurred.

Claims acceptance

The acceptance of a **claim, complaint**, matter or any cover by **us** under this policy can be subsequently withdrawn if facts come to **our** attention that trigger or satisfy a policy exclusion or the policy does not cover the **claim, complaint** or matter.

7. Conditions

These conditions apply to **your** policy.

Additional insureds

If more than one insured is named in the **member schedule**, unless otherwise stated, **our** total aggregate liability under this policy will not exceed the single **limit of indemnity** shown in the **member schedule** for the total of all named insureds. **You** agree that where there is more than one insured named in the **member schedule** the first of them is authorised to receive all notices and agree any amendments to the policy.

Cessation of specified clinical activities

You must stop providing or conducting a particular procedure, treatment or clinical activity if:

- a. **We** consider that the procedure or clinical activity poses an unreasonable risk of negligence or injury, illness or disability to patients; or
- b. a registration board places a condition on **your** registration that **you** must not perform a specified procedure, or that **you** cannot perform a procedure in a particular way.

We will provide a minimum of fourteen (14) business days' notice requiring **you** to cease carrying out any such procedure, treatment or clinical activity. If **you** do not do so, **we** may cancel **your** policy by giving **You** seven (7) business days' notice in writing.

Compliance with statute

Where any term or condition of this policy conflicts with any applicable and governing statute or regulation, the statute or regulation shall prevail and shall apply, but only to the extent necessary to achieve compliance therewith.

Deductible

Unless otherwise stated, **you** must pay the **deductible** shown in the member for each **claim**, including **defence costs and expenses**.

Fraudulent claims

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by **you** or anyone acting on **your** behalf to obtain any benefit under this policy, or if any loss hereunder be occasioned by the wilful act or with the connivance of any insured, **we**, without prejudice to any other right(s) **you** might have under this policy, shall be entitled to refuse to pay such claim.

Limit of indemnity

Our total aggregate liability during the **period of insurance** for claims and **defence costs and expenses** is the **limit of indemnity** shown in the **member schedule**, for any one claim, or all claims arising out of or in connection with the same originating cause or source, or all losses for which cover is available, arising out of or in connection with the same originating cause or source.

Loss prevention

You must not do anything recklessly or wilfully that might give rise to a **claim, complaint** or matter under this policy. **You** must take

Misrepresentation and non-disclosure

all reasonable care to avoid or reduce the chance of any **claim, complaint** or matter being made against **you**. **You** must not do, or fail to do anything which **you** know or should reasonably be expected to know will result in any **claim, complaint**, or matter being made against **you**.

If **you**:

- a. failed to disclose any matter which **you** were under a duty to disclose to **us**: or
- b. made a misrepresentation to **us** before this policy was entered into and if **we** would not have entered into this policy for the same premium and on the same terms and conditions expressed in this policy but for the failure to disclose or the misrepresentation, then:
 - i. **our** liability in respect of any claim will be reduced to an amount to place **us** in the same position in which **we** would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made: or
 - ii. if the non-disclosure or misrepresentation was fraudulent, **we** may avoid this policy.

Payment of deductible

When a **deductible** applies to **your** request for indemnity the following applies:

- a. **You** shall bear the amount of the **deductible** at **your** own risk;
- b. where **we** have paid all or any part of any **deductible** in respect of a request for cover on **your** behalf, **you** must reimburse **us** all or any part of the **deductible you owe us** within 14 days from the date **we** request payment from **you**;
- c. in the event that **you** fail to reimburse **us** in response to a request under (b) above, the sum requested shall, at the expiration of 14 days after the request, become a debt due and payable by **you** to **us**;

in the event that **you** fail to reimburse **us** in response to a request under (b) above, and if such failure leads to an increase in costs or liability, **our** liability under the policy shall not exceed the amount for which the **claim** or matter could have been settled up to the date of **your** failure or refusal to reimburse all or part of the **deductible**.

Payment of premium

You will not be covered for any period for which you have not paid **premium**

Policy cancellation

Your policy may be cancelled if your membership with the Australian Podiatry Association ceases. If an affected **member** has notified an **incident** or a claim during the **period of insurance** there will be no pro rata refund.

We may cancel this policy at any time by giving seven (7) business days' notice in writing:

- a. if **you** have not paid the **premium** within thirty (30) business days of the **period of insurance** commencing; or
- b. for any other reason available to **us** under the Insurance Contracts Act 1984 (Cth.).

If **we** give notice to cancel the policy then **we** must give that notice to **you** personally, or send it by certified mail at the last address of which **you** notified **us**. Unless **you** prove otherwise, it will be treated as if **you** received the notice when it would have arrived in the ordinary course of the post.

Record keeping

You shall at all times maintain accurate descriptive records of all professional services and equipment used in procedures, which shall be available for inspection and use by **us** or **our** duly appointed representatives, and you shall retain these records for a period of at least ten years from the date of treatment and, in the case of a minor, for a period of at least seven years after that minor attains the age of majority.

Rights of third parties

This policy is not intended to confer any enforceable rights upon any other person, whether or not an interest of such person is acknowledged by **us**.

Risk management

We are entitled to undertake a practice audit, peer review, risk analysis or other investigation of **your** practice when, in **our** reasonable opinion, such action is required. **Your** cooperation in any such action is a condition of **your** policy. If **you** do not cooperate in such action, **we** may cancel **your** policy by giving **you** seven (7) business days' notice in writing.

Subrogation and other insurance

If **we** make a payment under this policy **we** are subrogated to all **your** rights of contribution, indemnity or recovery without the need for **your** consent. **You** agree not to surrender any right to, or settle any claim for, contribution, indemnity or recovery without our prior written consent.

Use of instruments

In the performance of **your business**, **you** shall at all times handle, use, sterilise and store any tool or implement which is intended to penetrate tissue or be in contact with bodily fluid, in accordance with the manufacturer's instructions.

8. Governing Law and Jurisdiction

Governing law and jurisdiction

Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of the Australian state or territory in which it is issued. The parties to this policy will submit to the exclusive jurisdiction of the courts of that state or territory.

Interpretation

In this policy:

- a. reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy;
- b. if any term, condition, exclusion or endorsement or part is found to be invalid or unenforceable the remainder shall be in full force and effect;
- c. headings are for reference only and shall not be considered when determining the meaning of this policy.

9. Definitions

For the purposes of this policy the following words have special meaning:

Abuse	Any direct or indirect act or failure to act that intentionally harms or injures a third party. For the purposes of this policy, abuse shall include any form of physical, sexual and psychological harm or injury arising in the course of your business .
Australian Podiatry Association	The Australian Podiatry Association
Business	Professional services performed by you as stated in the proposal or declaration and as shown in the member schedule.
Bodily injury	Bodily injury, death, sickness, disease, illness, disability, nervous shock or emotional distress, mental anguish and/or mental injury, including loss of consortium resulting therefrom.
Claim	<p>Any:</p> <ul style="list-style-type: none">a. written or verbal notice of demand for compensation made by a third party against you; orb. 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 arising out of any actual or alleged breach of your business. <p>Also includes any circumstance, incident, complaint or criminal prosecution.</p>
Clinical trials	Any organized study or test that uses human or animal subjects to develop effectiveness or safety data for a designated treatment, procedure or product.
Complaint	An allegation of unlawful or actionable conduct or an allegation of misconduct or unsatisfactory conduct.
Costs and expenses	The reasonable legal costs including reasonable appeal costs and other necessary expenses incurred by you or on your behalf. Costs and expenses does not include your overheads or any salaries, wages, fees or benefits of your directors, employees , partners or principals.
Cyber liability	Any liability arising from the content of your computer systems or website or any additions made by a hacker to your computer systems or website.
Deductible	The amount set out in the member schedule, which is the amount that you shall bear at your own risk in respect of each claim or request for cover under the policy. The limit of indemnity and sub limit of indemnity only apply after the deductible has been exhausted.

Defence costs and expenses	All costs, fees and expenses incurred with our prior written agreement in the defense, investigation, mitigation or settlement of a claim, incident, complaint or prosecution.
Documents	Shall include any deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material. However, this shall not include any bearer bonds or coupons, stamps, bit-coins, bank or currency notes or any other negotiable instruments.
Expert	A person including but not limited to: an accountant, an actuary, an expert witness, a witness as to fact, or any person required to assist us in any matter covered under this policy.
Good Samaritan act	Any treatment administered by you at the scene of a medical emergency, accident or disaster where you were present following such medical emergency, accident or disaster.
Health care professional	A person who provides healthcare who is a medical or dental practitioner or is registered to provide healthcare in accordance with the laws of the Commonwealth or the State or Territory legislation in Australia.
Incident	Any act, error or omission by you, which adversely affects a patient; or an unexpected complication or injury occurring to a patient under your care as a result of the practice of your profession.
Inquiry	An investigation, examination or inquiry by a regulatory authority or disciplinary committee of any association or professional body of which you are a member; inquiry does not include any audit of you or any inquiry by a Coroner.
Lawyer	A legal practitioner or other person instructed by us .
Limit of indemnity	The limit of liability under this policy as stated in the member schedule.
Malpractice	Any bodily injury, mental injury, illness, disease or death of any patient caused by any negligent act, error or omission committed by you arising from the Practice of Your Profession .
Member(s)	A podiatrist who is a member of the Australian Podiatry Association
Occurrence	An event, including continuous or repeated exposure to conditions, which results in bodily injury or property damage, neither expected nor intended from your standpoint.
Period of insurance	The period specified in the member schedule.

Practice entity	Any corporate entity that is in the business of providing professional services (as noted in the member schedule) which is wholly controlled or owned by a member(s).
Practice staff	An employee, contractor, student or locum working in your practice or employed by you (but not a healthcare professional), who is supervised or instructed in their activities by you or an appropriately trained member of your staff.
Practice of Your Profession	Any role, whether remunerated or not, where you use your skills and knowledge as a podiatrist to: <ul style="list-style-type: none"> a. provide direct clinical care to a patient; b. conduct a medical examination, provide a medical report or medical opinion at the request of a third party, or c. provide education or conduct research, give a presentation or address, publish an article in a newspaper, newsletter or journal to the extent that it provides healthcare information or healthcare advice, act in an administrative capacity.
Premium	The premium specified in the invoice .
Privacy & health records legislation	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.
Products	Any property after it has left your custody or control which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by you or on your behalf. Any food or drink supplied by or on your behalf primarily to your employees as a staff benefit is not a product .
Property Damage	<ol style="list-style-type: none"> 1. Physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom; and/or 2. Loss of use of tangible property which has not been physically damaged, destroyed or lost, provided that such loss of use is caused by or arises out of physical damage of other tangible property.
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 in the member schedule from which we will cover business you performed but only where such business was disclosed to and accepted by us .

Schedule or Member Schedule	The current schedule to this policy.
Sub-limit of indemnity	A limit of indemnity in respect of an additional cover under this policy which is in place of and not in addition to the limit of indemnity .
Telehealth	Services provided in the practice of your profession to, or in respect of a patient who is not in the same place, that uses any form of technology to enable it to be provided, including videoconferencing, internet and telephone.
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, whether acting alone or on behalf of or in connection with any organisation(s) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or business and/or to put the public, or any section of the public, in fear.
Territorial limits	The territorial limits stated in the member schedule .
We, our, us	The insurers named in the member schedule.
You, your	A qualified podiatrist who is a member of the Australian Podiatry Association.