



**Home and Community Care Providers
Combined Liability Insurance
Policy Wording
vL0519**



Pen Underwriting Pty Ltd
ABN 89 113 929 516 AFSL 290518

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Current as at May 2019

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IMPORTANT INFORMATION

This Policy

This Policy is an important document and should be kept in a safe place. Please read it carefully so that you understand the insurance provided and to ensure that it meets your requirements.

About Pen Underwriting

In issuing this Policy, Pen Underwriting Pty Ltd ABN 89 113 929 516 AFSL 290518 is acting as agent on behalf of the Insurer(s) pursuant to a Binding Authority Agreement(s). The Insurer(s) are specified in the Schedule and details of the Insurer(s) and the proportions for which each of them are liable may be obtained from Pen Underwriting.

Further Information

Your insurance broker has arranged this insurance on your behalf. If you have any questions or need further information concerning your insurance, you should contact your insurance broker to assist you with your enquiry. You should direct all of your correspondence to us through your insurance broker as they are your agent for this insurance.

Your Duty of Disclosure

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

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

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

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

Claims Made Sections

Sections 2 and 3 of this Policy are issued on a claims made and notified basis. This means that Sections 2 and 3 of this Policy only cover the Insured for claims first made against the Insured and notified to the Insurer during the Period of Insurance.

Section 40(3) of the *Insurance Contracts Act 1984* may provide additional rights at law. That section provides that where the insured gave notice in writing to the insurer of facts that might give rise to a claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but during the period of insurance, the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of insurance.

Retroactive Date

Where a Limited Retroactive Date is specified in the Schedule in respect to Policy Section 2, Policy Section 2 of this Policy will not provide cover in relation to acts, errors or omissions committed or alleged to have been committed prior to the Retroactive Date.

Where a limited Retroactive Date is specified in the Schedule in respect to Section 3, Section 3 of this Policy will not provide cover in relation to Wrongful act(s) committed or alleged to have been committed prior to the Retroactive Date.

Preventing the Insurer's right of recovery

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability, which is covered by this Policy, the Insurer will not cover you under this Policy for that loss, damage or liability.

Other Party's Interests

You must tell us about all parties (e.g. financiers, lessors) to be covered by this Policy. We will protect their interests only if you have told us about them and we have noted them on the Schedule or endorsed their name on the Policy as an interested party.

Contracts or Agreements

We will not cover any liability or obligation assumed by you under any contract, agreement or warranty which would not have otherwise arisen or been implied by law unless you have told us about them and we have noted them on the Schedule.

GST

The Premium includes an amount for GST.

The Insurer's liability to indemnify the Insured under this Policy is calculated less any Input Tax Credit to which the Insured is entitled for any relevant Acquisition, or to which the Insured would have been entitled had it made a relevant Acquisition. The Insured must inform Underwriters of the extent to which it is entitled to an Input Tax Credit for that GST, and any GST liability arising from the Insured's provision of incorrect advice is payable by the Insured.

GST, Input Tax Credit and Acquisition have the meaning given to those words in *A New Tax System (Goods and Services Tax) Act 1999*.

Privacy

Pen Underwriting handles your personal information with care and in accordance with the Privacy Act 1988 and the Australian Privacy Principles. We collect personal information about you to provide you with insurance and insurance related services. We may disclose your personal information to third parties for the purposes described in our Privacy Policy, including related entities, insurers, reinsurers, agents and service providers, some of whom may be located in the United States of America, United Kingdom and India. By asking us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure (including overseas disclosure) of your personal information for the purposes described in our Privacy Policy.

Where you provide personal information about others, you represent to us that you have made them aware of that disclosure and of our Privacy Policy and that you have obtained their consent. If you do not consent to provide us with the personal information that we request, or withdraw your consent to the use and disclosure of your personal information at any stage, we may not be able to offer you the products or provide the services that you seek. For information about how to access and or correct the personal information we hold about you or if you have any concerns or complaints, ask us for a copy of our Privacy Policy or visit www.penunderwriting.com.au.

General Insurance Code of Practice

Pen Underwriting and Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The Code commits general insurers to uphold high standards of service and practice. A copy of the Code can be obtained from us upon request or from www.codeofpractice.com.au. This Policy is Code of Practice compliant, apart from any claims adjusted outside of Australia.

Claims

In the event of a claim arising under this insurance immediate notice should be given to Pen Underwriting:

Care Claims
GPO Box 541
Brisbane QLD 4001
claims.au@penunderwriting.com

Complaints

Any enquiry or complaint relating to this insurance should be referred to Pen Underwriting in the first instance. If you are dissatisfied with a decision Pen Underwriting makes, our service, the service of others we appoint to discuss insurance matters with you, or a claim settlement, we have an internal dispute resolution process to assist you. If Pen Underwriting is unable to 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 St
Sydney NSW 2000
Telephone: (02) 8298 0783
Facsimile: (02) 8298 0788
Email: ldraustralia@lloyds.com

who will refer your dispute to Policyholder & Market Assistance at Lloyd's.

For further information, ask for a copy of our Complaints and Disputes Resolution Policy or visit www.penunderwriting.com.au.

Litigation Dispute Resolution

The Insurer(s) hereon agree that:

- (i) In the event of a dispute arising under this Insurance, the Insurer(s) at the request of the Insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

- (ii) Any summons notice or process to be served upon the Insurer(s) may be served upon:
Lloyd's Underwriters' General Representative in Australia
Level 9
1 O'Connell Street
Sydney NSW 2000
Telephone Number: (02) 8298 0793
who has authority to accept service and to enter an appearance on the Insurer(s) behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that he will enter an appearance on the Insurer(s) behalf.
- (iii) If a suit is instituted against any one of the Insurer(s), all Insurer(s) hereon will abide by the final decision of such Court or any competent Appellate Court.

Premium

The amount of Premium specified herein is the amount due to the Insurer(s) and any commission allowed by them is to be regarded as remuneration of Pen Underwriting.

Australian Terrorism Insurance Act

The Insurer(s) has treated this insurance (or part of it) as an insurance to which the Australian Terrorism Insurance Act 2003 (ATIA) applies. ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism Exclusion to which this Policy is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Terrorism Exclusion to which this Policy is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insurance coverage and Exclusions of this Policy including applicable limits and excesses remain unchanged.

If any or all of the Insurers have reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such insurer will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Insurer's liability for payment for "eligible terrorism losses".

Several Liability

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

1. GENERAL CONDITIONS

1.1 Alteration to Risk

The Named Insured shall give to the Insurer or Pen Underwriting written notice as soon as practicable of any material alteration to the risk during the Period of Insurance including but not limited to:

- 1.1.1 an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings; or
 - 1.1.2 any material change in the nature of the business services offered by a Named Insured.
- Where such notice is given and/or where there is any material alteration to the risk the Insurer shall be entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984.

1.2 Assignment of Interest

No change in, or modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy and signed by an authorised employee of either the Insurer or Pen Underwriting.

1.3 Authorisation

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

1.4 Cancellation

- 1.4.1 The Named Insured may cancel this Policy at any time by notifying the Insurer in writing, and the Insurer will allow a pro-rata refund of Premium for the unexpired Period of Insurance but such refund will never be greater than 50% of the Premium.
- 1.4.2 The Insurer may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984, and the Insurer will provide a pro-rata refund of Premium for the unexpired Period of Insurance but such refund will never be greater than 50% of the Premium.

1.5 Non-Accumulation

In the event of a claim or series of claims arising out of the one source or originating cause in respect of which the Insured is entitled to indemnity under more than one Policy Section, then notwithstanding the separate Policy Sections, the maximum liability of the Insurer under all Policy Sections shall be the highest

limit of liability under any of the Policy Sections. In no event shall the limit of liability under such Policy Sections be cumulative.

1.6 Takeover or Acquisition

If the Named Insured, during the Period of Insurance, is acquired by, merged into, or becomes a subsidiary of any other entity then the cover provided by this Policy shall only apply in respect of any conduct or act or event (including Personal Injury, Property Damage or Advertising Liability) occurring prior to the effective date on which the Named Insured was acquired by, merged into, or became a subsidiary of such other entity, unless otherwise agreed in writing by the Insurer but always subject to the terms and conditions of this Policy including the Period of Insurance.

1.7 Severability and Non-Imputation

The Insurer agrees that where this Policy insures more than one party, any conduct on the part of any party or parties whereby such party or parties:

- 1.7.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
- 1.7.2 made a misrepresentation to the Insurer before this contract of insurance was entered into; or
- 1.7.3 failed to comply with any terms or conditions of this Policy; shall not prejudice the right of the remaining parties to indemnity as may be provided by this Policy. PROVIDED ALWAYS THAT such remaining parties shall:
 - (i) be entirely innocent of and have had no prior knowledge of any such conduct; and
 - (ii) as soon as is reasonably practicable upon becoming aware of any such conduct, advise the Insurer in writing of all known facts in relation to such conduct.
 - (iii) before the contract of insurance was entered into with the Insurer, proper inquiry has been made of the Named Insured and its directors (where applicable) for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984. For the sake of clarity, this provision is not intended to limit the duty of disclosure owed by any Insured.

1.8 Sanctions

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or pay any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction applicable to the (re)insurer.

2. CLAIMS CONDITIONS

2.1 Allocation

2.1.1 If both loss covered by this Policy and loss not covered by this Policy are incurred, either because:

- (i) a claim against an Insured includes both covered and uncovered matters; or
- (ii) a claim against an Insured is made and there are others who are party to the proceedings or demand to which the Claim relates but are not insured under the Policy, then the Insured and the Insurer shall use their best efforts to agree upon a fair and proper allocation of such amount between covered loss and uncovered loss, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties. The Insurer is only liable under this Policy for amounts attributable to covered matters and parties, and its liability for loss, including Defence Costs, otherwise payable by it shall be reduced to reflect such fair and proper allocation.

2.1.2 If the Insured and the Insurer cannot agree on an allocation of Defence Costs then the Insurer shall advance Defence Costs which the Insurer believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially or otherwise determined.

2.1.3 The Insurer, if requested by the Insured, shall submit the dispute to a Senior Counsel to be mutually agreed or, in default of agreement to be appointed by the President of the Bar Association in the relevant State or Territory, on the basis that the Senior Counsel shall determine the allocation of loss according to Senior Counsel's view of the fair and proper allocation, but having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties, and the overriding intention in 2.1.1 above.

2.1.4 Any negotiated, arbitrated or judicially or otherwise determined allocation of Defence Costs on account of a claim shall be applied retrospectively to all Defence Costs on account of such claim.

2.2 Mitigation and Co-Operation

2.2.1 If the Insured, either prior to or during the Period of Insurance, becomes aware of facts, matters or circumstances which could, if not rectified, lead to a loss or claim or increase the quantum of a loss or claim, the Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability for the loss or claim.

2.2.2 The Insured shall frankly and honestly disclose to the Insurer all relevant information and, in addition, shall provide assistance to the Insurer as it may require to enable it to investigate and to defend any claim under this Policy and/or to enable the Insurer to determine its liability under this Policy.

2.2.3 Compliance with this condition shall be at the Insured's own cost, unless otherwise agreed in writing by the Insurer.

2.3 Defence and Settlement

2.3.1 The Insured agrees not to settle any claim, incur any Defence Costs, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any claim or loss, without the Insurer's written consent, such consent not to be unreasonably withheld. The Insurer shall not be liable for any settlement, Loss, Defence Costs, admission, offer or payment, or assumed obligation to which it has not consented in writing.

2.3.2 The Insurer shall be entitled if it so desires, to take over and conduct, in the name of the Insured, the defence or settlement of any claim at any time. In the event that this occurs, the Insurer will then have sole control of the claim.

2.3.3 The Insurer may, if it believes that any claim will not exceed the Deductible, instruct the Insured to conduct the defence of the claim. In such situation, the Insurer will (subject to the terms of this Policy) reimburse the Insured for all reasonable Defence Costs in the defence of the claim in the event that any payment made to dispose of the claim exceeds the Deductible.

2.3.4 If the Insurer retains lawyers to conduct, in the name of the Insured, the investigation, defence or settlement of any claim, in relation to any issue regarding the Insured's entitlement to indemnity from the Insurer those lawyers will only act on behalf of the Insurer and they will not act on the Insured's behalf in respect of any such issue. Any information that is received by lawyers retained by the Insurer in the course of investigating, defending or settling any claim against the Insured or loss can be provided to the Insurer and relied upon by the Insurer in relation to any issue that may arise regarding the Insurer's liability to indemnify the Insured. In relation to any such information, the Insured waives any claim that it may have for legal professional privilege as between the Insured, the lawyers retained by the Insurer and the Insurer.

2.3.5 The lawyers retained by the Insurer to conduct the investigation, defence or settlement of any claim may provide advice to the Insurer on any issue regarding the Insurer's liability to indemnify the Insured and, whilst doing so, may continue to act in the investigation, defence or settlement of the claim on behalf of both the Insurer and the Insured.

2.3.6 The Insured agrees that all communications between the Insurer and lawyers retained by the Insurer to act in the conduct of the investigation, defence or settlement of any claim or loss which relate to the Insured's entitlement to indemnity from the Insurer are privileged as between the Insurer and the lawyers and the Insured agrees that it is not entitled, under any circumstances, to access or obtain any such communications.

2.3.7 If any actual or apparent conflict arises between the interests of the Insurer and the Insured's interests, the lawyers retained by the Insurer to conduct the investigation, defence or settlement of any claim may cease acting on behalf of the Insured and may continue to act on behalf of the Insurer in relation to any dispute between the Insurer and the Insured with respect to the Insured's entitlement to indemnity from the Insurer.

2.4 Insured's Right to Contest

In the event that the Insurer recommends a settlement in respect of any claim and the Insured does not agree that such claim should be settled, then the Insured may elect to contest such claim.

PROVIDED ALWAYS THAT the Insurer's liability in connection with such claim shall not exceed the amount for which the claim could have been so settled plus the Defence Costs incurred with the Insurer's written consent up to the date of such election, less the Deductible but nothing contained in this Condition 2.4 shall result in an increase to the Limit of Liability.

2.5 Senior Counsel Clause

2.5.1 The Insurer shall not require the Insured to contest any claim unless a Senior Counsel (to be mutually agreed upon by the Insured and the Insurer) shall advise that such claim should be contested.

2.5.2 In formulating such advice, Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Defence Costs and the prospects of the Insured successfully defending the claim.

2.5.3 The cost of such Senior Counsel's opinion shall be regarded as part of the Defence Costs.

2.6 Subrogation

In respect of any claim or loss covered by this Policy, and without limiting the Insurer's rights at law, the Insurer shall be subrogated to all the Insured's rights of recovery, and the Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable the Insurer effectively to bring suit in the name of the Insured.

The Insured shall not, without first obtaining the written consent of the Insurer, do anything or fail to do anything which excludes, limits or prejudices the Insurer's rights of subrogation. In particular, without limiting the operation of this provision, the Insured shall not enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the Insured may have in respect of any claim or loss covered by this Policy.

2.7 Confidentiality

The Insured shall not disclose the existence of this Policy, the nature of the liability indemnified, the Limit of Liability or the amount of the premium paid, to any third party, except to the extent that:

- 2.7.1 they are required by law to do so; or
- 2.7.2 the Insurer consents, in writing, to such disclosure.

2.8 Multiple Claims

- 2.8.1 All claims under a single Policy Section which arise from a single act, error or omission, or which arise from causally connected or interrelated acts, errors or omissions shall be regarded as one claim under that Policy Section and the Limit of Liability and Deductible shall apply accordingly. Where more than one Deductible would otherwise apply, the highest applicable Deductible shall be payable.

2.9 Policy Construction and Interpretation

- 2.9.1 The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the law of the state, territory or country in which this Policy is issued, being the place of issue specified in the Schedule, and any disputes relating to the Policy shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country. If no place of issue is shown in the Schedule it is agreed that the place of issue is Sydney, New South Wales, Australia.

- 2.9.2 The marginal notes and titles of paragraphs 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.

- 2.9.3 Under this Policy, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.

2.10 Jurisdiction

All disputes arising out of or under this Policy will be subject to determination by a court of competence within Australia only.

3. GENERAL EXCLUSIONS

These exclusions apply to all Policy Sections unless expressly stated otherwise.

The Insurer shall not be liable under this Policy for any claims:

3.1 Nuclear

in respect of or in consequence of or directly or indirectly caused by or contributed to or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel.

3.2 War

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

3.3 Terrorism

directly or indirectly based upon, attributable to or in consequence of any actual or alleged act of Terrorism or any action taken in controlling, preventing, suppressing or in any way relating to any actual or alleged act of Terrorism.

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

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

If the Insurer asserts that this exclusion applies, then in any action, suit, proceedings or claim brought by or on behalf of the Insured in connection with this exclusion, the burden of proving that this exclusion does not operate shall be upon the Insured. The Insurer is not required to prove that this exclusion applies. If the Insured brings any action, suit, proceedings, or claim against the Insurer in connection with the operation of this exclusion, and the Insured does not prove that this exclusion does not apply, the Insured shall pay the Insurer's costs of responding to the action, suit, proceedings or claim on an indemnity basis. This exclusion is in addition to, and not in derogation of, any other exclusion in the Policy.

3.4 Legal Jurisdiction

3.4.1 brought against the Insured in any country outside the Commonwealth of Australia:

3.4.2 brought in a court of law outside the territorial limits of the Commonwealth of Australia; or

3.4.3 arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of any country other than the Commonwealth of Australia.

3.5 Asbestos

directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

4. DEFINITIONS

Unless defined differently in an individual Policy Section, these definitions apply:

4.1 **Aircraft** means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

4.2 **Application** means the written application made by the Insured to Pen Underwriting or the Insurer containing particulars and statements which, together with other information provided by the Insured or the Insured's Insurance Broker.

4.3 **Business** means the business as shown in the Schedule for Policy Section 1 including the following if in connection with the business :- ownership and/or tenancy, maintenance and/or repair of real property, fundraising activities including a fete or car boot sale, the provision of child care services for employee's children whilst the parent/guardian is engaged in work for the Named Insured, social, sport or welfare activities, Good Samaritan Acts, provision of first aid, fire and ambulance services.

4.4 **Deductible** means the amount of the deductible as specified in the Schedule for each applicable Policy Section, Extension and Endorsement.

4.5 **Defence Costs** means reasonable costs, charges, and expenses (other than regular or overtime wages, salaries or fees of any Insured Person) incurred by the Insurer or by the Insured with the prior written consent of the Insurer (such consent not to be unreasonably withheld) in defending, investigating or monitoring any claim, or proceedings and appeals therefrom.

4.6 **Documents** means 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 but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

- 4.7 Employee** means any person employed under a contract of service or apprenticeship during or prior to commencement of the Period of Insurance.
- 4.8 Environmental Legislation** means any Commonwealth, State or Territory statute, regulation, by-law or local law prohibiting, controlling or regulating the discharge, release, escape or disposal of Pollutants into or upon land, the atmosphere or any watercourse or body of water.
- 4.9 Good Samaritan Acts** means assisting at the scene of a medical emergency, accident or disaster by the Insured or any employee present either by chance, or in response to an S.O.S. call following a disaster or accident whilst at or in transit to or from the address of the Business, provided however that the Insurer shall not be liable where the employee was acting at the time under a contract of employment with any employer other than the Insured.
- 4.10 Hovercraft** means any vessel, craft or thing made or intended to float on or in or through the atmosphere or water.
- 4.11 Insured** shall have the meaning for each Policy Section in the Definitions applicable under each Policy Section.
- 4.12 Insurer** means the Insurer specified in the Schedule.
- 4.13 Limit of Liability** means the limit of liability as specified in the Schedule for each applicable Policy Section.
- 4.14 Loss** means the total amount which an Insured becomes legally obligated to pay in respect of a Claim made against such Insured and shall include damages, judgements, settlements, legal costs and expenses awarded against an Insured to any claimant and Defence Costs.
- 4.15 Medical Practitioner** means a person with a doctor's qualification or higher who is registered to practice in Australia.'
- 4.16 Medical Services** means nursing and other care related services.
- 4.17 Named Insured** means for each Policy Section the Insured (Policy Sections 1 and 2) and the Corporation (Policy Section 3) named in the Schedule for that Policy Section; and any subsidiary company (including subsidiaries thereof) of the Insured/Corporation named, and any other entity controlled by it and over which it assumes active management whose place of incorporation is within Australia;
- 4.18 Penalty** means any monetary sum payable by the Insured to any Regulatory Authority pursuant to a Wrongful Breach by the Insured but excluding:
- 4.18.1 any amounts payable as compensation;
- 4.18.2 any compliance, remedial, reparation or restitution costs;
- 4.18.3 any damages, including but not limited to any exemplary or punitive damages;
- 4.18.4 any consequential economic loss;
- 4.18.5 any amounts uninsurable under the law pursuant to which this Policy is construed;
- 4.18.6 any legal costs and associated expenses of the Regulatory Authority.
- 4.19 Period of Insurance** means the period shown in the Schedule for each Policy Section.
- 4.20 Personal Injury** means death, physical injury, bodily injury, sickness or disease to any person, disability, shock, mental anguish or mental injury, false arrest, wrongful detention, false imprisonment or malicious prosecution, wrongful entry or eviction or other invasion of the right of privacy, defamation of character, including, libel and slander or invasion of the right of privacy, and assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.
- 4.21 Policy** means:
- 4.21.1 Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein; and
- 4.21.2 any endorsement attaching to and forming part of this Policy either at inception or during the Period of Insurance; and
- 4.21.3 the Application.
- 4.22 Policy Section** means the separate sections of the Policy identified as Policy Section 1 - Public & Products Liability, Policy Section 2 - Professional Indemnity and Malpractice and Policy Section 3 - Directors & Officers Liability.
- 4.23 Pollutants** means:
- 4.23.1 any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals; or
- 4.23.2 any waste materials including materials recycled, reconditioned or reclaimed; or
- 4.23.3 any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.
- 4.24 Premium** means the premium specified in the Schedule or in any endorsement to the Schedule.
- 4.25 Property Damage** means:
- 4.25.1 physical damage to or loss or destruction of tangible property including any resulting loss of use of that property, or
- 4.25.2 loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an Occurrence.

- 4.26 Regulatory Authority** means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.
- 4.27 Retroactive Date** means the date specified under that heading in the Schedule for each Policy Section.
- 4.28 Schedule** means the schedule to this Policy for each Policy Section.
- 4.29 Section** means Policy Section.
- 4.30 Senior Counsel** means a barrister in active practice who is entitled to use the post nominal's Q.C. or S.C. in any one or more superior court in Australia or New Zealand.
- 4.31 Subsidiary** means:
- 4.31.1 any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the Named Insured specified in the Schedule; or
- 4.31.2 any entity over which the Named Insured specified in the Schedule is in a position to exercise effective direction or control through ownership or control of more than fifty percent (50%) of the issued voting shares of such entity.
- 4.32 Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- 4.33 Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through water.

POLICY SECTION 1

HOME AND COMMUNITY CARE PROVIDERS PUBLIC AND PRODUCTS LIABILITY INSURANCE POLICY

Preamble

In consideration of payment of the Premium, the Insurer will provide indemnity in accordance with, and subject to, the terms of this Section.

1. COVER

In consideration of the payment of premium and subject to the terms definitions, conditions, exclusions and Limits of Liability incorporated herein, the Insurer will pay to or on behalf of the Insured all amounts which the Insured shall become legally liable to pay for compensation in respect of Personal Injury; Property Damage; Advertising Liability happening during the Period of Insurance and caused by an Occurrence in connection with the Business.

1.1 Limit of Liability

1.1.1 The Insurer's liability to pay compensation and/or claimant's costs and expenses shall not exceed the Limit of Liability shown on the Schedule in respect of any one claim or series of claims arising from one Occurrence.

1.1.2 The Insurer's total aggregate liability for any one Period of Insurance for all claims arising from the Insured's Products shall not exceed the Limit of Liability shown on the Schedule.

1.2 Costs and Expenses

In addition to the stated Limit of Liability, the Insurer will:

1.2.1 defend any suit against the Insured claiming compensation for Personal Injury; Property Damage; Advertising liability and seeking damages on account thereof, even if such suit is groundless, false or fraudulent and the Insurer may investigate, negotiate and settle any claim or suit as the Insurer deems expedient;

1.2.2 pay all expenses incurred by the Insurer, including all interest accruing after entry of any judgement until the Insurer has paid, tendered or deposited in court such part of the judgement as does not exceed the Insurer's Limit of Liability;

1.2.3 reimburse the Insured for all reasonable expenses in connection with the Claim, other than loss of earnings, incurred by the Insured with the Insurer's consent;

1.2.4 pay reasonable expenses incurred by the Insured for first aid to others at the time of any Personal Injury or reasonable expenses to make safe the property so as to prevent Personal Injury or damage to third party property for which the Insured is or would be entitled to indemnity under this Policy. The total amount payable under this clause 1.2.4 is limited to \$20,000 any one Period of Insurance.

1.2.5 Provided that if a payment exceeding the Insurer's Limit of Liability has to be made to dispose of a claim, the Insurer's liability to pay Costs and Expenses in connection therewith shall be limited to such proportion of the Costs and Expenses as the Limit of Liability bears to the amount paid to dispose of the claim.

The Insurer will not be obliged to pay any claim or judgment or defend any claim or legal action after the Limit of Liability has been exhausted.

1.3 Deductible

1.3.1 The Deductible specified in the Schedule shall be to the Insured's own account and shall include additional payments under 1.2.1; 1.2.2; 1.2.3 and 1.2.4.

1.3.2 Any Costs and Expenses incurred by the Insurer to determine whether the Insurer has a liability to indemnify the Insured under this Policy shall not be subject to the Deductible and shall be borne by the Insurer.

2. EXTENSIONS

2.1 Preamble

It is agreed that:

2.1.1 the indemnity provided by each Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Section (unless otherwise expressly stated herein); and

2.1.2 the inclusion of any Extension shall not increase the Limit of Liability; and

2.1.3 where an Extension is not specified in the Schedule as 'Included' then this Section shall not provide any indemnity under such Extension.

2.2 Acquired Entities

The Insurer agrees to provide indemnity under this Section to any entity or Subsidiary acquired or created by the Named Insured during the Period of Insurance for a period of up to thirty (30) days (but never beyond the expiry date of the Period of Insurance) from the date of such acquisition or creation

The Insurer may, at its discretion, agree to provide further indemnity beyond a period of thirty (30) days (but never beyond the expiry date of the Period of Insurance) where:

2.2.1 the Named Insured has notified the Insurer of the acquisition or creation of the entity or Subsidiary or acquisition and has provided all information requested by the Insurer; and

2.2.2 any terms imposed by the Insurer including the charging of any additional premium considered appropriate, have been agreed by the Named Insured.

PROVIDED ALWAYS THAT any indemnity provided under this Extension will only apply in respect of Personal Injury or Property Damage or Advertising Liability happening during the Period of Insurance but subsequent to the date of acquisition or creation. It is a prerequisite to cover under this extension that the business of the new entity is the same as the Business currently shown in the Schedule.

2.3 Vehicle (Non Owned)

The Insurer agrees to provide indemnity in respect of Property Damage arising out of the use by employees and/or volunteers of their own Vehicle on the Business of the Insured which would otherwise be excluded by this Policy, coverage is subject to the following provisos:

- 2.3.1 The employee and/or volunteer has unintentionally failed to effect or renew a Vehicle insurance policy covering third party property damage; or
- 2.3.2 Any claim under the employees and/or volunteers motor vehicle insurance policy is rendered invalid or not insured due to reasons beyond the employees, volunteers or the insured's control.
The Insurer also agrees to pay:
- 2.3.3 At the first renewal of the employees and/or volunteer's Vehicle insurance, the difference between the premium which would have been paid had the accident not occurred and the premium payable as a result of the accident to a maximum of \$5,000.
- 2.3.4 Up to \$10,000 for repairs to the employee's and/or Volunteer's Vehicle if the employee and/or the volunteer have a valid comprehensive vehicle policy in place and the insurer of that policy declines a claim under that policy and such declinature is beyond the control of the employee, volunteer or Insured.
There is no cover under this Extension 2.3 if the Vehicle is being used by a person under the influence of drugs, intoxicating liquor or by a person not holding a valid or appropriate licence.

3. EXCLUSIONS

The Insurer shall not be liable for claims in respect of:

3.1 Advertising liability

Arising out of:

- 3.1.1 breach of contract, other than misappropriation of advertising ideas under an implied contract
- 3.1.2 the wrong description or price of the Insured's product, or
- 3.1.3 the failure of the Insured's Product to conform with advertised performance or quality.

3.2 Aircraft, Hovercraft and Watercraft

Personal Injury or Property Damage arising out of the ownership, maintenance operation or use by the Insured of:

- 3.2.1 any Aircraft or Hovercraft; or
- 3.2.2 any Aircraft landing area, Aircraft hangar or airport,
- 3.2.3 any Watercraft exceeding 10 metres in length.

3.3 Aircraft Parts

Personal Injury or Property Damage arising out of the Insured's Products that are used with the Insured's knowledge in Aircraft or any aerial device.

3.4 HIV/AIDS

Personal Injury arising from or contributed to by:

- 3.4.1 The Human Immune Deficiency Virus (HIV) or any mutation, derivation or variation thereof; or
- 3.4.2 Any HIV related illness including but not limited to Acquired Immune Deficiency Syndrome (AIDS) or any mutation, derivation or variation thereof.

3.5 Construction

Personal Injury or Property Damage arising directly or indirectly out of or caused by or in connection with any land or site development or the erection, demolition, alteration of and/or addition to buildings by or on the Insured's behalf except such erection, demolition, alteration, addition or development not exceeding the sum of \$250,000 in total contract value for the entire project.

3.6 Contractual Liability

Liability assumed directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by an Insured by way of any contract, agreement, warranty, guarantee or indemnity to the extent that such liability exceeds the liability the Insured would have incurred in the absence of such contract or agreement.

But this exclusion shall not apply to:

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

3.7 Damage to the Insured's Products (Product Defect)

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

3.8 Defamation, libel and slander

Liability arising out of the publication or utterance of a defamation, libel or slander:

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

3.9 Employees

Liability for Personal Injury imposed:

- 3.9.1 by any workers' compensation law;
- 3.9.2 by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination or contract of employment or workplace agreement, or provided that if the Insured is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such personal injury to the extent that the Insured's liability would be covered under such fund, scheme, policy of insurance or self-insurance arrangement had the Insured complied with their obligations pursuant to such law.

3.10 Faulty Workmanship

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

3.11 Fines and Penalties

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

3.12 Electronic Data

Liability arising out of

- 3.12.1 communication, display, distribution or publication of Electronic Data;
 - 3.12.2 total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
 - 3.12.3 error in creating, amending, entering, deleting or using Electronic Data: or
 - 3.12.4 total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;
- from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.
- This exclusion does not apply to liability for bodily injury, death, sickness, disease, disability, shock, fright, mental injury, mental anguish or loss of consortium.

3.13 Loss of Use

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

- 3.13.1 a delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or
- 3.13.2 the failure of the Insured's Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured, but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the Insured's Products after such products have been put to use by any person or organisation.

3.14 Mechanical Amusement Devices

Personal Injury or Property Damage arising directly or indirectly out of, in connection with or out of the use of mechanical amusement devices. However this exclusion 3.14 shall not apply to the Insured's vicarious liability arising from the hire of such devices if such device is operated by an operator qualified to operate such device and provided that the Insured has obtained a certificate of currency confirming such parties hold a valid liability insurance policy with a minimum limit of \$5,000,000.

3.15 Participation and Contact Sport

Personal Injury or Property Damage arising directly or indirectly out of any person actually participating in any contact sport, adventure activity or display involving athletic, acrobatic, military or equestrian skill or the use of firearms, missiles of any kind, explosives or combustibles. This Exclusion shall not apply to any adventure activity or display involving athletic, acrobatic or equestrian skill if a qualified third party engaged by the Insured facilitates and supervises the activity or display.

3.16 Pollution

Personal Injury or Property Damage arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water. The Insurer shall also not be liable to pay any costs and expenses incurred in the prevention, removal, or clean-up of such Pollutants.

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

3.17 Professional Advice

Liability directly or indirectly arising from or in connection with;

- 3.17.1 rendering or the failure to render professional service, advise or any act error or omission connected therewith;

- 3.17.2 Professional services, treatment, advice or any act error or omission of a Medical Practitioner;
- 3.17.3 the provision of or failure to render Medical Services, advice, treatment to any person admitted to the Insured's care or in the Insured's care or otherwise a client of the Insured.

This exclusion does not apply to the provision of first aid to persons who are not in the care of the Insured or otherwise a client of the Insured.

3.18 Property in the Insured's Physical or Legal Control

Property Damage to:

- 3.18.1 Property owned by the Insured; or
- 3.18.2 Property in the physical or legal control of the Insured.

But this exclusion shall not apply to liability for Property Damage to:

- 3.18.3 Property in the physical or legal control of the Insured up to a maximum of \$250,000 or up to the amount stated in the Schedule whichever is the lesser, any one Occurrence and in the aggregate during any one Period of Insurance. However the Insurer shall not be liable for Property Damage to that part of any property upon which the Insured is or has been working where such Property Damage arises from such work.
- 3.18.4 Premises which are leased or rented to the Insured.
- 3.18.5 Employee's personal property.
- 3.18.6 Vehicles (not belonging to or used by or on behalf of the Insured) in the physical or legal control of the Insured where such Property Damage occurs whilst any such vehicle is in a car park owned or operated by the Insured, provided that the Insured as part of its Business does not own or operate a car park for reward.

3.19 Recall of Products

Damages, costs or expenses claimed for the withdrawal, inspection, repair, replacement or loss of use of the Insured's Products or of any property of which such products form a part, if such Insured's Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

3.20 Territorial Limits

Personal Injury, Property Damage or Advertising Liability:

- 3.20.1 in the United States of America or Canada. This exclusion shall not apply to claims arising from the presence of any person who is normally resident in Australia or New Zealand and who is not a manual worker or a supervisor of work, however the Limits of Liability for such claims are inclusive of all costs and expenses as set out in Clause 1.2 of the Policy;

- 3.20.2 caused by or arising out of the Insured's Products knowingly exported by the Insured or his agents to the United States of America or Canada;

- 3.20.3 where claims are made upon the Insured outside Australia or New Zealand in any country where the Insured is represented by a branch or company or firm or individual holding the Insured's power of attorney;

- 3.20.4 where such claim is based on or attributable to, or in consequence of any contract entered into by the Insured under the terms of which work is to be performed outside Australia or New Zealand to the extent that such liability exceeds the liability the Insured would have incurred in the absence of such contract.

For the purpose of this exclusion 3.20 the term manual worker or supervisor of work does not refer to a carer(s) escorting and or caring for a client(s) whilst the client(s) is visiting or vacationing in the United States of America or Canada or their territories or protectorates.

3.21 Vehicles

Personal Injury or Property Damage arising out of the ownership, maintenance, operation or use by the Insured of any Vehicle:

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

But this exclusion shall not apply to:

- 3.21.3 Personal Injury or Property Damage arising from:
 - 3.21.3.1 the delivery or collection of goods to or from any Vehicle where such Personal Injury or Property Damage occurs beyond the limits of any carriageway or thoroughfare; or
 - 3.21.3.2 the loading or unloading of any Vehicle;
- 3.21.4 Personal Injury where:
 - 3.21.4.1 the compulsory liability insurance or statutory indemnity does not provide indemnity, and the reason or reasons why the compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by of legislation relating to any Vehicles.

4. CONDITIONS

- 4.1 In the event of an Occurrence, the Insured shall at its expense (other than for expenses covered by clause 1.2) take all reasonable steps to prevent other Personal Injury or Property Damage from arising out of the same or similar conditions, but such expense shall not be recoverable under this Policy.

4.2 The Insured shall use their best endeavours to preserve any products or property which may assist in the defence or investigation of a claim and so far as may be reasonably practical no alteration or repair shall be made without the Insurer's consent or until the Insurer shall have had an opportunity of inspection.

4.3 Reasonable Precautions

The Insured shall take all reasonable precautions to:

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

4.4 Inspection of Property

The Insurer shall be permitted but not obligated to inspect the Insured's property and operations at any time. Neither the Insurer's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe.

4.5 Cross Liability

Where the Insured is comprised of more than one party each of the parties shall be considered as a separate legal entity and the word Insured shall apply to each party as if a separate policy had been issued to each party but nothing contained in this Condition 4.5 shall result in an increase to the Limit of Liability.

4.6 Adjustment of Premium

Where premium has been calculated on estimates furnished by the Insured, the Insured shall within 30 days after the expiry of each Period of Insurance furnish to the Insurer such information as the Insurer may require to adjust the premium for the expired Period of Insurance. Any difference in premium shall be paid by or allowed to the Insured. The Insured shall allow the Insurer to inspect the Insured's records of such information.

5. DEFINITIONS

The following words have the following meaning for this Section only:

5.1 Advertising Liability means Liability arising out of one or more of the following:

- 5.1.1 Defamation except arising out of the publication or utterance of defamatory statements or disparaging material prior to the inception date of this Policy or made at the Insured's direction with the Insured's knowledge of the falsity of the statement or material;
 - 5.1.2 infringement of copyright, title or slogan;
 - 5.1.3 unfair competition, misappropriation of advertising ideas or style of doing business; or
 - 5.1.4 invasion of privacy;
- committed or alleged to have been committed in any advertisement and arising out of any advertising activities conducted by the Insured or on the Insured's behalf, in the course of carrying out the Business.

For the purpose of this definition, 'advertising' means any manner of communication given to the public including by way of any form of print media, telecommunication, radio or television broadcast, electronic mail, internet, world wide web or exhibit.

5.2 Approved Community Service means an activity approved by the Named Insured involving members of the public (including school children) to provide a voluntary service for the benefit of the Named Insured or client(s) of the Named Insured.

5.3 Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

5.4 Insured means:

- 5.4.1 Named Insured;
- 5.4.2 every director, executive officer, employee, partner or shareholder of the Named Insured;
- 5.4.3 any voluntary worker, social worker, advisory board member, counsellor or person undertaking work experience, a person participating in an Approved Community Service, but only whilst acting within the scope of their duties in such capacity for or and on behalf of the Named Insured;
- 5.4.4 every office bearer or member of social and sporting clubs, canteen and welfare organisation and first aid, fire and ambulance services formed with the Named Insured's consent in respect of Personal Injury or Property Damage arising from their duties connected with the activities of any such club, organisation or service.

5.4.5 any principal for their vicarious liability arising out of the actions of the Named Insured or the Insured noted in 5.4.3 and subject always to the extent of indemnity and the Limit of Liability provided by this Section, (for the purpose of this definition principal shall mean any person or entity for whom the Named Insured or Insured noted in 5.4.3 perform work whether voluntary or otherwise);

5.4.6 the legal personal representative of any person entitled to indemnity under paragraphs 5.4.1 and 5.4.2 in circumstances which give rise to indemnity under this Section .

5.4.7 any director or senior executive of the Named Insured in respect of private work undertaken by the Named Insured's employees for such director or senior executive;

5.4.8 any student of a university or college of advanced education or a TAFE college, other Tertiary institution or Registered Training Organization and assigned to and under the supervision of the Insured;

5.4.9 any joint venture or partnership if the Named Insured is part of that joint venture or partnership.

Provided that:

5.4.8.1 No indemnity shall be available to the other joint venture partners or partners of any partnership; and

5.4.8.2 Indemnity is limited to the percentage share the Named Insured has in the joint venture or partnership and

5.4.8.3 The income derived from the joint venture or partnership and Business of the joint venture or partnership is declared in the application for this insurance and Business of the joint venture or partnership is noted in the schedule of this Policy.

5.5 Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage neither expected nor intended from the standpoint of the Insured.

With respect to Advertising Liability all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants shall be deemed to arise out of the one occurrence.

5.6 Insured's Product means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the

Insured, including any container thereof (other than a vehicle) in the course of the Business.

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

POLICY SECTION 2

HOME AND COMMUNITY CARE PROVIDERS PROFESSIONAL INDEMNITY AND MALPRACTICE INSURANCE POLICY

Preamble

In consideration of payment of the Premium, the Insurer will provide indemnity in accordance with, and subject to, the terms of this Section.

1. INSURING CLAUSES

Insuring Clause A

1.1 Civil Liability Insuring Clause

1.1.1 The Insurer agrees to indemnify the Insured for civil liability for any Claim first made against the Insured and notified to the Insurer during the Period of Insurance arising from the conduct of the Professional Business Practice.

Insuring Clause B

1.2 Defence Costs Insuring Clause

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

1.2.2 Defence Costs will be paid in addition to the Limit of Liability or sub-limit of liability whichever applies but only up to a maximum of 50% of the Limit of Liability or sub-limit of liability.

1.3 Retroactive Date

1.3.1 "Unlimited Retroactive"- unless a Retroactive Date is specified in the Schedule, this Section shall provide indemnity in respect of acts, errors or omissions committed (or alleged to have been committed) irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).

1.3.2 "Limited Retroactive" - where a Retroactive Date is specified in the Schedule, then this Section shall only provide indemnity in respect of acts, errors or omissions committed or alleged to have been committed after the Retroactive Date.

2. AUTOMATIC EXTENSIONS

2.1 Preamble

The Insurer shall provide indemnity as is available under this Section, PROVIDED ALWAYS THAT:

2.1.1 each Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise stated herein);

2.1.2 the inclusion of any Extension shall not increase the Limit of Liability.

2.2 Advancement of Defence Costs

The Insurer agrees to advance Defence Costs within a reasonable time frame following receipt of invoices specifying such Defence Costs and prior to determining the entitlement of the Insured to indemnity for a Claim. In determining the entitlement of the Insured to indemnity under this Policy in respect of such Claim, the Insurer agrees that it will not rely on Exclusion 3.6 (Fraud and Dishonesty) unless and until:

2.2.1 an Insured makes an admission of any conduct described in Exclusion 3.6 (Fraud and Dishonesty); or

2.2.2 it has been established through a judicial process that such Insured has committed any conduct described within Exclusion 3.6 (Fraud and Dishonesty).

PROVIDED ALWAYS THAT:

the advance of such Defence Costs does not constitute an acceptance of indemnity under this Policy for such Claim; and

if 2.2.1 and/or 2.2.2 above apply, the Insurer may cease to advance Defence Costs for any such Insured, unless the Insurer at its sole discretion, continues to pay Defence Costs resulting from such Claim;

where either 2.2.1 and/or 2.2.2 above apply, such Insured(s) (for their respective rights and interests) shall refund Defence Costs advanced by the Insurer, unless the Insurer agrees in writing to waive recovery of such Defence Costs.

2.3 Competition and Consumer Act and Related Legislation

The Insurer agrees to provide indemnity in respect of any Claim for damage or compensation made against the Insured under the terms of the Competition and Consumer Act 2010 (Commonwealth), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria) or similar legislation enacted by the other states or territories of the Commonwealth of Australia or the Dominion of New Zealand.

2.4 Board of Management and Committees

The Insurer agrees to provide indemnity in respect of any Claim made against any member of any board of management of the Insured or "Committee" established by the Insured relating to Medical Services in respect of the conduct of the Professional Business Practice

For the purpose of this extension, "Committee" shall mean: any disciplinary, ethics, business practice, examining or research body or committee.

2.5 Continuous Cover

If the Insured has neglected, through error or oversight only, to avail themselves of the benefit of section 40(3) Insurance Contracts Act 1984 (Cth) in relation to an earlier policy issued by Pen Underwriting of the same type as this one, then provided that the Insured has maintained uninterrupted insurance with Pen Underwriting of the same type since the expiry of that earlier policy we will, notwithstanding Exclusion 3.13 (Prior and Pending), permit the Claim to be reported under this Policy and indemnify the Insured in respect of the Claim on the proviso that:

- 2.5.1 the Insured first became aware of the fact, matter or circumstance giving rise to the Claim after the Continuity Date stated in the Schedule;
- 2.5.2 the Insurer may reduce the indemnity entitled by the monetary equivalent of any prejudice which the Insurer suffer as a result of the delay;
- 2.5.3 such indemnity shall not apply to any Claim where the Insured's failure to notify such Claim is fraudulent;
- 2.5.4 the Limit of Liability shall be the lesser available under the terms of the policy in force at the time that the Insured first became aware of the facts, matters or circumstances and the Section Two Limit of Liability of this Policy;
- 2.5.5 the Deductible shall be the greater payable under the terms of the policy in force at the time that the Insured first became aware of the facts, matters or circumstances and the Section Two Deductible of this Policy; and
- 2.5.6 the terms and conditions of this Policy shall otherwise apply provided that the coverage is no broader than that available under the earlier policy.

2.6 Coronial Enquiries & Official Investigations

The Insurer agrees to pay Investigation Costs & Expenses.

PROVIDED ALWAYS THAT:

- 2.6.1 The Insurer shall be entitled, at its discretion, to appoint legal representation to represent the Insured in the investigation, examination or enquiry;
- 2.6.2 the investigation, examination or enquiry, or notice of intended investigation, examination or enquiry is commenced during the Period of Insurance and is notified to the Insurer during the Period of Insurance;
- 2.6.3 in the event that a claim for payment of Investigation Costs & Expenses is withdrawn or indemnity under this Policy is subsequently withdrawn or denied, the Insurer shall cease to advance Investigation Costs & Expenses and the Insured shall refund any Investigation Costs & Expenses advanced by the Insurer to the extent that the Insurer is satisfied that the Insured was not entitled to such Investigation Costs & Expenses, unless the Insurer agrees in writing to waive recovery of such Investigation Costs & Expenses; and

2.6.4 the Insurer's total liability under this Extension will not exceed \$250,000 in the aggregate in any one Period of Insurance;

2.6.5 in the event that the Insured is entitled to be indemnified under Policy Section 3 Insuring Clause E – Official Investigations and Inquiries-Costs & Expenses in respect of an official investigation, examination or enquiry, there is no entitlement to indemnity under this Extension in respect to that official investigation, examination or enquiry;

2.6.6 there is no cover under Policy Section 2 for any industry based investigation, examination, inquiry or Royal Commission.

2.7 Emergency First Aid / Good Samaritan Acts

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

2.8 Estates and Legal Representatives

The Insurer agrees to provide indemnity to the estate, heirs, legal representatives or assigns of any Insured in the event of the death or incapacity of such Insured. PROVIDED ALWAYS THAT such persons shall observe and be subject to all the terms of this Policy insofar as they can apply.

2.9 Fraud and Dishonesty

The Insurer agrees to provide indemnity in respect of any Claim which would otherwise be excluded by reason of Exclusion 3.7 (Fraud and Dishonesty).

PROVIDED ALWAYS THAT:

- 2.9.1 such indemnity shall not be provided to any person committing or condoning any act, omission or breach excluded by reason of Exclusion 3.7 (Fraud and Dishonesty);
- such indemnity shall not apply to loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

2.10 Reinstatement of Limit of Liability

The Insurer agrees to increase the Limit of Liability under this Policy as noted in the Policy Schedule by increasing the Limit of Liability to its original limit if that limit has been reduced or exhausted by payments of judgements or settlements,

PROVIDED ALWAYS THAT the Insurer's total liability under this Policy shall not exceed:

- 2.10.1 in respect of any one Claim, the Limit of Liability as specified in the Schedule; and

2.10.2 in respect of all Claims, an amount equal to the Aggregate Limit of Liability as specified in the Schedule

2.11 Intellectual Property

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

2.12 Joint Venture Liability

The Insurer agrees to provide indemnity in respect of any Claim made against the Insured arising out of the Insured's engagement as a joint venturer or as a partner. Provided that:

- 2.12.1 no indemnity shall be available to the other joint venture partners; and
- 2.12.2 indemnity is limited to the percentage share the Insured has in the joint venture; and
- 2.12.3 the income derived from the joint venture and Professional Business Practice of the joint venture is declared and noted in the Schedule of this Section.

2.13 Libel, Slander and Defamation

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

2.14 Loss of Documents

The Insurer agrees to provide indemnity arising from the loss of any Documents (including but not limited to Documents which are the property of the Insured) which have been destroyed, damaged, lost or mislaid and, after diligent search, cannot be found.

PROVIDED ALWAYS THAT:

- 2.14.1 the discovery of such loss of Documents occurred during the Period of Insurance and was notified in writing to the Insurer within ninety (90) days after the date of such discovery but not later than the end of the Period of Insurance;
- 2.14.2 such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring such Documents and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by the Insurer with the approval of the Insured:
 - 2.14.2.1 which were in the physical custody or control of the Insured or any other person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business; and
 - 2.14.2.2 which occurred within the territorial limits of the Commonwealth of Australia or the Dominion of New Zealand.

2.14.3 The Insurer shall not be liable under this Policy Extension to provide indemnity in respect of that proportion of any costs, charges and expenses of whatsoever nature arising directly or indirectly out of corruption, erasure, theft, alteration of, or access or lack of access to, or interference with electronically stored data of the Insured or held by the Insured wholly or partly caused by any computer virus, or any person who is not a current principal, partner, director or Employee of the Insured where such costs, charges and expenses relate to the Insured replacing and/or restoring such data after a period of 48 hours following the time when the virus or act took effect; and such indemnity shall be limited to the loss of any Documents:

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

2.14.4 The Insurer's aggregate liability in respect of all losses under this Policy Extension shall not exceed the sub-limit of \$1,000,000 inclusive of Defence Costs.

2.15 Newly Created or Acquired Entity or Subsidiary

2.15.1 The Insurer agrees to provide indemnity to any entity or Subsidiary acquired or created by the Insured or in respect of any facility acquired during the Period of Insurance for a period of up to thirty (30) days (but never beyond the expiry date of the Period of Insurance) from the date of such acquisition or creation.

2.15.2 The Insurer may, at its discretion, agree to provide further indemnity beyond a period of thirty (30) days (but never beyond the expiry date of the Period of Insurance) where:

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

PROVIDED ALWAYS THAT any indemnity provided under this Extension 2.15 will only apply in respect of civil liability incurred in the conduct of a business (that is the same as the Professional Business Practice) subsequent to the date of acquisition or creation.

2.16 Online Medicare Benefit Fraud

The Insurer agrees to provide indemnity to the Insured against:

- 2.16.1 civil liability for compensation; and
- 2.16.2 Defence Costs incurred with the written consent of the Insurer arising from any Claim made against the Insured based upon or attributable to the Commonwealth Health Insurance Commission having transferred or paid any benefit or funds to any person (other than the Insured) who had no legal entitlement to such benefit or funds as the direct result of the dishonest or fraudulent input, deletion or modification of data on HIC Online by an Employee,
PROVIDED ALWAYS THAT:
 - 2.16.3 such Claim is first made against the Insured during the Period of Insurance and notified to the Insurer during the Period of Insurance; and
 - 2.16.4 the Insurer shall not be liable for any loss of money, negotiable instruments, bearer bonds, coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally liable; and
 - 2.16.5 the Insurer shall not be liable to indemnify any Insured who committed, participated in or condoned such dishonest or fraudulent conduct; and
 - 2.16.6 the Insurer shall not be liable for any liability, loss, cost or expense sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable suspicion of, dishonest or fraudulent conduct on the part of the Employee concerned; and
 - 2.16.7 the Deductible shall apply to each and every individual dishonest or fraudulent act or omission; and
 - 2.16.8 the Insurer's total liability in respect of all Claims covered by this Extension, including all Defence Costs, shall not exceed \$100,000.

2.17 Previous Business

The Insurer agrees to provide indemnity in respect of any Claim made against any person who is a partner, director, principal of the Insured for civil liability incurred on the part of such person in the conduct of the same profession as the Professional Business Practice before that person joined the Insured.

2.18 Principals

The Insurer agrees to provide indemnity in respect of any Claim made against a Principal for whom the Insured is or has been working in respect of that Principal's vicarious liability arising from any act, error or omission committed or alleged to have been committed by the Insured, subject always to the extent of indemnity and the Limit of Liability provided by this Policy Section.

2.19 Privacy Complaints and Claims

The Insurer agrees to provide indemnity to the Insured against:

- 2.19.1 liability for compensation; and
- 2.19.2 any Defence Costs
 - 2.19.2.1 arising from any Claim or written complaint made against the Insured for unintentional breach of any duty of confidentiality owed to any resident or client arising at law or any unintentional breach of the Privacy Act 1988 (Commonwealth), Health Records & Information Privacy Act 2002 (NSW), Health Records Act 2001 (Victoria) or Health Records (Privacy and Access) Act 1997 (ACT) or similar privacy legislation in any state or territory of the Commonwealth of Australia or the Dominion of New Zealand, PROVIDED ALWAYS THAT:
 - 2.19.2.2 such Claim or complaint is first made against the Insured during the Period of Insurance and notified to the Insurer during the Period of Insurance; however the Insurer shall not be liable for:
 - 2.19.2.2.1 any civil or criminal fines or penalties
 - 2.19.2.2.2 non compensatory damages, including punitive or exemplary damages; or
 - 2.19.2.2.3 the costs of compliance with any regulatory, administrative, Court or Tribunal directives or with any injunctive or non-compensatory relief or;
 - 2.19.2.2.4 any liability, loss, cost or expense that is uninsurable under the laws of Australia or New Zealand; and
 - 2.19.2.3 the Deductible shall apply to each and every Claim or complaint covered by this Extension; and

The Insurer's total liability in respect of all Claims and complaints covered by this Extension, including all Defence Costs, shall not exceed \$500,000

2.20 Run-off Cover Insured Entity or Subsidiary

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

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

2.21 Statutory Liability Fines and Penalties

The Insurer agrees to indemnify the Insured against legal liability, which would otherwise be excluded by reason of Exclusion 3.5 (Fines and Penalties) or Exclusion 3.12 (Pollutants) only, for any Penalty arising from the conduct of the Professional Business Practice and first imposed against the Insured during the Period of Insurance and notified to the Insurer during the Period of Insurance as a result of:

- 2.21.1 a Penalty imposed upon the Insured by any Regulatory Authority arising from any actual or alleged breach of any occupational health & safety or Environmental Legislation; and
 - 2.21.2 any Defence Costs incurred with the written consent of the Insurer in the defence or settlement of any Penalty indemnified by this Extension.
- PROVIDED ALWAYS THAT:
- 2.21.3 the Insured first became aware of the existence of such Penalty during the Period of Insurance and notified the Insurer of such Penalty during the Period of Insurance; and
 - 2.21.4 the act, error or omission giving rise to the Penalty did not arise from gross negligence or an intentional, wilful, reckless, or deliberate act, error, or omission; and
 - 2.21.5 the Insurer's total liability in respect of all claims made under this extension shall not exceed \$1,000,000 including Defence Costs.

2.22 Students

The Insurer agrees to provide indemnity in respect of any Claims made against any current or former student of a university or college of advanced education or a T.A.F.E. college, other Tertiary institution or Registered Training Organisation and assigned to and under the supervision of the Insured where such Claim arises from civil liability incurred on the part of the student in the conduct of the Professional Business Practice.

2.23 Vicarious Liability for Contractors and Medical Practitioners

The Insurer agrees to indemnify the Insured against legal liability arising out of any act, error or omission committed or alleged to have been committed by any consultant, contractor or sub-contractor in the conduct of Medical Services for which the Insured is or would be legally liable or for any act, error or omission committed or alleged to have been committed by a Medical Practitioner in the conduct of Medical Services which would otherwise be excluded by reason of Exclusion 3.9 (Medical Practitioners) for which the Insured is legally liable.

3. EXCLUSIONS

The Insurer shall not be liable under this Section to provide indemnity or pay costs and expenses in respect of any Claim against the Insured:

3.1 Abuse

directly or indirectly based upon, attributable to, or in consequence of violence against or abuse of (including physical, sexual and psychological) any person.

3.2 Aircraft and Watercraft

directly or indirectly based upon, attributable to, or in consequence of the ownership, lease, operation or use of any Aircraft or Watercraft/Hovercraft by an Insured.

3.3 AIDS/HIV

directly or indirectly based upon, attributable to, or in consequence of or contributed to by:

- 3.3.1 The Human Immune Deficiency Virus (HIV) or any mutation, derivation or variation thereof; or
- 3.3.2 Any HIV related illness including but not limited to Acquired Immune Deficiency Syndrome (AIDS) or any mutation, derivation or variation thereof

3.4 Assumed Duty or Obligation

liability assumed directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by an Insured by way of any contract, agreement, warranty, guarantee or indemnity to the extent that such liability exceeds the liability the Insured would have incurred in the absence of such contract, agreement, warranty, guarantee or indemnity.

3.5 Euthanasia

directly or indirectly based upon, attributable to or in consequence of any procedure or advice rendered concerning euthanasia.

3.6 Fines and Penalties

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

3.7 Fraud and Dishonesty

directly or indirectly based upon, attributable to, or in consequence of:

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

3.8 Intoxicants and Drugs

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

3.9 Jurisdictional Limit

directly or indirectly based upon, attributable to, or in consequence of any Claim brought:

3.9.1 within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or

3.9.2 any Claim that arises out of the enforcement of any judgement, order or award obtained within, or determined pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

3.10 Medical Practitioners

directly or indirectly based upon, attributable to, or in consequence of any Claim:

3.10.1 made against an Insured that is a Medical Practitioner in relation to:

3.10.1.1 Medical Services and/or Health Care Incidents:

3.9.1.2 any Incident directly attributable to the Insured acting in their capacity as a Medical Practitioner.

3.10.2 which is brought or maintained by or on behalf of a Medical Practitioner against the Insured in relation to claims that may be made against the Medical Practitioner in relation to Health Care Incidents (including but not limited to any Claim in respect of the enforcement of any indemnity between the Insured and a Medical Practitioner). For the purposes of this exclusion:

“Health Care Incident” means an Incident that occurs in the course of, or in connection with, the provision of Health Care by the Medical Practitioner.

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

“Incident” includes but is not limited to any act, error, omission or circumstance and an incident that is claimed to have occurred.

3.11 Obligations to Employees

directly or indirectly based upon, attributable to, or in consequence of bodily injury, mental injury, sickness, disease or death of any Employee of the Insured or damage to or destruction of any property of any Employee, including loss of use, arising out of, or in the course of, their employment.

3.12 Occupiers Liability and Property Damage

directly or indirectly based upon, attributable to, or in consequence of:

3.12.1 any liability incurred or alleged to have been incurred as a result of any occupation or ownership of any real property by the Insured.

3.12.2 physical loss of, damage to, or destruction of, any tangible property (other than any Document), including loss of use thereof or any consequential loss.

3.13 Pollutants

directly or indirectly based upon, attributable to, or in consequence of:

3.13.1 the actual or alleged discharge, release or escape of Pollutants; or

3.13.2 any enforcement action or proceeding in connection with the containment, clean up, removal or treatment of such Pollutants.

3.14 Prior or Pending

3.14.1 made, threatened or intimated against the Insured prior to the Period of Insurance;

3.14.2 directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:

3.14.2.1 of which written notice has been given, or ought reasonably to have been given, under any previous policy; or

3.14.2.2 of which the Insured first became aware prior to the Period of Insurance, and which the Insured knew or ought reasonably to have known had the potential to give rise to a Claim.

3.15 Related or Associated Entities

brought or maintained by or on behalf of any Insured, subsidiary or parent company of the Insured; or any person who, at the time of the act, error or omission giving rise to the Claim, is a Family Member unless such Family Member is acting without any prior direct or indirect solicitation or co-operation of any Insured.

3.16 Territorial Limit

directly or indirectly based upon, attributable to, or in consequence of any act, error or omission giving rise to the Claim committed within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates. But this exclusion shall not apply to Claims in connection with or arising out of escorting and/or caring for clients whilst such client is visiting or vacationing in the United States of America or the Dominion of Canada or their territories or protectorates.

3.17 Trading Debts

directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by the Insured or any guarantee given by the Insured for a debt.

4. GENERAL CONDITIONS

4.1 Deductible

- 4.1.1 In respect of each Claim made against the Insured the amount of the Deductible shall be borne by the Insured at their own risk.
- 4.1.2 The Deductible is exclusive of Defence Costs.
- 4.1.3 Where the Insurer has elected to pay all or part of the Deductible in respect of any Claim, the Insured shall, within seven (7) days from the date of such payment, reimburse the Insurer for such payment.
- 4.1.4 In respect of any Claim where the amount of the Claim is less than the amount of the Deductible, the Insured shall bear all Defence Costs associated therewith unless the Insurer shall have agreed to meet such Defence Costs pursuant to Insuring Clause B.
- 4.1.5 Where the Deductible is expressed in the Schedule to be inclusive of Defence Costs then the Insured will pay all Defence Costs, up to the amount of the Deductible, incurred by the Insurer pursuant to the engagement of advisers considered necessary by the Insurer to determine the liability of the Insured and to resolve the Claim.
- 4.1.6 Any Defence Costs incurred by the Insurer to determine whether the Insurer has a liability to indemnify the Insured under this Policy Section shall not be subject to the Deductible but shall be borne by the Insurer.

5. CLAIMS CONDITIONS

5.1 Reporting and Notice

- 5.1.1 The Insured shall give to the Insurer written notice as soon as practicable of any Claim made against an Insured PROVIDED ALWAYS THAT such written notice is given to the Insurer during the Extended Reported Period in which the Claim is made or discovered.
- 5.1.2 Notice of any Claim shall be given in writing to the Insurer and delivered to the address stated in the Schedule.

6. DEFINITIONS

The following words have the following meaning for this Section only:

- 6.1 **Aggregate Limit of Liability** means the amount shown as the Aggregate Limit of Liability in the Schedule for this Section. If no amount is shown for this Section, the Aggregate Limit of Liability in respect of all Claims for this Section is no greater than the Limit of Liability.

6.2 Claim means:

- 6.2.1 any written or verbal demand made by a third party upon the Insured for compensation, however conveyed, including a writ, statement of claim, summons, application, cross-claim, counterclaim or other legal or arbitral process.
- 6.2.2 for the purpose of cover under Automatic Extension 2.6 Coronial Enquiries & Investigations Claim means receipt of notice to attend an investigation, examination or enquiry as covered by this Policy.
- 6.2.3 for the purpose of cover under Automatic Extension 2.21 Statutory Liability Fines and Penalties Claim means a prosecution of the Insured brought under occupational health and safety or Environmental Legislation.

- 6.3 **Family Member** means any spouse, domestic partner, or companion, any parent, or parent of the spouse, domestic partner or companion, any sibling or child, step-child, grandchild or step-grandchild of the Insured.

6.4 Insured means:

- 6.4.1 the Named Insured; and
- 6.4.2 any person who is, during the Period of Insurance, a Principal, Partner, Director or Employee of the Named Insured; and
- 6.4.3 any former principals, partners, directors or Employees of the Named Insured; and
- 6.4.4 any member of an ethics committee or advisory council set up by or serving the Named Insured; and
- 6.4.5 any current or former, volunteer worker authorised by the Named Insured designated in 6.4.1, 6.4.2 and 6.4.3 to provide Medical Services.

- 6.5 **Investigation Costs & Expenses** means the reasonable legal costs and expenses incurred by the Insurer or with the Insurer's prior written consent relating to an Insured's legally compellable attendance at any official investigation, examination or enquiry in relation to the conduct of the Insured's Professional Business Practice where such investigation, examination or enquiry may lead to a recommendation in respect of civil liability which would be the subject of a Claim covered by this Policy Section.

It does not mean:

- 6.5.1 regular or overtime wages, salaries or fees of any Insured Person;
- 6.5.2 costs and expenses incurred by or on behalf of the Named Insured.

- 6.6 Privacy Costs & Expenses** means legal costs and expenses reasonably and necessarily incurred by the Insured with the written consent of the Insurer arising out of:
- 6.6.1 the Insured's defence or investigation of any Claim or written complaint made against the Insured for the unintentional breach of any duty of confidentiality owed to any resident or client arising at law or any unintentional breach of the Privacy Act 1988 (Commonwealth), Health Records & Information Privacy Act 2002 (NSW), Health Records Act 2001 (Victoria) or Health Records (Privacy and Access) Act 1997 (ACT) or similar privacy legislation in any state or territory of the Commonwealth of Australia or the Dominion of New Zealand; and
 - 6.6.2 the Insured's attendance or representation before any Privacy Commissioner, Private Code Adjudicator, Administrative Tribunal or Court in relation to the unintentional breach of any of the above legislation, however
 - 6.6.3 Privacy Costs & Expenses shall not include any internal or overhead expenses of the Insured or the salaries, wages or benefits of any Insured, Employee or in-house lawyers or other in-house professional advisers of the Insured.
- 6.7 Professional Business Practice** means the business conducted by the Insured, as specified in the Schedule for Policy Section 2.

POLICY SECTION 3

HOME AND COMMUNITY CARE PROVIDERS DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY

1. INSURING CLAUSES

1.1 Preamble

In consideration of payment of the Premium, the Insurer will provide indemnity in accordance with, and subject to, the terms of this Section. PROVIDED ALWAYS THAT:

- 1.1.1 the inclusion of any Insuring Clause shall not increase the Limit of Liability or Aggregate Limit of Liability under the Policy.
 - 1.1.2 where an Insuring Clause (A-E) is not specified in the Schedule as 'included', then this Policy shall not provide any indemnity under such Insuring Clause.
- The Insurer agrees to pay all Loss arising from a Claim against:

1.2 INSURING CLAUSE A - Directors & Officers Insuring Clause

the Insured Person(s) alleging a Wrongful Act where the Insured Person is not provided indemnification by the Corporation,

1.3 INSURING CLAUSE B - Corporate Entity Insuring Clause

the Insured Person(s) alleging a Wrongful Act where the Corporation had provided indemnification to the Insured Person(s) as permitted or required by law,

1.4 INSURING CLAUSE C - Corporate Entity Liability Insuring Clause

the Corporation alleging a Wrongful Act,

1.5 INSURING CLAUSE D – Employment Practices Liability Insuring Clause

the Insured alleging a Wrongful Act, where such Claim is first made during the Period of Insurance, and notified to the Insurer during the Period of Insurance.

1.6 INSURING CLAUSE E – Official Investigations and Inquiries – Costs & Expenses

The Insurer agrees to pay Investigation Costs & Expenses in relation to any Official Investigation or Inquiry commenced during the Period of Insurance and which is notified to the Insurer during the Period of Insurance. PROVIDED ALWAYS THAT the Insurer's aggregate liability for all claims under this Insuring Clause shall not exceed:

- 1.6.1 the sub-limit shown in the Schedule for Official Investigations and Inquiries – Costs & Expenses; or
- 1.6.2 if no amount is shown, a maximum of \$500,000

2. RETROACTIVE DATE

2.1 Retroactive Date

- 2.1.1 "Unlimited Retroactive Cover" - if no Retroactive Date is specified in the Schedule or if the Retroactive Date is specified in the Schedule as "Unlimited", this Policy shall provide indemnity in respect of Wrongful Act(s) committed (or alleged to have been committed) irrespective of when such Wrongful Act(s) were committed (or were alleged to have been committed).
- 2.1.2 "Limited Retroactive Cover" - where a Retroactive Date is specified in the Schedule, then this Policy shall only provide indemnity in respect of Wrongful Act(s) committed (or alleged to have been committed) after the Retroactive Date.

3. POLICY SECTION EXTENSIONS

3.1 Preamble

The Insurer shall provide indemnity as is available under this Section, for no additional premium, PROVIDED ALWAYS THAT:

- 3.1.1 the indemnity provided by each extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein); and
- 3.1.2 the inclusion of any extension shall not increase the Limit of Liability, Aggregate Limit of Liability or applicable sub-limit under the Policy; and
- 3.1.3 where a Policy Extension is not specified in the Schedule as 'included', then this Policy shall not provide any indemnity under such extension.

3.2 Advancement of Defence Costs

The Insurer agrees to advance Defence Costs within a reasonable time period following the Insurer's receipt of invoices for such Defence Costs and prior to determining the entitlement of the Insured to indemnity for the Claim. In determining the entitlement of the Insured to indemnity under the Policy in respect of such a Claim, the Insurer agrees that it will not rely on Exclusion 5.6 (Fraud and Dishonesty) unless and until:

- 3.2.1 an Insured makes an admission of any conduct described in Exclusion 5.6 (Fraud and Dishonesty); or
 - 3.2.2 it has been established through a judicial process that such Insured has committed any conduct described within Exclusion 5.6 (Fraud and Dishonesty).
- PROVIDED ALWAYS THAT:
- 3.2.3 the advance of such Defence Costs does not constitute an acceptance of indemnity under the Policy for such Claim; and

3.2.4 if 3.2.1 or 3.2.2 above applies, the Insurer may cease to advance Defence Costs for any such Insured, unless the Insurer, at its sole discretion, continues to pay Defence Costs resulting from such Claim;

3.2.5 where either 3.2.1 or 3.2.2 above applies, such Insured(s) (for their respective rights and interests) shall refund Defence Costs advanced by the Insurer, unless the Insurer agrees in writing to waive recovery of such Defence Costs.

3.3 Aggregate Limit of Liability

The Insurer agrees to provide indemnity under this Policy up to the Aggregate Limit of Liability PROVIDED ALWAYS THAT the Insurer's total liability under this Policy inclusive of Defence Costs shall not exceed:

3.3.1 in respect of any one Claim or loss covered by this Section, the Limit of Liability as specified in the Schedule; and

3.3.2 in respect of all Claims and losses covered by this Policy, the Aggregate Limit of Liability.

3.4 Continuous Cover

If the Insured has neglected, through error or oversight only, to avail themselves of the benefit of section 40(3) Insurance Contracts Act 1984 (Cth) in relation to an earlier policy issued by Pen Underwriting of the same type as this one, then provided that the Insured has maintained uninterrupted insurance with Pen Underwriting of the same type since the expiry of that earlier policy we will, notwithstanding Exclusion 5.12 (Prior and Pending), permit the Claim to be reported under this Policy and indemnify the Insured in respect of the Claim on the proviso that:

3.4.1 the Insured first became aware of the fact, matter or circumstance giving rise to the Claim after the Continuity Date stated in the Schedule;

3.4.2 the Insurer may reduce the indemnity entitled by the monetary equivalent of any prejudice which the Insurer suffer as a result of the delay;

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

3.4.4 the Limit of Liability shall be the lesser available under the terms of the policy in force at the time that the Insured first became aware of the facts, matters or circumstances and the Section Two Limit of Liability of this Policy;

3.4.5 the Deductible shall be the greater payable under the terms of the policy in force at the time that the Insured first became aware of the facts, matters or circumstances and the Section Two Deductible of this Policy; and

3.4.6 the terms and conditions of this Policy shall otherwise apply, provided that the coverage is no broader than that available under the earlier policy.

3.5 Contractual Liabilities, Assumed Duty or Obligation

The Insurer agrees to provide indemnity under Insuring Clauses A and B in respect of any Claim against an Insured Person or Trustee of an Insured Person for breach or alleged breach of any contract, other than a breach or alleged breach of a contract for the provision of professional services and/or professional advice which would otherwise be excluded by reason of Exclusion 5.4 (Contractual Liabilities, Assumed Duty or Obligation).

3.6 Corporate Manslaughter

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

3.7 Defamation

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

3.8 Estates and Legal Representatives

The Insurer agrees to indemnify the estate, heirs, legal representatives or assigns of any Insured Person in the event of the death or incapacity of such Insured Person, but only where the Claim is made against them solely because of their status as such and is only in respect of a Wrongful Act of such Insured Person which would otherwise be covered under this Policy. PROVIDED ALWAYS THAT such persons shall observe and be subject to all the terms of this Policy insofar as they can apply.

3.9 Extended Period of Insurance for Retired Directors

The Insurer agrees that a director of the Corporation or a committee member of an incorporated association may (in accordance with Claims Condition 7.1 Reporting and Notice) notify under Insuring Clauses A or B a Claim made on them as an Insured Person in an extended Period of Insurance of 84 months immediately following the Period of Insurance.

PROVIDED ALWAYS THAT:

3.9.1 no policy insuring directors' and officers' or committee members' legal liability on or after expiry of the Period of Insurance has been effected by the Insured with the Insurer or any other insurer (whether as a replacement policy or otherwise); and

3.9.2 indemnity will only be provided in respect of directors or committee members of an incorporated association who, prior to the expiry of the Policy, have permanently retired from all appointments and positions (not only with the Corporation or an association), other than from any 'not for profit' organisation; and

3.9.3 The Insurer's aggregate liability in respect of all claims under this Policy Extension, including for Defence Costs, shall not exceed the lesser of the Limit of Liability or \$1,000,000.

3.10 Intellectual Property

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

3.11 Not for Profit Outside Directorships

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

PROVIDED ALWAYS THAT:

- 3.11.1 such indemnity shall not be available to the Outside Entity in which such Outside Directorship is held or to any other director, officer, office bearer, or employee of such Outside Entity who is not also an Insured Person; and
- 3.11.2 such indemnity shall be specifically excess of any other indemnity available to such Insured Person by reason of serving in such Outside Directorship; and
- 3.11.3 this Extension shall only apply in respect of a Wrongful Act occurring during the period for which such Outside Directorship was held.

3.12 Not for Profit Outside Directorship Run-Off Cover

The Insurer agrees that:

- 3.12.1 in the event that an Insured Person ceases to hold an Outside Directorship in a Not for Profit Organisation during the Period of Insurance, indemnity under Insuring Clauses A and B with respect to such Outside Directorship shall continue until the expiry date of the Period of Insurance.
- 3.12.2 in the event that an Insured Person ceases to hold an Outside Directorship prior to the commencement date of the Period of Insurance, indemnity with respect to such Outside Directorship shall be granted under Insuring Clauses A and B of this Policy.

3.13 Pollution Liability

The Insurer agrees to indemnify the Insured under Insuring Clauses A, B and C for Defence Costs in respect of any Claim brought or maintained by a Regulatory Authority, which would otherwise be excluded by reason of Exclusion 5.11.1 or 5.11.2 (Pollutants), where such Claim alleges a breach of Environmental Legislation.

PROVIDED ALWAYS THAT:

- 3.13.1 such indemnity shall not extend to any Claim brought by a Regulatory Authority on behalf of, in the name of or as a representative of any other person(s), corporation or other entity; and

- 3.13.2 the Insurer's aggregate liability for all claims under this Extension shall not exceed:

- 3.13.2.1 the sub-limit shown in the Schedule for Pollution Liability; or
- 3.13.2.2 if no amount is shown, a maximum of \$2,000,000.

3.14 Spousal Liability

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

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

3.15 Subsidiary Created or Acquired

The Insurer agrees the definition of the Insured shall include any Subsidiary which is created or acquired by the Corporation, irrespective of whether the Subsidiary was created or acquired prior to or during the Period of Insurance. PROVIDED ALWAYS THAT:

- 3.15.1 indemnity shall only apply in respect of a Wrongful Act occurring subsequent to the date of creation or acquisition; and
- 3.15.2 notification of any Subsidiary created or acquired during the Period of Insurance shall be given in writing to the Insurer within 30 days of the creation or acquisition of the Subsidiary.

3.16 Subsidiary Run-Off Cover

The Insurer agrees that:

- 3.16.1 in the event that an entity ceases to be a Subsidiary during the Period of Insurance, indemnity with respect to such Subsidiary shall continue until the expiry date of the Period of Insurance.
- 3.16.2 in the event that an entity ceased to be a Subsidiary prior to the commencement of the Period of Insurance, indemnity with respect to such Subsidiary shall be granted under this Policy.

PROVIDED ALWAYS THAT such indemnity shall only apply in respect of a Wrongful Act occurring between the date of creation or acquisition by the Corporation and the date such entity ceased to be a Subsidiary.

4. OPTIONAL EXTENSIONS

4.1 Preamble

It is agreed that:

- 4.1.1 the indemnity provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein); and
- 4.1.2 the inclusion of any Optional Extension shall not increase the Limit of Liability; and
- 4.1.3 where an Optional Extension is not specified in the Schedule as 'Included' then this Policy shall not provide any indemnity under such Optional Extension.

4.2 Extended Reporting Period

The Insurer agrees to amend the Period of Insurance for the purposes of Insuring Clauses A and B for Claims on Insured Persons by extending the expiry date by 12 months such that the Insured may (in accordance with Claims Condition 7.1(Reporting and Notice)) notify a Claim within 12 months after the Original Expiry Date.

PROVIDED ALWAYS THAT:

- 4.2.1 the Insurer has refused to offer terms for another policy of the same or lesser Limit of Liability for the Insured (whether a replacement policy or otherwise) incepting on or from the expiry date of the Period of Insurance; and
- 4.2.2 the Insured has requested the purchase of the Extended Reporting Period in writing prior to the expiry of the Period of Insurance; and
- 4.2.3 the Insured pays an additional premium of 75% of the annualised Premium; and
- 4.2.4 indemnity shall not be provided for any Wrongful Act committed or allegedly committed after the Original Expiry Date; and
- 4.2.5 this Extension is not available if:
 - 4.2.5.1 the Insured has effected another policy with any insurer (whether a replacement policy or otherwise) incepting at any time on or after the Original Expiry Date and which insures directors and officers legal liability; or
 - 4.2.5.2 this Policy is cancelled or avoided.

4.3 Public Relations Expense

The Insurer will pay on behalf of the Corporation, Business Crisis Consultant Fees incurred by the Corporation during the first thirty days immediately following a Business Crisis Event that occurs during the Period of Insurance. No Excess is applicable to this extension.

- 4.3.1 The Insurer's aggregate liability for all claims under this Extension shall not exceed:
 - 4.3.1.1 the sub-limit shown in the Schedule for Public Relations Expense; or
 - 4.3.1.2 if no amount is shown, a maximum of \$50,000.

4.4 Outside Directorship Cover (other than Not for Profit Organisation)

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

PROVIDED ALWAYS THAT:

- 4.4.1 such indemnity shall not be available to the Outside Entity in which such Outside Directorship is held or to any other director, officer, office bearer, or employee of such Outside Entity who is not also an Insured Person; and
- 4.4.2 such indemnity shall be specifically excess of any other indemnity available to such Insured Person by reason of serving in such Outside Directorship; and
- 4.4.3 this Extension shall only apply in respect of a Wrongful Act occurring during the period for which such Outside Directorship was held.

4.5 Outside Directorship Run-Off Cover (other than Not for Profit Organisation)

The Insurer agrees that:

- 4.5.1 in the event that an Insured Person ceases to hold an Outside Directorship during the Period of Insurance, indemnity under Insuring Clauses A and B with respect to such Outside Directorship shall continue until the expiry date of the Period of Insurance.
- 4.5.2 in the event that an Insured Person ceases to hold an Outside Directorship prior to the commencement date of the Period of Insurance, indemnity with respect to such Outside Directorship shall be granted under Insuring Clauses A and B of this Policy.

PROVIDED ALWAYS THAT such indemnity shall be subject to the conditions of Extension 4.4 (Outside Directorship Cover).

4.6 Statutory Penalties

The Insurer agrees to indemnify the Insured against any Penalty and Defence Costs not otherwise indemnified under clause 2.21 of Policy Section 2 resulting from a Claim by a Regulatory Authority for a Wrongful Breach including those which would otherwise be excluded by reason of Exclusion 5.5 (Fines & Penalties) where the Claim is first made on the Insured and notified in writing to the Insurer in the Period of Insurance. PROVIDED ALWAYS THAT the Insurer shall not be liable to indemnify the Insured in respect of any Penalty or Defence Costs in respect of any such Claim arising directly or indirectly from or which is based upon, attributable to, in consequence of, or in connection with any:

- 4.6.1 dishonest, wilful, intentional or deliberate Wrongful Breach; or

- 4.6.2 wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act; or
 - 4.6.3 gross negligence or recklessness of an Insured; or
 - 4.6.4 requirements to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost; or
 - 4.6.5 breach of Sections 182 or 183 of the Corporations Act and any amendment, consolidation or re-enactment of any of these sections; or
 - 4.6.6 substandard care to, or mistreatment of any person; or
 - 4.6.7 discrimination against any person; or
 - 4.6.8 exploitation, violence or abuse of any person; or
 - 4.6.9 failure to comply with any notice issued by any Regulatory Authority; or
 - 4.6.10 governance or compliance failures that may have resulted in any of the matters set out in clauses 4.6.1 to 4.6.9.
- PROVIDED ALWAYS THAT the Insurer's aggregate liability for all claims under this Extension shall not exceed:
- 4.6.11 the sub-limit shown in the Schedule for Penalties; or
 - 4.6.12 if no amount is shown, a maximum of \$1,000,000.

4.7 Tax Audit

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

Provided that the Corporation and/or Insured Persons:

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

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

- 4.7.4 the Auditor has given written notice to that effect; or
- 4.7.5 the Auditor notifies the Corporation that it has made a concluded decision; or
- 4.7.6 the Auditor has issued an assessment or an amended assessment of the Corporation's Returns; or
- 4.7.7 in the absence of 4.7.4, 4.7.5 or 4.7.6, where the Corporation's Professional Adviser declares in writing that such an audit has been concluded.
- 4.7.8 The Insurer's total liability under this Optional Extension will not exceed \$20,000, any one loss in the aggregate in any one Period of Insurance.

5. EXCLUSIONS

The Insurer shall not be liable under this Section for any Claims:

5.1 Personal Injury

directly or indirectly based upon, attributable to or in consequence of Personal Injury.

However, this Exclusion shall not apply to:

- 5.1.1 Penalties and Defence Costs resulting from a Claim by a Regulatory Authority;
 - 5.1.2 Investigation Costs & Expenses as a result of an alleged contravention of any Commonwealth, State or Territory occupational or workplace health and safety legislation.
- PROVIDED ALWAYS THAT indemnity shall not extend to Defence Costs incurred in relation to any civil proceeding or Claim seeking damages or compensation in connection with such alleged contravention; or
- 5.1.3 indemnity for Public Relations Expenses pursuant to clause 4.3.
 - 5.1.4 Insuring Clause D if such Claim results from bodily injury including or any form of psychiatric, psychological or mental injury, illness, disease or death of any employee

5.2 Breach of Professional Duty

directly or indirectly based upon, attributable to or in consequence of the rendering or failure to render professional services and/or professional advice.

5.3 Capital Raising Disclosure Document

directly or indirectly based upon, attributable to or in consequence of any capital raising disclosure document including but not limited to a prospectus, short-form prospectus, profile statement, offer information statement or information memorandum or similar document providing information to potential investors.

5.4 Contractual Liability, Assumed Duty or Obligation

directly or indirectly based upon, attributable to or in consequence of any liability, duty or obligation assumed by an Insured by way of contract, warranty, guarantee or indemnity, to the extent that such liability, duty or obligation exceeds the liability, duty or obligation the Insured would have incurred or been under in the absence of such contract, warranty, guarantee or indemnity.

5.5 Fines & Penalties

for, directly or indirectly based upon, attributable to or in consequence of any punitive, aggravated, multiple, or exemplary damages, or fines or penalties imposed by law including but not limited to civil penalties. This exclusion does not apply to any cover afforded by Extensions 3.13 (Pollution Liability) or 4.6 (Statutory Penalties).

5.6 Fraud and Dishonesty

directly or indirectly based upon, attributable to or in consequence of any:

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

5.7 Insolvency

directly or indirectly based upon, attributable to, or in consequence of insolvent trading of the Corporation / Trust.

5.8 Insured v Insured

brought or maintained by or on behalf of an Insured, however this Exclusion shall not apply to:

- 5.8.1 Defence Costs;
- 5.8.2 any Claim brought by an Insured Person against another Insured Person for contribution or indemnity if such Claim directly results from another Claim covered under Insuring Clause A (Directors & Officers Insuring Clause);
- 5.8.3 any Claim brought or maintained against an Insured Person in the name of the Corporation:
- 5.8.4 a shareholder derivative action, provided that such shareholder is not also an Insured and is acting without any prior direct or indirect solicitation or enticement or with any other Insured; or

5.8.5 any Claim pursuant to Section 50 of the Australian Securities & Investment Commission Act 1989; or at the instigation of a receiver, a receiver and manager, an administrator or liquidator formally appointed by the court.

5.9 Joint Venture

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

5.10 Jurisdictional Limits

directly or indirectly based upon, attributable to or in consequence of any **Claim**, action or legal proceedings:

- 5.10.1 brought in a court of law, arbitration, tribunal forum or other body entitled to impose enforceable orders against the Insured in the United States of America (including its territories or protectorates); or
- 5.10.2 arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law in United States of America (including its territories or protectorates).

5.11 Pollutants

directly or indirectly based upon, attributable to or in consequence of:

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

5.12 Prior or Pending

- 5.12.1 made, threatened or intimated against an Insured prior to the Period of Insurance; or
- 5.12.2 directly or indirectly based upon, attributable to or in consequence of any fact or circumstance:
 - 5.12.2.1 of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
 - 5.12.2.2 of which an Insured first became aware prior to the Period of Insurance, and which such Insured knew or ought reasonably to have known had potential to give rise to a Claim.

5.13 Products

directly or indirectly based upon, attributable to or in consequence of the efficacy of, or failure to supply, any goods or products manufactured, sold or supplied by the Corporation.

For the purposes of this Exclusion, where Optional Extension 4.4 and 4.5 (Outside Directorships) have been included, then the definition of Corporation shall be deemed to include any Outside Entity.

5.14 Property Damage

directly or indirectly based upon, attributable to or in consequence of physical loss of, damage to or destruction of any tangible property (other than any Document), including loss of use thereof or any consequential loss. The exclusion shall not apply to indemnity for Public Relations Expenses pursuant to clause 4.3..

5.15 Statutory Payments Liability

directly or indirectly based upon, attributable to or in consequence of any amounts owing or allegedly owing to the Australian Taxation Office or any State revenue office, including but not limited to tax, duties, levies, penalties, interest and costs.

5.16 Substantial Shareholders

brought or maintained by or on behalf of any Substantial Shareholder.

PROVIDED ALWAYS THAT THIS EXCLUSION shall apply whether or not the Wrongful Act was committed or is alleged to have been committed before or after the date on which the Substantial Shareholder of the Corporation first became a Substantial Shareholder of the Corporation.

For the purposes of this Exclusion:

5.16.1 Substantial Shareholder means any person, body corporate or other entity who or which is entitled to fifteen percent (15%) or more of the voting shares in the Corporation.

5.16.2 A person, body corporate or other entity shall be taken to be entitled to a voting share if that person, body corporate or other entity has any direct or indirect, legal or beneficial interest in the share or any direct or indirect power to vote the share or to dispose of the share and whether or not the interest or power is held through any interposed body corporate or other entities or held jointly with others.

5.16.3 Where Optional Extension 4.4 and 4.5 (Outside Directorships) have been included, then the definition of Corporation shall be deemed to include any Outside Entity.

5.17 Tax audit

Under Policy Extension 4.7, in relation to the following:

5.17.1 Amended notices/additional tax/fine/legal costs for any:

5.17.1.1 Amounts sought by any amended notice of assessment; or

5.17.1.2 Additional tax, duty, government impost or the like; or

5.17.1.3 Fine or penalty imposed; or

5.17.1.4 Costs in legally pursuing or defending any legal actions against the Corporation or the Insured Persons.

5.17.2 Any audit conducted by the Australian Prudential Regulation Authority.

5.17.3 Any criminal prosecution/foreign return or entity/tax return for Professional Adviser Fees:

5.17.3.1 arising directly or indirectly from or in respect of any criminal prosecution; or

5.17.3.2 arising directly or indirectly from or in respect of any Return lodged outside Australia, its States or Territories; or

5.17.3.3 arising directly or indirectly from or in respect of any person or organisation ordinarily resident outside Australia, its States or Territories; or

5.17.3.4 incurred, that should have been incurred and that ordinarily would have been incurred for work done prior to or as part of the preparation of the Corporation's accounts, Returns, taxation and financial records prior to or as part of the preparation of the Corporation's Returns, taxation and financial records, or any document required by the relevant legislation in connection with its Returns.

5.18 Wrongful Employment Act

directly or indirectly based upon, attributable to or in consequence of any wrongful employment act other than as provided by Insuring Clause D.

6. INSURING CLAUSE D ADDITIONAL EXCLUSIONS (EMPLOYMENT PRACTICES LIABILITY)

6.1 Preamble

The Exclusions within this section apply to Insuring Clause D (Employment Practices Liability) only. They are in addition to the Exclusions in Policy Section 3.

The Insurer shall not be liable under this Policy to make any payment for Loss arising from any Claim against any Insured directly or indirectly based upon, attributable to or in consequence of any:

6.2 Criminal Proceedings

criminal, administrative or other disciplinary proceeding against any Insured.

6.3 Benefits

actual or alleged obligation of any Insured:

6.3.1 pursuant to any workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, superannuation, retirement benefits, social security benefits, or similar law.

6.3.2 for or in respect of employment entitlements such as but not limited to employee share or equity plans, bonuses or incentives of any kind, leave or similar entitlements, severance or redundancy, superannuation contributions and similar alleged entitlements or amounts.

- 6.4 Unfair Contract**
actual or alleged unfair contract of employment, including but not limited to any claim or proceeding brought under Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) 1999 or similar legislation in any other State, Territory, or jurisdiction.
- 6.5 Building Modifications**
costs incurred by the Insured to modify any building or property in order to make such building or property more accessible or accommodating to any disabled person. This Exclusion does not apply to Defence Costs.
- 6.6 Continuity of Employment Benefits**
employment-related benefits (other than back pay) to which the claimant would have been entitled as an employee had the Insured provided the claimant with a continuance, reinstatement or commencement of employment. This Exclusion does not apply to Defence Costs.
- 6.7 Non-Pecuniary Relief**
cost of compliance with any order for, grant of, or agreement to provide injunctive or non-pecuniary relief. This Exclusion does not apply to Defence Costs.
- 7. CLAIMS CONDITIONS**
- 7.1 Reporting and Notice**
- 7.1.1 The Insured shall give to the Insurer written notice as soon as practicable of any Claim made against an Insured PROVIDED ALWAYS THAT such written notice is given to the Insurer during the Period of Insurance in which the Claim is made or discovered.
- 7.1.2 Notice of any Claim shall be given in writing to the Insurer and delivered to the address stated in the Schedule.
- 7.2 Official Investigations and Inquiries – Costs & Expenses**
In relation to any cover afforded under Insuring Clause E – (Official Investigations and Inquiries), the following provisions apply:
- 7.2.1 the Insurer shall be entitled, at its discretion, to appoint legal representation to represent the Insured in the Official Investigation or Inquiry; and
- 7.2.2 in the event that a claim for payment of Investigation Costs & Expenses is subsequently withdrawn or denied, the Insurer shall cease to advance Investigation Costs & Expenses and the Insured (for their respective rights and interests) shall refund any Investigation Costs & Expenses advanced by the Insurer, unless the Insurer agrees in writing to waive recovery of such Investigation Costs & Expenses; and
- 7.2.3 the Deductible shall apply to each and every Official Investigation or Inquiry.
- 7.2.4 Official Investigation or Inquiry is deemed to be a Claim, notwithstanding that there has been no allegation of a Wrongful Act against the Insured. The sub-limit for such Investigation Costs & Expenses is not increased.
- 7.3 Deductible**
- 7.3.1 In respect of each Claim made against the Insured (or each claim by the Insured under Insuring Clause E (Official Investigations and Enquiries – Costs & Expenses), the amount of the Deductible shall be borne by the Insured at their own risk and the Insurer shall only be liable to indemnify the Insured for that part of any Claim (or any loss or claim) which is in excess of the Deductible.
- 7.3.2 In the event of a claim by the Insured under this Policy, the Insured shall, if directed by the Insurer, pay to the Insurer (or as is directed by the Insurer) the Deductible within seven (7) working days. Any delay, failure or refusal by the Insured to pay the Deductible will entitle the Insurer to deduct such amount from any amount(s) required to settle any Claim or judgement, order, or any other payment to be made by the Insurer under this Policy. In the event that a failure or refusal to grant access to monies for any Deductible results in a failure of a settlement or an increase in Defence Costs, the Insurer's liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Defence Costs incurred with the Insurer's written consent up to the date of such failure or refusal, less the Deductible.
- 7.3.3 Where the Insurer has elected to pay all or part of the Deductible in respect of any Claim (or any loss or claim), the Insured shall, within seven (7) working days from the date of such payment, reimburse the Insurer for such payment.
- 7.3.4 Where the amount of the Claim is less than the amount of the Deductible, the Insured shall bear all Defence Costs associated therewith unless the Insurer shall have agreed to meet such Defence Costs.
- 7.3.5 Any costs and expenses incurred by the Insurer to determine whether the Insurer has a liability to indemnify the Insured under this Policy shall not be subject to the Deductible but shall be borne by the Insurer.
- 8. DEFINITIONS**
- The following words have the following meaning for this Section only:
- 8.1 Aggregate Limit of Liability** means the amount shown as the Aggregate Limit of Liability in the Schedule for this Section and is inclusive of all Loss, loss and Defence Costs. If no amount is shown for this Section, the Aggregate Limit of Liability in respect of all Claims, Loss, loss and Defence Costs for this Section is no greater than the Limit of Liability.

- 8.2 Auditor** means an officer who is authorised under Commonwealth, State or Territory legislation to carry out a Tax Audit of the Corporation's taxation or financial affairs or Return on behalf of the Australian Taxation Office.
- 8.3 Business Crisis Consultant Fees** means the reasonable costs, charges, fees and expenses of an independent management consultant engaged to minimise the effect of a Business Crisis Event.
- 8.4 Business Crisis Event** means any unforeseen event which, in the reasonable opinion of the Chief Executive Officer (or equivalent) of the Corporation, if left unmanaged has the potential to lead to an imminent decrease of 20% or more of the Corporation's consolidated annual revenues.
- 8.5 Claim** means
- 8.5.1 subject to clauses 8.5.2, 8.5.3 and 8.5.4:
- 8.5.1.1 a written allegation communicated to any Insured of a Wrongful Act;
- 8.5.1.2 a civil proceeding commenced by the service of a complaint, summons, statement of claim, third party notice, cross claim or similar pleading alleging any Wrongful Act;
- 8.5.2 for Insuring Clauses A (Directors & Officers Insuring Clause) and B (Corporate Entity and Trust Reimbursement) a criminal proceeding commenced by a summons or charge alleging any Wrongful Act;
- 8.5.3 for the purposes of Policy Extension 4.6 (Statutory Penalties) any written notice received by an Insured which alleges a Wrongful Breach and alleges that an Insured is liable to pay a Penalty.
- 8.5.4 For the purposes of Insuring Clauses C (Corporate Entity Liability Insuring Clause) and Extensions 3.10(Intellectual Property) and 3.7(Defamation):
- 8.5.4.1 a written allegation communicated to any Insured by a third party of a right to compensation as a result of a Wrongful Act.;
- 8.5.4.2 a civil proceeding commenced by the service of a complaint, summons, statement of claim, third party notice, cross claim or similar pleading alleging by a third party of a right to compensation as a result of a Wrongful Act.
- 8.6 Corporate Manslaughter Proceeding** means a formal criminal proceeding brought against an Insured Person for involuntary manslaughter (including constructive manslaughter or gross negligence manslaughter) in their capacity as an Insured Person and directly related to the business of the Corporation.
- 8.7 Corporation** means the entity specified in the Schedule for this Section and shall be deemed to include any Subsidiary.
- 8.8 Insured** means:
- 8.8.1 the Corporation,
- 8.8.2 any Insured Person;
- 8.9 Insured Person** means:
- 8.9.1 any past, present, or future director, secretary, officer, office bearer or Employee of the Corporation, including any natural person who is deemed to be a director or officer by virtue of any applicable legislation;
- 8.9.2 any past, present, or future secretary, officer, office bearer, member, committee member or Employee of the resident's association if such association or committee is incorporated and or formed with the consent of the Named Insured.
Insured Person shall however not include:
- 8.9.3 a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made between the Corporation and any other person or persons; or
- 8.9.4 any company, organisation or other body corporate; or
- 8.9.5 a person acting in the capacity as a Trustee.
- 8.10 Investigation Costs and Expenses** means the reasonable legal costs and expenses incurred by the Insurer or by the Insured with the Insurer's written consent in connection with the Insured Person's attendance at an Official Investigation or Inquiry.
- It does not mean:
- 8.10.1 Regular or overtime wages, salaries or fees of any Insured Person; or
- 8.10.2 costs and expenses incurred by or on behalf of the Corporation.
- 8.11 Joint Venture** means any enterprise undertaken jointly by the Corporation with a third party or parties.
- 8.12 Joint Venture Partner** means any non-Insured who jointly participates with the Corporation in any Joint Venture.
- 8.13 Official Investigation or Inquiry** means an official investigation, examination or inquiry conducted by a Regulatory Authority in relation to the affairs of the Corporation where such Official Investigation or Inquiry may lead to a recommendation in respect of civil or criminal liability, or civil or criminal proceedings, and which would be the subject of a Claim or Defence Costs covered by this Policy, including such an investigation, examination or inquiry by way of Royal Commission or Coronial Inquiry or conducted by a regulatory authority such as the Australian Securities and Investments Commission or Workcover.

- However, Official Investigation or Inquiry does not include:
- 8.13.1 any industry based investigation or inquiry or Royal Commission; or
 - 8.13.2 any investigation, examination or inquiry conducted by a parliament, or any committee of a parliament, or
 - 8.13.3 any disciplinary committee of any association or professional body of which the Insured is a member.
- 8.14 Original Expiry Date** means the last day of the Period of Insurance as listed on the Schedule.
- 8.15 Outside Directorship** means the position of director, secretary, officer, office bearer, or committee member held by an Insured Person in an Outside Entity, which position is held:
- 8.15.1 with the knowledge and consent of the Corporation; and
 - 8.15.2 for the purpose of representing the Corporation.
- 8.16 Outside Entity** means any entity which is not the Corporation or a Subsidiary, and in which an Outside Directorship is held by an Insured Person.
- 8.17 Professional Adviser** means:
- 8.17.1 an accountant who is a member of a nationally recognised accounting body, a registered tax agent or tax consultant; and
 - 8.17.2 any other professional person or consultant engaged by or at the recommendation of the person referred to in paragraph 8.17.1, but does not mean the Corporation or any person working for the Corporation under a contract of employment.
- 8.18 Return** means any return, legally required to be, and actually lodged with, a government or government authority or agency by the Corporation or on its behalf.
- 8.19 Wrongful Act** means:
- 8.19.1 for the purposes of Insuring Clauses A and B, in respect of Insured Persons, any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement or other act committed or allegedly committed or attempted by any Insured Person in the course of their duties for or on behalf of the Corporation. It does not include conduct as a Trustee. For the purpose only of Extensions 4.4 and 4.5 (Outside Directorship Covers), it also includes such actual or alleged conduct in the course of their duties to the Outside Entity.
 - 8.19.2 for the purposes of Insuring Clauses A and B in respect of Trustees, any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or allegedly committed or attempted by any Trustee, in the course of executing any of the functions of the Trust.
 - 8.19.3 for the purposes of Insuring Clause C in respect of the Corporation, any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or allegedly committed or attempted by any Insured in the course of undertaking the business of the Corporation. It does not include conduct as a Trustee.
 - 8.19.4 for the purposes of Insuring Clause D, any of the following actual or alleged conduct by an Insured Person in the course of their duties to the Corporation, or by the Corporation:
 - (i) (a) discharge or termination, either actual or constructive, of an employment relationship;
 - (b) breach of any oral or written, express or implied, employment contract or quasi-employment contract;
 - (c) misleading representation or advertising relating to employment.
 - (ii) (a) failure to employ or promote;
 - (b) unfair deprivation of a career opportunity
 - (c) unfair discipline;
 - (d) failure to grant tenure;
 - (e) negligent employee evaluation.
 - (iii) workplace harassment of any kind (whether sexual or otherwise), including the alleged creation or permission of a harassing workplace environment.
 - (iv) employment-related:
 - (a) denial of natural justice;
 - (b) invasion of privacy;
 - (c) defamation;
 - (d) infliction of emotional distress;
 - (e) discrimination on any legally prohibited basis.
 - 8.19.5 For the purposes of Extension 3.10 (Intellectual Property), any unintentional infringement of copyright, trademarks, registered designs or patents, or any plagiarism or breach of confidentiality.
 - 8.19.6 For the purposes of Extension 3.7 (Defamation), any actual or alleged conduct referred to therein.
- 8.20 Wrongful Breach** means any conduct by an Insured which results in a contravention of:
- 8.20.1 any occupational, health, or safety legislation enacted by the Commonwealth of Australia or any state or territory of Australia; or
 - 8.20.2 the Corporations Act 2001.

