



MACQUARIE UNDERWRITING



Medical Liability Insurance Policy

Secured by

CATLIN



Medical Liability Insurance Policy

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Macquarie Underwriting Pty Ltd (ABN 48 008 497 318 and AFSL 237 267) is an authorised Coverholder at Lloyds under a binding authority agreement with the Insurer. UMR – SC3342012173

Insurer: Catlin Australia Pty Ltd (ABN 64 108 319 786) on behalf of Catlin Syndicate 2003 underwriters at Lloyds

MEDICAL LIABILITY INSURANCE POLICY

In consideration of the payment of the Premium and in reliance on the contents of the Proposal the Insured has provided, We agree to provide indemnity subject to the terms of this Policy.

1. SECTION 1 - INSURING CLAUSES

1.1 Medical Liability

We agree to indemnify the Insured against legal liability for any Claim first made against the Insured during the Period of Insurance and notified to Us during the Period of Insurance for Medical Liability arising from any act, error or omission wherever or whenever committed or allegedly committed by the Insured in the conduct of the Medical Business.

1.2 Consultants and Others

We agree to extend the indemnity provided in clause 1.1 to any Claim first made against the Insured during the Period of Insurance and notified to Us during the Period of Insurance for Medical Liability arising from any act, error or omission of any consultants, Medical Practitioners, contractors, sub-contractors, locum tenens or agents for whose acts, errors or omissions the Insured is legally liable, PROVIDED THAT there is no indemnity for any consultant, Medical Practitioner, contractor, sub-contractor, locum tenens or agent unless they are also an Insured.

1.3 Consumer Protection Legislation

We agree to extend the indemnity provided in clause 1.1 to any Claim first made against the Insured during the Period of Insurance and notified to Us during the Period of Insurance for Medical Liability resulting from breach of a statutory duty under the Competition and Consumer Act 2010 (Cth), Corporations Act 2001 (Cth), National Consumer Credit Protection Act 2009 (Cth) or similar legislation enacted for the protection of consumers, within any Australian jurisdiction including any amendment, consolidation or re-enactment of such legislation.

1.4 Additional Insuring Clauses

We agree to indemnify the Insured against legal liability for any Claim first made against the Insured during the Period of Insurance and notified to Us during the Period of Insurance arising from any negligent act, error or omission wherever or whenever committed or allegedly committed by the Insured in the conduct of the Medical Business as a result of the following;

1.4.1 Defamation

libel, slander or defamation but excluding any Claim made against the Insured by any of the Insured's partners, directors, Employees or agents.

1.4.2 Intellectual Property Rights

unintentional:

- (a) infringement of copyright, trademarks, registered designs, patents, plagiarism; or
- (b) passing off; or
- (c) breach of confidentiality.

1.4.3 Privacy

unintentional:

- (a) breach of a legal duty of confidentiality owed to a patient; or
- (b) breach of any Privacy Legislation

Our aggregate liability for all Claims under this clause 1.4 shall not exceed \$500,000 or the Limit of Liability, whichever the lesser.

1.5 Defence Costs

Where the Limit of Liability is specified in the Schedule to be exclusive of Defence Costs, We agree, in addition to the Limit of Liability, to pay the Defence Costs of any Claim which is the subject of indemnity under insuring clause 1.1, 1.2, 1.3 or 1.4 PROVIDED THAT:

- (a) where the Insured's liability exceeds the available Limit of Liability, We shall only pay such proportion of the Defence Costs as the available Limit of Liability bears to the Insured's liability;
- (b) where the amount We have paid or incurred as Defence Costs exceeds the share that We are obliged to pay under (a), the Insured shall upon demand pay to Us the excess amount. Alternatively, We may deduct the excess amount from any entitlements the Insured may have at any time under this Policy.

Where the Limit of Liability is not specified in the Schedule to be exclusive of Defence Costs, We agree to pay the Defence Costs of any Claim which is the subject of indemnity under clause 1.1, 1.2, 1.3 or 1.4 PROVIDED THAT the total of our liability together with the Defence Costs shall not exceed the Limit of Liability.

1.6 Dishonesty

Notwithstanding exclusion 3.6 ("Dishonest or Reckless Acts"), We agree to indemnify the Insured under insuring clauses 1.1, 1.2, 1.3 and 1.4 where the Claim arises from a dishonest, fraudulent, criminal or malicious act, error or omission of any of the Insured's Employees, partners or directors or in the case of insuring clause 1.2 any consultant, Medical Practitioner, contractor, sub-contractor, locum tenens or agent PROVIDED THAT:

- (a) there is no indemnity under this clause for any person committing or condoning the act or omission;
- (b) there is no indemnity under this clause for any loss sustained as a result of any act or omission occurring after the date on which the Insured first discovers, or has reasonable cause for suspicion of, a dishonest, fraudulent, criminal or malicious act or omission on the part of any person; and
- (c) there is no indemnity under this clause for loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

1.7 Loss of Documents

We agree to indemnify the Insured for the costs, charges and expenses, incurred with Our written consent, which they incur in replacing or restoring Documents (including but not limited to Documents which are the property of the Insured) which have been destroyed or damaged, or lost or mislaid and cannot be found after diligent search PROVIDED THAT:

- (a) the Insured first discovered the destruction, damage, loss or mislaying of the Documents during the Period of Insurance;
- (b) the Insured notified Us in writing during the Period of Insurance and within 28 days of discovering the destruction, damage, loss or mislaying of the Documents;
- (c) the Insured supplies satisfactory documentary proof of their loss, including bills and accounts;
- (d) the Documents were in the Insured's physical custody or control or in the physical custody or control of another person to whom the Insured entrusted, lodged or deposited the Documents in the ordinary course of the Insured's Medical Business;

- (e) there is no indemnity under this clause for any costs, charges or expenses as a result of any Document being destroyed or damaged by normal wear, tear or other gradual process;
- (f) our aggregate liability for all Claims under this clause shall not exceed \$500,000 or the Limit of Liability, whichever is the lesser.

1.8 Costs of Inquiries

We agree to indemnify the Insured for the costs incurred by Us, or the reasonable costs incurred by the Insured with Our written consent, of the Insured's legal representation at any Inquiry which the Insured is legally compelled to attend as a result of any Claim which is the subject of indemnity under insuring clause 1.1, 1.2, 1.3 or 1.4 PROVIDED THAT:

- (a) the Inquiry is ordered or commissioned during the Period of Insurance;
- (b) We shall be entitled to select lawyers to represent the Insured;
- (c) the Insured notified Us in writing within the Period of Insurance and within 28 days of having received notice of the Inquiry;
- (d) our aggregate liability for all Claims under this clause shall not exceed \$500,000 or the Limit of Liability, whichever is the lesser.

1.9 Court Attendance Costs

We agree to indemnify the Insured's partners, directors or Employees for the costs, charges and expenses, incurred with Our written consent, which they incur in attending court as a witness when legally compelled to in connection with a Claim which is the subject of indemnity under this Policy PROVIDED THAT:

We will pay up to a maximum of \$250 per person for each day on which attendance is required; our aggregate liability for all Claims under this clause shall not exceed \$50,000 or the Limit of Liability, whichever is the lesser.

1.10 Public Relations Expenses

We agree to indemnify the Insured for the costs, charges and expenses, incurred with Our written consent, which they incur in retaining a public relations consultant for the sole purpose of preventing or limiting the adverse effects of or negative publicity arising from an event in the conduct of the Medical Business, first occurring and notified to Us during the Period of Insurance, that may cause the reputation of the Insured to be seriously affected PROVIDED THAT:

- (a) We will indemnify such costs, charges and expenses only during the first 30 days immediately following the event;
- (b) our aggregate liability for all Claims under this clause shall not exceed \$50,000 or the Limit of Liability, whichever is the lesser.

1.11 Indemnity to Board of Management

We agree to extend the indemnity under insuring clauses 1.1, 1.2, 1.3 and 1.4 to those Employees of the Insured who are or have at any time acted as advisers to or members of a board or committee of the Insured or of a hospital or facility operated by an Insured where the Claim arises by reason of their conduct when acting as such advisers or members.

Indemnity under this Insuring clause 1.11 specifically excludes any claim arising out of any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement or other act committed by the Insured in his/her capacity as a director or officer of the Insured or in respect of any Employees of the Insured acting as a policy committee member for a superannuation fund established for the benefit of the Insured's Employees.

1.12 Teaching

We agree to extend the indemnity provided under insuring clauses 1.1, 1.2, 1.3 and 1.4 in respect of any Claim arising out of the activities of the Insured committed or allegedly committed in the conduct of the Insured's capacity as a medical teaching facility for a university, college of advanced education, T.A.F.E college or other tertiary educational institution.

1.13 Incidents Prior to Inception

Notwithstanding sub-clauses 3.14.1 and 3.14.2 of this Policy, We agree to extend the indemnity provided under insuring clauses 1.1, 1.2, 1.3 and 1.4 in respect of any Claim, to which insuring clause 1.1, 1.2, 1.3 or 1.4 responds, which arises out of circumstances that the Insured first became aware of up to 48 hours prior to inception of this Policy which the Insured knew or ought reasonably to have known might give rise to a Claim, PROVIDED THAT:

- (a) the circumstances have been notified to the previous insurer and the Claim arising out of the circumstances has been declined on the basis of late notification under the terms of that previous insurer's policy;

- (b) we shall be entitled at any time to take over and conduct any action necessary to enforce the obligations of the previous insurer under that policy;
- (c) the previous policy was not issued by Us; and
- (d) the act, error or omission resulting in the Claim occurred after the Retroactive Date if any specified in the Schedule.

For the purposes of this clause 1.13, Our total liability under this Policy shall not exceed the Limit of Liability specified in the Schedule or the limit of liability under the previous policy whichever is the lesser.

1.14 Fidelity (Optional)

If a Limit of Liability for fidelity is specified in the Schedule, We agree to indemnify the Insured for any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes in the Insured's care, custody or control which belong to the Insured or for which the Insured is legally responsible, which the Insured sustains as a result of any dishonest or fraudulent act of any of the Insured's Employees and committed in the conduct of the Insured's Medical Business PROVIDED THAT:

- (a) there is no indemnity for any person committing or condoning the dishonest or fraudulent act;
- (b) the Insured first discovered the loss during the Period of Insurance;
- (c) the Insured notified Us in writing within the Period of Insurance and within 28 days of having reasonable cause for suspicion of a loss or discovery of a loss;
- (d) there is no indemnity under this clause for loss sustained by the Insured as a result of any act, error or omission occurring after the date on which the Insured first discovers, or has reasonable cause for suspicion of, dishonesty or fraud on the part of the Employee concerned;
- (e) the Insured provides all information and assistance that We request in order to recover from the Employee or the Employee's estate;
- (f) the amount of indemnity under this clause is reduced by the amount of any moneys which are payable by the Insured to the Employee or which, but for the Employee's dishonesty or fraud, would have been payable by the Insured to the Employee. These moneys include but are not limited to wages, dividends, outstanding loans and equity; and

- (g) the Deductible shall apply for each and every individual dishonest or fraudulent act;
- (h) our aggregate liability for all Claims under this clause shall not exceed the Sub-Limit of Liability - Fidelity.

1.15 Clinical Trials (Optional)

Notwithstanding clause 3.3 of this policy, if a Limit of Liability for Clinical Trials is specified in the Schedule, we agree to extend indemnity under insuring clauses 1.1, 1.2, 1.3 and 1.4 in respect to any Claims arising out of the Insured's participation in any Clinical Trials PROVIDED THAT:

- (a) the Insured has provided the Insurer with a completed clinical trials questionnaire prior to commencement of the Clinical Trials; and
- (b) the particular Clinical Trial giving rise to the Claim has been agreed to by Us prior to commencement of the Period of Insurance and the particular Clinical Trial is listed in the Schedule.

Our aggregate liability for all Claims (including Defence Costs) under this clause shall not exceed the Sub-Limit of Liability - Clinical Trials.

1.16 Joint Venture Liability (Optional)

If specified in the Schedule, We agree to extend the indemnity provided under insuring clauses 1.1, 1.2, 1.3 and 1.4 to any Claims arising out of any activities connected with the Medical Business in which the Insured is engaged as a joint venturer or as a partner.

1.17 Previous Business (Optional)

If specified in the Schedule, We agree to extend the indemnity provided under insuring clauses 1.1, 1.2, 1.3 and 1.4 to any Claims against any past or present principal, partner or director for Medical Liability arising from any act, error or omission wherever or whenever committed or allegedly committed by the person in the conduct of business of the same character as the Medical Business before the person became a principal, partner or director of the Insured.

1.18 Newly Created or Acquired Subsidiaries (Optional)

If specified in the Schedule, we agree to extend the definition of 'Insured' to include any subsidiary created or acquired by the Insured Entity during the Period of Insurance for a period of up to 60 days (but never beyond the expiry date of the Period of Insurance) from the date of

such creation or acquisition PROVIDED THAT this extension:

will only apply in respect of claims against the subsidiary arising from the conduct of business the same as the Medical Business occurring after the date of creation or acquisition of the subsidiary;

does not apply to any new subsidiary acquired or created by the Insured Entity that is domiciled or incorporated in the United States of America, Canada or any of their territories or protectorates.

We may, at our discretion, offer to extend cover for a new subsidiary beyond a 60 day period period if the Insured Entity, prior to the end of that period:

gives Us written notice of any such acquisition or creation together with such additional information as we may require so that we can exercise our discretion whether or not to extend the cover;

accepts any notified alteration in the terms of this Policy; and

pays any additional premium required by Us.

1.19 Extended Reporting Period — Insurer Derived

In the event that We:-

- (a) refuse to renew this Policy for reasons other than the Insured's non-payment of premium or noncompliance with the terms or conditions of this Policy, or
- (b) agree to the renewal or replacement of this Policy but impose exclusion(s) that are not contained in this Policy,

then the Insured may, upon payment of an additional premium equivalent to 100% of the annual premium for this Policy, purchase an extended reporting period of 12 months following the end of the Period of Insurance during which written notice may be given to Us of any Claim first made against the Insured during the extended reporting period for Medical Liability arising from any act, error or omission in the conduct of the Medical Business committed or allegedly committed by the Insured prior to the end of the Period of Insurance.

For the purposes of insuring clause 1.19(a) a change in premium, terms, conditions or exclusions shall not constitute a refusal to renew. This option to purchase the above extended reporting period must be exercised by the Insured giving notice in writing to Us not later than 30 days after the end of the Period of Insurance. If the Insured fails to exercise this right within the above 30 day period the option to exercise that right shall expire.

The additional premium in respect of this extension is due and payable within 30 days of the expiration of the Period of Insurance. If the Insured fails to pay such additional premium when due, the Insured's option to purchase the above extended reporting period will expire. This insuring clause 1.19 shall not operate to increase the Limit of Liability under this Policy. This insuring clause 1.19 shall not operate to extend the Period of Insurance.

1.20 Extended Reporting Period — Insured Derived

In the event that the Insured declines to renew this Policy, the Insured may, upon payment of an additional premium equivalent to 100% of the annual premium for this Policy, purchase an extended reporting period of 12 months following the end of the Period of Insurance during which written notice may be given to Us of any Claim first made against the Insured during the extended reporting period for Medical Liability arising from any act, error or omission in the conduct of the Medical Business committed or allegedly committed by the Insured prior to the end of the Period of Insurance.

This option to purchase the above extended reporting period must be exercised by the Insured giving notice in writing to Us prior to the expiration of the Period of Insurance. If the Insured fails to exercise this right prior to the expiration of the Period of Insurance, the option to exercise that right shall expire.

The additional premium in respect of this extension is due and payable within 30 days of the expiration of the Period of Insurance. If the Insured fails to pay such additional premium when due, the Insured's option to exercise that right will expire.

This insuring clause 1.20 shall not operate to increase the Limit of Liability which shall apply to the Period of Insurance under this Policy. This insuring clause 1.20 shall not operate to extend the Period of Insurance.

1.21 Continuous cover

We agree not to rely on the 'Prior Claims or Circumstances' exclusion in respect of any Claim made against the Insured during the Period of Insurance that arises from or is in any way connected with any circumstance:

of which the Insured first became aware prior to the Period of Insurance and which the Insured knew or ought reasonably to have known may give rise to a Claim; and

which should have, but was not, notified to Us prior to the Period of Insurance.

PROVIDED THAT:

such indemnity shall not apply to any Claim where the Insured's failure to notify is fraudulent;

We have continuously insured the Insured without interruption between the date when the circumstance should have been notified and the date the Claim was actually notified;

We may reduce our liability under the Policy to the extent of any prejudice we may suffer in connection with the Insured's failure to notify the circumstance prior to the Period of Insurance;

We have the discretion to apply either the terms and conditions of the Policy on foot when the Insured first became aware of the circumstance, including but not limited to the Limit of Indemnity and Deductible, or the terms and conditions of this Policy; and

The Insured agrees to only make a claim under one medical liability policy issued by Us.

1.22 Retroactive Date

Where a Retroactive Date is specified in the Schedule, then this Policy shall not provide indemnity in respect of any Claim arising from any act, error or omission committed or alleged to have been committed before the Retroactive Date.

1.23 Increased Aggregate Limit of Liability (Optional)

If the Schedule specifies that the Insured has purchased an Increased Aggregate Limit of Liability, we agree to increase the Limit of Liability under this Policy by an amount equal to the Limit of Liability PROVIDED THAT Our total liability under this Policy shall not exceed:

- (a) in respect of any one Claim, the Limit of Liability as specified in the Schedule; and
- (b) in respect of all Claims, an amount equal to twice such Limit of Liability; or

- (c) in the case of Claims covered by clauses 1.14 and 1.15, the relevant Sub-Limit of Liability as specified in the Schedule.

2. SECTION 2 - LIMITS OF LIABILITY

2.1 Limit of Liability

2.1.1 Our total liability under this Policy for any one Claim and in the aggregate in respect of all Claims shall not exceed the Limit of Liability specified in the Schedule or, in the case of Claims covered by clauses 1.14 and 1.15 the relevant Sub-Limit of Liability specified in the Schedule.

2.1.2 Where we have agreed to provide an Increased Aggregate Limit of Liability in accordance with clause 1.23 then Our total liability under this Policy in respect of all Claims shall not exceed the amount specified in clause 1.23.

2.1.3 We shall pay Defence Costs in accordance with clause 1.4.

2.2 Deductible

2.2.1 The amount of the Deductible shall be borne by the Insured at its own risk in respect of each Claim.

2.2.2 Where the quantum of any Claim is less than the Deductible, the Insured shall be liable for the Claim and the Defence Costs.

2.2.3 Unless the Deductible is expressed to be exclusive of Defence Costs, the Insured shall pay the Defence Costs as they are incurred, up to the amount of the Deductible.

2.3 Claims Aggregation

2.3.1 All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission for the purposes of this Policy.

2.3.2 Where a single act, error or omission gives rise to more than one Claim, all such Claims shall jointly constitute one Claim for the purpose of this Policy.

3. SECTION 3 – EXCLUSIONS

We shall not be liable under this Policy to provide indemnity in respect of any Claim against the Insured:

3.1 Asbestos

directly or indirectly arising from or in any way connected with asbestos other than in respect to medical treatment for an asbestos related illness.

3.2 Assumed Liability

directly or indirectly arising from or in any way connected with:

- (a) any contractual or assumed liability, unless the Insured would in any event be legally liable in the absence of such contractual or assumed liability; or
- (b) any liability assumed by an Insured under any guarantee or warranty.

3.3 Clinical Trials

directly or indirectly arising from or in any way connected with any Clinical Trial that is not covered pursuant to clause 1.15 of this Policy.

3.4 Contagious Diseases

directly or indirectly arising from or in any way connected with the transmission of a notifiable contagious disease or virus by an Insured, when at the time of transmission the Insured knew or ought reasonably have known that the relevant Insured was infected with the disease or virus, PROVIDED THAT this exclusion shall not apply to any Insured who did not know or could not reasonably have known that the relevant Insured was infected with the disease or virus.

3.5 Deregistered Practitioners

directly or indirectly arising from or in any way connected with the administering of medical treatment by a Medical Practitioner who is either:

- (a) currently banned or deregistered from practicing their respective specialisation as a result of professional misconduct by a relevant lawfully established and recognised authority in either the country of their medical training or in any other country where they have practiced as a Medical Practitioner; or
- (b) not in possession of a valid license, authority, registration, accreditation to practice their respective specialisation issued by a relevant lawfully established and recognised licensing authority in Australia,

PROVIDED THAT this exclusion shall not apply to the Insured Entity where the Insured Entity has complied with its reasonable internal guidelines for verifying the credentials of that Medical Practitioner.

3.6 Dishonest or Reckless Acts

directly or indirectly arising from or in any way connected with any actual or alleged:

- (a) dishonest, fraudulent, criminal or malicious act, error or omission;
- (b) willful breach of any statute, contract or duty; or
- (c) act, error or omission committed or omitted with a reckless disregard for the consequences thereof;

by the Insured.

3.7 Employer's Liability

directly or indirectly arising from or in any way connected with bodily injury, mental injury, sickness, disease, death of any Employee of the Insured or damage to or destruction of any property of any Employee of the Insured including loss of use, suffered in the course of employment.

3.8 Fines Penalties and Damages

for fines, penalties, liquidated damages, punitive damages, exemplary damages, aggravated damages, additional damages resulting from the multiplication of compensatory damages, or any other non-compensating damages of any kind against the Insured.

3.9 Insolvency

directly or indirectly arising from or in any way connected with the Insured's insolvency, bankruptcy, liquidation, or failure to pay any trading debt.

3.10 Jurisdiction and Territorial Limits

- 3.10.1** directly or indirectly arising from or in any way connected with any actual or alleged act, error or omission committed or omitted within the territorial limits of the United States of America, Canada or any of their territories or protectorates; or
- 3.10.2** which is brought in a court of law within the territorial limits of the United States of America, Canada, or their territories or protectorates or directly or indirectly arising from or in any way connected with any settlement or for the enforcement of any judgment or order obtained within the territorial limits of, or determined pursuant to the laws of the United States of America, Canada or their territories or protectorates; or
- 3.10.3** which is the subject of any Inquiry conducted, commissioned or established in the territorial limits of the United States of America, Canada or any of their territories or protectorates.

3.11 Medicines

directly or indirectly arising from or in any way connected with the administration or provision of medicines which, by law, are required to be prescribed by a qualified Medical Practitioner, unless those medicines have been so prescribed.

3.12 Narcotics

directly or indirectly arising from or in any way connected with the administering of or failing to administer medical services by any Insured while under the influence of intoxicants or drugs, PROVIDED THAT this exclusion shall not apply to any Insured who did not know or could not reasonably have known that the relevant Insured was administering medical services while under the influence of intoxicants or drugs.

3.13 Occupier's Liability

directly or indirectly arising from or in any way connected with any occupation or ownership or management of any real property by the Insured.

3.14 Prior Claims or Circumstances

- 3.14.1** made, threatened or in any way intimidated against the Insured prior to the Period of Insurance; or
- 3.14.2** arising from or in any way connected with any circumstance:
 - (a) of which written notice has been given under any previous medical liability or other insurance policy;
 - (b) noted on the Proposal for the current Period of Insurance or on any previous proposal; or
 - (c) of which the Insured first became aware prior to the Period of Insurance and which the Insured knew or ought reasonably to have known may give rise to a Claim.

3.15 Radioactivity

directly or indirectly caused by or contributed to by ionising radiation or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material whether occurring naturally or otherwise, or by the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof. Provided, however, that this exclusion will not apply where the Claim arises directly out of medical treatment or medical research.

3.16 Related Entities

directly or indirectly brought or maintained by, or on behalf of:

- (a) any Insured; or
- (b) any person who, at the time of the act, error or omission giving rise to the Claim, is a Family Member of the Insured unless such person is acting without any prior solicitation or co-operation of any Insured; or
- (c) any entity operated or controlled by any Insured or Family Member of the Insured unless such person is acting without any prior solicitation or co-operation of any Insured.

3.17 Rights of Recovery

for any liability, loss or damage in respect of which the Insured has at any time foregone, excluded or limited a right of recovery.

3.18 Sexual Misconduct

directly or indirectly arising from or in any way connected with any actual or alleged sexual misconduct of any nature.

3.19 Terrorism

directly or indirectly arising from or in any way connected with terrorism or any action taken in controlling, preventing, suppressing any act or acts of terrorism or in any way relating thereto.

For the purposes of this Clause, "terrorism" means any act or acts (whether threatened or actual) of any person or persons involving the causing or occasioning of threatening of harm of whatever nature and by whatever means made or claimed to be made in whole or in part for political, religious, ideological or similar purposes.

For the purpose of this exclusion the term "indirectly" does not include the rendering of or failure to render medical treatment to persons injured as a result of a terrorism event.

3.20 War

directly or indirectly arising from or in any way connected with war, invasion acts of foreign enemies, hostilities (whether war be declared or not), civil war, 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.

For the purpose of this exclusion the term "indirectly" does not include the rendering of or failure to render medical treatment to persons injured as a result of an event described above

4. SECTION 4 — GENERAL CONDITIONS**4.1 Alteration to the Insured's Medical Business**

The Insured must notify Us in writing within 30 days of any material alteration to the Insured's Medical Business, including but not limited to:

- (a) any material alteration made or permitted by the Insured to the nature of the Insured's Medical Business; or
- (b) any acquisition by the Insured of, or merger of the Insured with, any other business, whether or not of the same nature as the Insured's Medical Business; or
- (c) (where the Insured is a natural person), the Insured becoming a bankrupt or entering into a debt agreement under Part IX of the Bankruptcy Act or entering into an arrangement with creditors under Part X of the Bankruptcy Act; or
- (d) (where the Insured is a company or body corporate), the appointment of an administrator, receiver, receiver and manager, controller, provisional liquidator or liquidator to the Insured; or
- (e) if an Insured's statutory registration or registration with their professional association is cancelled, suspended or has conditions imposed.

4.2 Assignment of Interest

No change in, modification of or assignment of any interest under this Policy shall have effect at law unless made with Our written approval.

4.3 Policy Construction, Interpretation and Notices

4.3.1 The construction, interpretation and meaning of the terms of this Policy shall be determined in accordance with the laws of New South Wales. Any dispute relating to this Policy shall be submitted to the exclusive jurisdiction of the courts of New South Wales.

4.3.2 The headings in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.

- 4.3.3 In this Policy words used in the singular shall include the plural and vice versa.
- 4.3.4 Any notice the Insured is required or elects to give under this Policy, may be given to Macquarie Underwriting.
- 4.3.5 The amount of Premium specified herein is the amount due to Us and any commission allowed by Us is to be regarded as remuneration of the Coverholder placing this insurance.

4.4 Severability and Non-Imputation

Where the Insured is more than one person or entity and one or more of those persons or entities:

- (a) failed to comply with the duty of disclosure under section 21 or section 21A of the Insurance Contracts Act 1984; or
- (b) made a misrepresentation to Us before this Policy was entered into;

the right of another person or entity to indemnity under this Policy shall not be prejudiced as a result PROVIDED THAT the other person or entity:

- (i) acted in good faith in the performance of their or its duties and obligations both under this policy and at law; and
- (ii) was entirely innocent of, had no prior knowledge of, or did not have reasonable cause to have knowledge of the relevant conduct; and
- (iii) notifies Us in writing of all facts known to them as soon as is reasonably practicable upon becoming aware of the relevant conduct.

This clause shall not operate to increase the Limit of Liability as stated in the schedule.

4.5 Health Practitioners Private Insurance

The Insured shall ensure that all Medical Practitioners and locum tenens carry their own medical malpractice insurance.

5. SECTION 5 – CLAIMS CONDITIONS

5.1 Reporting Claims

5.1.1 Loss Summaries Bordereau

Notice of new Claims and an update on the current status of each existing Claim should be sent to Us in the first week of each month during the Period of Insurance and during any Extended Reporting Period using the agreed loss summaries bordereau.

The Insured shall also submit to Us, each year thereafter within one week of the anniversary of the expiration of the Period of Insurance, until the Limit of Liability under this Policy has been exhausted, a supplemental loss summaries bordereau updating Us in relation to the current status of each Claim.

If the Insured has exercised their right to the Extended Reporting Period, as provided for by Insuring Clause 1.19 or 1.20, then written notice of any new Claim must be sent prior to expiration of the Extended Reporting Period.

In the event that written notice of a new Claim is sent, as aforesaid, within a period of 30 days after the expiration date of this Policy, or during the Extended Reporting Period, such notice shall be deemed to have been sent on the last day of the Period of Insurance.

5.1.2 Individual Loss Advice Forms

In addition to the written notice of any new Claim or status updates for existing Claims, as required in 5.1.1 above, the Insured shall immediately submit to Us during the Period of Insurance detailed written information regarding each new Claim that meets one or more of the following criteria during the Period of Insurance:-

- (a) those reserved by the Insured, or any insurer, for an amount equal to or greater than fifty percent of the Deductible or any underlying insurance applicable to such Claim;
- (b) those involving any of the following injuries or alleged acts or omissions of which the Insured becomes aware:-
 - (i) death,
 - (ii) brain damage or neurological deficit,
 - (iii) paralysis or nerve injury,
 - (iv) total or partial loss of limb(s), or loss of the use of limb(s),
 - (v) impairment or loss of sight, hearing, taste, touch or smell,

- (vi) failure to diagnose resulting in radiation therapy, chemotherapy or other continuous treatment, Human Immunodeficiency Virus (HIV), Acquired Immune Deficiency Related Complex (ARC), Acquired Immune Deficiency Syndrome (AIDS) or any related virus, complex or syndrome;

Once notified all Claims must be reported as required for Claims in 5.1.1 above unless otherwise notified by Us.

- 5.1.3** All notices to be given to Us under clause 5.1 must be given by delivery to any one of the Persons Nominated to accept Service Notices as shown in the Schedule. All Notices under this clause 5.1 may be given by email to the email addresses shown in the Schedule.
- 5.2 Defence and Settlement**
- 5.2.1** We shall be entitled at any time to take over and conduct, in the Insured's name, the defence or settlement of any Claim. Lawyers retained by Us to act on the Insured's behalf shall at all times be at liberty to disclose to Us any information or document obtained (whether by the Insured or otherwise) in the course of so acting, and the Insured agrees to waive any claim for client legal privilege as between Us and the Insured to the extent that such privilege may otherwise prevent that disclosure to Us.
- 5.2.2** The Insured must not settle any Claim, incur any Defence Costs, make any admission, offer or payment, or assume any contractual obligation in relation to any Claim without Our prior written consent (which consent shall not be unreasonably withheld). We shall not be liable for any settlement, Defence Costs, admission, offer or payment, or assumed obligation to which We have not consented in writing.
- 5.2.3** Where, in Our opinion, any Claim may not exceed the Deductible, We shall be entitled to require the Insured to conduct the defence of the Claim. In this situation:
- (a) the Insured shall keep Us advised in writing of all developments

- relating to the defence and settlement of the Claim as they occur;
 - (b) the Insured may settle the Claim without Our consent PROVIDED THAT they do not claim indemnity under this Policy in respect of the Claim; and
- 5.2.4** where it becomes apparent that the Claim will exceed the Deductible:
- (a) We shall be entitled to take over and conduct, in the Insured's name, the defence or settlement of the Claim; and
 - (b) We will reimburse the reasonable Defence Costs already incurred by the Insured.
- 5.2.5** Where, in Our opinion, the liability of any Claim may exceed the available Limit of Liability, We shall be entitled to discharge Our liability by paying the available Limit of Liability at Our discretion to the Insured or on the Insured's behalf and paying the Defence Costs up to the date of that payment. In this situation:
- (a) if at the time of payment We are conducting the defence of the Claim, We shall also relinquish that conduct; and
 - (b) insuring clause 1.5 (a) and (b) (Defence Costs) shall still apply.
- 5.2.6** The Insured must, when instructed by Us to do so, pay promptly within the terms of any proposed settlement the amount of the Deductible. If the Insured fails or refuses to make that payment and We elect to make the payment on the Insured's behalf, We shall be entitled to deduct the amount from any entitlements the Insured may have at any time under this Policy.
- 5.3 Insured's Right to Contest a Claim**
- Where we consider that a Claim should be settled and the Insured does not agree, the Insured may elect to contest the Claim PROVIDED THAT if the actual liability for the Claim exceeds the amount for which, but for the Insured's election, the Claim could have been settled, then:
- (a) our liability for the Claim shall be the amount for which, but for the Insured's election, the Claim could have been settled;
 - (b) the Defence Costs of the Claim shall be the Defence Costs incurred up to the date of the Insured's election; and

- (c) insuring clause 1.5 (Defence Costs) shall still apply.

5.4 Our Right to Contest a Claim

If we wish to continue to defend a Claim but the Insured does not wish to continue to defend the Claim, the Insured will not be required to defend the Claim unless a Senior Counsel (to be nominated by Us) advises that the Claim should be defended. In formulating that advice, Senior Counsel shall take into consideration the economics of the matter, the likely liability together with Defence Costs and the prospects for successfully defending the Claim. The cost of the Senior Counsel's advice shall be regarded as part of the Defence Costs.

5.5 Claims Mitigation and Co-Operation

5.5.1 The Insured must use due diligence and do and concur in doing all reasonable and practicable things in order to avoid, minimise or mitigate any liability, loss or damage that is or may be the subject of a Claim.

5.5.2 The Insured must disclose to Us honestly and frankly all relevant information, and provide all information and assistance We request to investigate and defend any Claim, to determine whether the Insured is entitled to indemnity under this Policy, or to prosecute any recovery action.

5.5.3 Compliance with clauses 5.5.1 and 5.5.2 shall be at the Insured's own cost.

6. SECTION 6 — DEFINITIONS

6.1 Claim

"Claim" shall mean:

- (a) the receipt by the Insured of a demand for compensation made by a third party against the Insured. It must take the form of:
- (i) a writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third party or similar party notice; or
 - (ii) any other form of written or verbal notice; and where applicable
- (b) the making by the Insured of a claim against Us under insuring clauses 1.7 (Loss of Documents), 1.8 (Costs of Inquiries), 1.9 (Court attendance costs), 1.10 (Public relations expenses) and 1.14 (Fidelity).

6.2 Clinical Trial

"Clinical Trial" shall mean any research project that prospectively assigns human participants or groups of human participants to one or more health related interventions to evaluate the effects on health outcome.

6.3 Deductible

"Deductible" shall mean the deductible specified in the Schedule except in respect of :

- (a) a Claim under insuring clause 1.7 (Loss of Documents) in which case it means the amount specified in the Schedule as the 'Loss of Documents Deductible';
- (b) a Claim under insuring clause 1.10 (Public relations expenses) in which case it means the amount specified in the Schedule as the 'Public Relations Expenses Deductible'; and
- (c) a Claim under insuring clause 1.14 (Fidelity) in which case it means the amount specified in the Schedule as the 'Fidelity Deductible'.

6.4 Defence Costs

"Defence Costs" shall mean the costs incurred by Us, or the reasonable legal costs and associated expenses incurred by the Insured with Our written consent, in the investigation, defence or settlement of any Claim. It shall not include any legal costs and associated expenses of the party that is claiming against the Insured.

6.5 Documents

"Documents" are as defined in the Commonwealth Acts Interpretation Act (as amended) and includes documents of any nature whatsoever, whether written, printed or reproduced by any method BUT SHALL NOT INCLUDE electronically stored data, software or computer programs for any computer system, money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

6.6 Employee

"Employee" shall mean any person employed under a contract of service or apprenticeship including Medical Practitioners, voluntary workers, social workers, any member of a board or management committee and work experience students but shall not mean a consultant, subcontractor, visiting Medical Practitioner, locum tenens or agent.

6.7 Family Member

"Family Member" shall mean:

- (a) any spouse, domestic partner or companion;
- (b) any parent, or parent of the spouse, domestic partner or companion; or
- (c) any sibling or child.

6.8 Inquiry

"Inquiry" shall mean any coronial inquiry or any inquiry under the disciplinary rules of a professional association of which the Insured is a member.

6.9 Insured

"Insured" shall mean:

- (a) the person, persons, partnership, company, corporation, statutory authority or other entity specified in the Schedule as Insured ("the Insured Entity");
- (b) any predecessor in business of the Insured Entity;
- (c) any person who is, was, becomes or ceases to be a principal, partner, director or Employee of the Insured Entity but in each case solely in respect of a liability arising from any act, error or omission committed or omitted for and on behalf of that Insured Entity; and
- (d) any executor, heir or trustee of any person in (a), (b) or (c).

6.10 Limit of Liability

"Limit of Liability" shall mean the maximum amount payable by Us in respect of all Claims under this Policy as specified in the Schedule.

6.11 Macquarie Underwriting

"Macquarie Underwriting" shall mean Macquarie Underwriting Pty Ltd

6.12 Sub-Limit of Liability - Clinical Trials

"Sub-Limit of Liability - Clinical Trials" shall mean the maximum amount payable by Us in respect of all Claims under insuring clause 1.15 as specified in the Schedule.

6.13 Sub-Limit of Liability - Fidelity

"Sub-Limit of Liability - Fidelity" shall mean the maximum amount payable by Us in respect of all Claims under insuring clause 1.14 as specified in the Schedule.

6.14 Medical Business

"Medical Business" shall mean the business or profession specified in the Schedule conducted by the Insured.

6.15 Medical Liability

"Medical Liability" shall mean a legal liability arising directly out of the rendering of, or failure to render, medical treatment in the conduct of the Medical Business resulting in bodily injury, mental injury or death of any person admitted to the care of the Insured for the purpose of receiving medical treatment and includes the provision of emergency medical treatment to any person at any incident by an Employee of the Insured provided that Employee was not acting under a contract of employment with any other employer at the time.

6.16 Medical Practitioner

"Medical Practitioner" shall mean a person registered under the Health Practitioner Regulation National Law to practice in the medical profession (other than as a student).

6.17 Period of Insurance

"Period of Insurance" shall mean the period specified in the Schedule.

6.18 Policy

"Policy" shall mean:

- (a) the insuring clauses, exclusions, conditions, definitions, Schedule and other terms contained herein;
- (b) any written endorsement to this Policy signed by an authorised officer of Macquarie Underwriting whether issued at the inception of the Policy or during the Period of Insurance; and
- (c) the information provided by the Insured in the Proposal.

6.19 Premium

"Premium" shall mean the premium specified in the Schedule.

6.20 Proposal

"Proposal" shall mean the written proposal by the Insured made to Us containing information and statements which, together with any other information or documents provided, are the basis of this Policy and are considered incorporated in it.

6.21 Privacy Legislation

"Privacy Legislation" shall mean the Privacy Act 1988 (Commonwealth); Health Records & Information Privacy Act 2002 (NSW); Health Records Act (Victoria) or Health Records (Privacy and Act) Act 1997 (ACT) or similar privacy legislation in any state or territory of the Commonwealth of Australia.

6.22 Schedule

"Schedule" shall mean the schedule to this Policy. For this Policy to be valid, the Schedule must be signed by an authorised agent of the Insurer.

6.23 We, Our, Us

"We", "Our" or "Us" shall mean the Insurer stated in the Schedule.



Macquarie Underwriting Pty Ltd

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