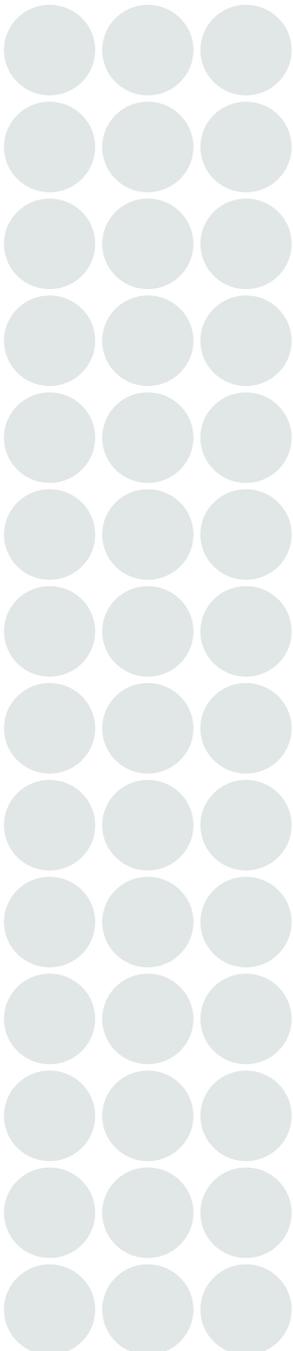
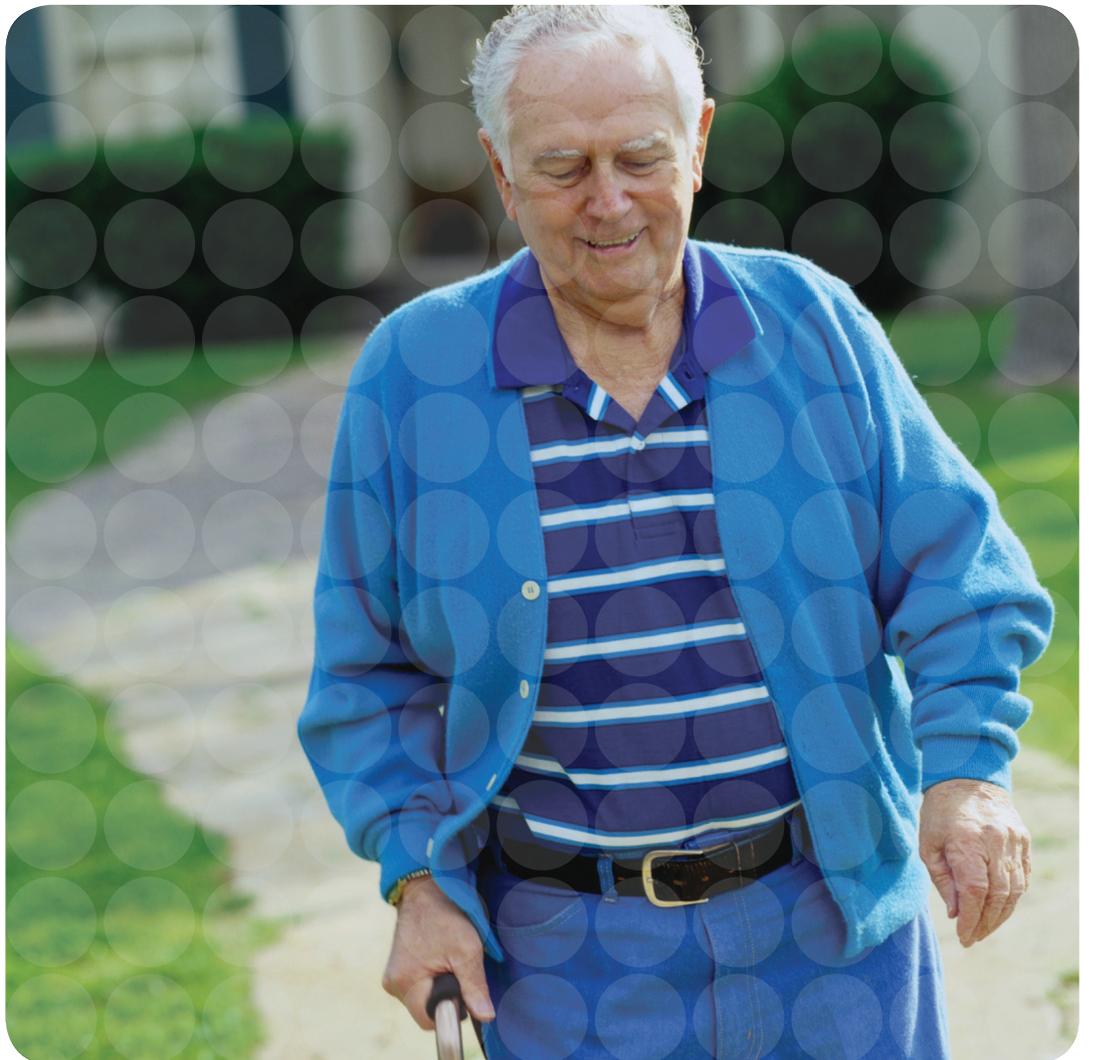


Zurich Community Care Liability Insurance

Group Policy Wording



Important

Statutory Notice – Section 40 Insurance Contracts Act 1984 (Cth)

This notice is provided in connection with but does not form part of the policy.

Section 2 of this policy is a 'Claims Made' liability insurance policy. It only provides cover if:

A *claim* is made against an *affiliated carer*, by some other person, during the period when the policy is in force; and

The *claim* arises out of *circumstances* committed, attempted or alleged to have been committed or attempted after the *retroactive date* stipulated in the *schedule*.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if an *insured* becomes aware, during the period when the policy is in force, of any occurrence or fact which might give rise to a *claim* against them by some other person, then provided that the *insured* notifies Zurich of the matter before this policy expires, Zurich may not refuse to indemnify merely because a *claim* resulting from the matter is not made against an *insured* while the policy is in force.

If an *insured*, inadvertently or otherwise, does not notify the relevant occurrence or facts to Zurich before the expiry of the policy, the *insured* will not have the benefit of section 40(3) and Zurich may refuse to pay any subsequent *claim*, notwithstanding that the events giving rise to it or the *circumstances* alleged in it may have taken place during the *period of insurance*.

If a *claim* is actually made against the *insured* by some other person during the *period of insurance* but is not notified to Zurich until after the policy has expired, Zurich may refuse to pay or may reduce its payment under the policy if it has suffered any financial prejudice as a result of the late notification.

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Welcome to Zurich

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507, a subsidiary of Zurich Financial Services Australia Limited (ZFSA). In this document, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurance provider with a global network of subsidiaries and offices. With about 55,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

About Insureds

An *affiliated carer* has a right to recover under this policy only through Section 48 of the Insurance Contracts Act 1984 (Cth) and is not a party to the contract of insurance. Only the *policy owner* is able to vary or cancel the policy, however *insureds* can also make decisions that affect whether they are covered by the policy, for example, whether they perform *approved care work*.

Understanding the Policy

To properly understand the policy's significant features, benefits and risks, an *affiliated carer* needs to carefully read:

- each of the available types of cover and benefits (Sections 1 and 2);
- the rest of this introduction which sets out how an *affiliated carer* applies for cover, the basis on which we provide insurance, the 'Duty of Disclosure' that needs to be met, our privacy information and our dispute resolution procedures;
- the 'Definitions' which set out what we mean by certain words used in the policy;
- the 'General Exclusions – Section 1 and 2' and additional 'Exclusions' within each Section which set out the exclusions and limits that apply to all or specific covers and benefits;
- the 'General Conditions – Section 1 and 2', 'Claims Conditions' and 'Additional Conditions' within each Section which set out certain general rights and obligations that the *policy owner*, the *insureds* and we have. If not met we may be able to refuse to pay or reduce what we pay for a *claim* to the extent permitted by law;
- the 'General Extensions of Cover – Section 1 and 2' and 'Extensions of Cover' within each Section set out additional coverage which apply consequent on a *claim* being admitted under the relevant Section;
- certificate of currency issued to an *affiliated carer* or the *policy schedule*, and any endorsements or other written changes to the cover we issue.

Applying for cover

An *affiliated carer* applies for cover under this group policy by completing an application process on the *policy owner's* 'Better Caring' website. At that time, we or our representative shall confirm whether the *affiliated carer* is accepted as an *insured* under the group policy. If the *affiliated carer's* application for cover is accepted, we will issue them a certificate of currency showing relevant details of cover.

When cover starts and ends

An *insureds* ability to access cover:

- starts at the time the relevant person becomes an *insured*; and
- ends when the relevant person no longer meets the definition for an *insured* or at the end of the *period of insurance* (whichever is the earliest).

Basis on which we provide insurance

We agree to provide insurance:

- based on the information provided and subject to payment of the required premium by the required date;
- in accordance with the policy terms and conditions. Please carefully read all of these and keep them in a safe place.

Duty of Disclosure

Before the *policy owner* enters into a contract of general insurance with us, the *policy owner* has a duty, under the Insurance Contracts Act 1984 (Cth), to tell us every matter that the *policy owner* knows, or could reasonably be expected to know, is relevant to our decision whether to provide insurance and whether any special conditions need to apply to the policy.

The *policy owner* has the same duty to disclose those matters to us before the *policy owner* renews, extends, varies or reinstates the Policy. The *policy owner* doesn't however need to tell us about any matter that:

- diminishes our risk;
- is of common knowledge;
- we know or should know as insurers; or
- that we tell the *policy owner* we do not need to know.

If we offer to renew this policy, we may give the information about the disclosures that have previously been made and ask the *policy owner* to tell us if there has been any change to those matters. If the *policy owner* does not disclose any change to those matters, which a reasonable person in the circumstances would disclose, then the *policy owner* will be taken to have informed us that there are no changes to those matters.

If the *policy owner* does not comply with this duty, we may cancel the policy or reduce the amount we pay if a *claim* is made. If fraud is involved, we may treat the policy as if it never existed, and pay nothing.

In the case of *insureds*, there is no statutory duty of disclosure which exists. However it is a condition of provision of cover in respect of an *affiliated carer* under this policy that the *policy owner* obtain an insurance application from each *affiliated carer* through the *policy owner's* 'Better Caring' website before cover to that *affiliated carer* is provided and we will not be liable to provide or to pay benefits where there has been misrepresentation or non-disclosure by an *insured*.

For these purposes we will treat an *affiliated carer* as if they did owe a duty of disclosure to us and without limitation will exercise any powers in respect of non-payment of benefits or cancellation of cover which we could exercise under the Insurance Contracts Act 1984 (Cth) if an *affiliated carer* did owe us a duty of disclosure.

Non-disclosure or Misrepresentation

If the *policy owner* or an *insured* makes a misrepresentation to us, or if they do not comply with this duty of disclosure and we issue the policy with terms and conditions that are different to the terms and conditions that would have been issued had there not been any misrepresentation, or the *policy owner's* or *insured's* duty of disclosure had been complied with, then:

- we may reduce the cover provided so that we are placed in the same position as we would have been in, had there not been any misrepresentation and the *policy owner's* or *insured's* duty of disclosure had been complied with; and
- we may also cancel the policy; or
- we may treat the policy as if it never existed if the misrepresentation or the non-compliance with the *policy owner's* or *insured's* duty of disclosure was fraudulent.

Our contract with the policy owner

This policy is a contract of insurance between the *policy owner* and Zurich and contains all the details of the cover that we provide.

This policy is made up of:

- the policy wording. It states what is covered, sets out the claims procedure, Exclusions and other terms and conditions of cover;
- the submission which is the information provided to us when applying for insurance cover;
- the most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to the *policy owner*. It includes any changes, exclusions, terms and conditions made to suit the individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the policy *schedule* are insured. We reserve the right to change the terms of this product where permitted to do so by law.

Significant issues to consider

Insurance contracts contain policy exclusions, policy terms and conditions and policy limits and sub-limits that all *insureds* should be aware of when making decisions in respect of the policy. These things may affect the amount of the payment that we will make to *insureds* in the event of a *claim*.

An *affiliated carer* should be aware of the following matters in considering whether this product is suitable for their needs:

- it is a condition of provision of cover in respect of an *insured* under this policy that the *policy owner* obtains an application from each *affiliated carer* through the *policy owner's* 'Better Caring' website before cover to that *affiliated carer* is provided and, subject to the provisions of the Insurance Contracts Act 1984 (Cth), we will not be liable to provide or to pay benefits where there has been misrepresentation or non-disclosure by an *insured*. For these purposes we will treat an *affiliated carer* as if they did owe a duty of disclosure to us;
- as this is a group policy, limits shown as applying in the aggregate are shared across all *insureds* and effective cover may not be available to a particular *insured* if the limit has been reached by *claims* on other *insureds*. Where an aggregate liability nears an aggregate limit, the *policy owner* may apply for a new policy or a reinstatement of the cover at an additional cost. If there is a reinstatement as per Section 2 – Extensions of Cover 3.10 'Reinstatement' there shall be no reinstatement of any sub-limit;
- the *policy owner* may vary the policy with our consent and alter the cover under the policy.

Deductibles can apply

For each of the available covers, a *deductible* may apply.

A *deductible* is not an additional fee charged by us at the time of making a *claim*. Rather, it is amount which is the responsibility of the *insured*, and will be the first amount borne by the *insured* and shall remain uninsured. The *deductible* shall be paid by the *insured* and shall be applicable to each *claim* and shall include *loss* and *claim expenses*.

Details of the *deductible* amounts are set out in the certificate of currency and policy *schedule*.

Exclusions

The policy contains a number of exclusions, some of which are common in insurance policies. Some of the exclusions may be less common, and as such may be unexpected. Before making a decision in relation to this product, an *affiliated carer* should read the full details of all relevant exclusions, which are contained in the policy wording. Some may not be relevant to the *affiliated carer's professional business practice*, however, an *affiliated carer* should make themselves aware of all the exclusions. Please refer to 'General Exclusions – Section 1 and 2' and additional 'Exclusions' within each Section.

Terms and Conditions

Terms and conditions in the policy include obligations with which an *affiliated carer* needs to comply and set out how the policy is administered. An *affiliated carer* should make themselves aware of all the terms and conditions that apply. The terms and conditions impact on how we administer the policy and if the *policy owner* or an *insured* does not meet all of their obligations, we may be able to decline or reduce the *claim* payment or cancel the cover. The terms and conditions are included within the 'General Conditions – Section 1 and 2', 'Claims Conditions' and 'Additional Conditions' within each Section.

Additional Extensions of Cover

Extensions of Cover in the policy provides additional coverage which apply consequent on a *claim* being admitted under the relevant Section as set out in each Section. Some of the extensions of cover have sub-limits that apply to each individual *affiliated carer* and in the aggregate for all *insured's* during the *period of insurance*. An *affiliated carer* should make themselves aware of all the extensions of cover that apply. The extensions of cover are included within the 'General Extensions of Cover – Section 1 and 2' and 'Extensions of Cover' within each Section.

Privacy

Zurich is bound by the Privacy Act 1988. We collect, disclose and handle information, and in some cases personal or sensitive (eg health) information, about *insureds* ('your details') to assess applications, administer policies, contact *insureds*, enhance our products and services and manage claims ('Purposes'). If an *affiliated carer* does not provide the information, we may not be able to do those things. By providing us or Gow-Gates Insurance Brokers Pty Ltd with information, you consent to us using, disclosing to third parties and collecting from third parties your details for the Purposes.

We may disclose your details, including sensitive information, to relevant third parties including Gow-Gates Insurance Brokers Pty Ltd, affiliates of Zurich Insurance Group Ltd, reinsurers, our service providers, our business partners, health practitioners, your employer, parties affected by claims, government bodies, regulators, law enforcement bodies and as required by law, within Australia and overseas. Laws authorising or requiring us to collect information include the Insurance Contracts Act 1984, Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Corporations Act 2001, Autonomous Sanctions Act 2011, A New Tax System (Goods and Services Tax) Act 1999 and other financial services, crime prevention, trade sanctions and tax laws.

We may obtain your details from relevant third parties, including those listed above. Before giving us information about another person, please give them a copy of this document.

Zurich's Privacy Policy, available at www.zurich.com.au or by telephoning us on 132 687, provides further information and lists service providers, business partners and countries in which recipients of your details are likely to be located. It also sets out how we handle complaints and how an *insured* can access or correct your details or make a complaint.

General Insurance Code of Practice

The General Insurance Code of Practice was developed by the Insurance Council of Australia to further raise practice standards and service levels across the insurance industry. We support the standards set out in the Code. An *insured* can obtain more information on the Code of Practice and how it assists you by visiting www.insurancecouncil.com.au or phoning 02 9253 5100.

Dispute resolution

If an *insured* has a complaint about an insurance product we have issued or service we have provided, please contact Gow-Gates Insurance Brokers Pty Ltd to initiate the complaint with ZAIL or alternatively contact ZAIL directly on 132 687.

ZAIL will respond to the complaint within 15 working days. If the *insured* is not satisfied with our response, the *insured* may have the matter reviewed through ZAIL's internal dispute resolution process, which is free of charge.

Community Care Liability Insurance

In consideration of the *policy owner* having paid or agreed to pay the premium, Zurich, on the basis of all information provided to us, agrees with the *policy owner* to provide insurance as follows, subject to the provisions of this policy and on the basis that this policy shall not be in force unless it has been signed by an authorised Zurich official.

1. Definitions

When used in this policy, its *schedule* and its endorsements, the following definitions shall apply:

1.1 Act of terrorism

act of terrorism means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- 1.1.1 involves violence against one or more persons;
- 1.1.2 involves damage to property;
- 1.1.3 endangers life other than that of the person committing the action;
- 1.1.4 creates a risk to health or safety of the public or a section of the public; or
- 1.1.5 is designed to interfere with or to disrupt an electronic system.

1.2 Advertising liability

advertising liability means:

- 1.2.1 infringement of copyright of, or passing off of a title or slogan;
- 1.2.2 unfair competition, piracy or idea misappropriation contrary to an implied contract;
- 1.2.3 invasion of privacy; or
- 1.2.4 defamation, libel, slander,

committed or alleged to have been committed during the *period of insurance* in any advertisement, publicity article, broadcast or telecast arising out of the *insured's* advertising activities or any advertising activities conducted on the *insured's* behalf, in the course of advertising the *products*, goods or services related to those *products*.

1.3 Affiliated Carer

affiliated carer means an individual natural person or company or other entity who the *policy owner* notifies to us for the *period of insurance* as a person providing *approved care work* and who:

- 1.3.1 has not been referred to us for individual underwriting; or
- 1.3.2 has been referred to us for individual underwriting and has been accepted by us as an *insured*.

1.4 Aircraft

aircraft shall mean any vessel, craft or thing made, or intended, to fly or move in or through the atmosphere or space.

1.5 Approved care work

approved care work means work arranged and invoiced through the *policy owner's* 'Better Caring' website involving *professional business practice*. *Approved care work* excludes any activity undertaken by an *affiliated carer* outside of such an arrangement.

1.6 Business

business means all the *affiliated carer's* activities and operations stated in the *schedule* or the certificate of currency and:

1.6.1 for the purpose of Section 1; and

1.6.2 for the purpose of Section 2, the provision of *professional business practice*,

in respect of an *affiliated carer's approved care work* and as per the agreement with the corresponding client only, and for no other activities outside of this arrangement.

1.7 Circumstances

circumstances means any incident, occurrence, fact or matter which may give rise to a *claim*.

1.8 Civil liability

civil liability means liability of the *insured* to any civil cause of action for *compensation*, based solely on its provision of, or failure to provide, the *professional business practice*. It does not include any liability, of whatever nature and however arising, for aggravated, punitive or exemplary damages or for civil or criminal penalties, fines or sanctions.

1.9 Claim

claim means any oral or written demand for *compensation* from a *third party* which is received by an *insured*, including but not limited to a civil proceeding commenced by the service of a statement of claim, writ, complaint or similar pleading, or an arbitration or other alternative dispute resolution proceeding.

1.10 Claim expenses

claim expenses means all reasonable legal costs and expenses necessarily incurred with our prior written consent in the investigation, defence and settlement of any *claim* covered by this policy, except any internal or overhead expenses or costs incurred by an *affiliated carer* and any salary or remuneration of any *employee*.

1.11 Compensation

compensation means monies paid or agreed to be paid by judgment or settlement for:

1.11.1 *personal injury*;

1.11.2 *property damage*;

1.11.3 *advertising liability*;

1.11.4 *malpractice*; or

1.11.5 *civil liability*.

1.12 Computer virus

computer virus means an executable program or computer code segment that is self-replicating, requires a host program or executable segment in which it can be contained, and which destroys or alters the host, program or other computer code or data, causing undesired program or computer system operation.

1.13 Deductible

deductible means the amount an *affiliated carer* first bears in relation to each *claim* or *occurrence* and is specified in the *schedule*, in accordance with each Section of this policy. The *deductible* applies to all amounts payable under this policy including the indemnity provided under any Extensions of Cover (unless otherwise stated therein).

1.14 Employee

employee means:

- 1.14.1 any person under a contract of service or apprenticeship with an *affiliated carer*;
- 1.14.2 any labour master or person supplied;
- 1.14.3 any self-employed person working under contract with an *affiliated carer* and under its direction; or
- 1.14.4 any student or person undertaking work for an *affiliated carer* under a work experience or similar scheme,

whilst engaged in connection with the *business*.

1.15 Employment Practices

employment practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment by an *affiliated carer*.

1.16 Family member

family member means any spouse, former spouse, partner, parent, child, grandparent, aunt, uncle, niece, nephew, cousin or sibling of an *insured*.

1.17 Good Samaritan Act

good samaritan act means treatment administered at the scene of a medical emergency, accident or disaster, by an *insured* of an *affiliated carer*, who is present either by chance or in response to an S.O.S. call following a disaster.

1.18 Hovercraft

hovercraft means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

1.19 Insolvency

insolvency means in relation to any *insured*:

- 1.19.1 being under administration or insolvent, each as defined in the Corporations Act 2001 (Cth);
- 1.19.2 having a controller (as defined in the Corporations Act 2001 (Cth)) appointed;
- 1.19.3 being in receivership, in receivership and management, in statutory management, in liquidation, in provisional liquidation, wound up, subject to any scheme of arrangement, assignment, composition or other form of moratorium or protection from creditors or in bankruptcy;
- 1.19.4 being otherwise unable to pay any debts as and when they fall due;
- 1.19.5 having anything with the same or similar effect happen under the laws of any jurisdiction.

1.20 Insured

insured means an *affiliated carer*, and includes:

- 1.20.1 any person who is, at inception of the *period of insurance*, a principal, partner or director of the *affiliated carer*;
- 1.20.2 any person who becomes, during the *period of insurance*, a principal, partner or director of the *affiliated carer* in respect of the provision of the *insured's professional business practice*;
- 1.20.3 any former principal, partner or director of the *affiliated carer* (in respect of work performed for and on behalf of the *affiliated carer* in the provision of the *professional business practice*); and
- 1.20.4 any past or present *employee* of the *affiliated carer* acting within the scope of their employment in the provision of the *affiliated carer's professional business practice*.

1.21 Internet operations

internet operations means:

- 1.21.1 transfer of computer data or programmes by use of electronic mail systems by an *affiliated carer* or the *affiliated carer's employees*, including for the purpose of this definition only, part-time and temporary staff, contractors and others within the *affiliated carer's* organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to *computer virus*, worm, logic bomb, or trojan horse;
- 1.21.2 access through an *affiliated carer's* network to the world wide web or a public internet site by an *affiliated carer* or the *affiliated carer's employees*, including for the purposes of this definition only, part-time and temporary staff, contractors and others within the *affiliated carer's* organisation;
- 1.21.3 access to the *affiliated carer's* intranet (meaning internal company information and computing resources) which is made available through the world wide web for the *affiliated carer's* customers or others outside the *affiliated carer's* organisation; and
- 1.21.4 the operation and maintenance of the *affiliated carer's* web site.

1.22 Inquiry

inquiry means any hearing related to the provision of the *professional business practice* by an *insured* or for representation at any inquest, fatal inquiry or criminal proceedings relating to an *occurrence*, which from such inquiry or hearing could lead to a *claim* for *compensation* being made against the *insured* which may be covered under this policy.

1.23 Inquiry costs

inquiry costs means reasonable legal, assessors, adjusters and expert witness costs incurred with our written consent but does not include any *insured's* or *employee's* salaries, wages, travel or accommodation expenses.

1.24 Limit of liability

limit of liability means, for Section 1 of this policy, the Limit of Liability stated in the *schedule* for this cover, and for Section 2 of this policy, the Limit of Liability stated in the *schedule* for this cover.

1.25 Loss

loss means the following for which the *insured* is legally liable:

- 1.25.1 *compensation* and/or claimant's costs pursuant to an award or judgment against any *insured*;
- 1.25.2 settlements negotiated by us and consented to by the *insured*;
- 1.25.3 settlements negotiated by the *insured* but only with our prior written consent;
- 1.25.4 *claim expenses*;
- 1.25.5 *inquiry costs*.

But *loss* does not include:

- (i) wages, salary, commission, fees, charges and other form of remuneration or profit to be repaid, lost or foregone by the *insured*, as a result of a *claim*;
- (ii) any component of an award or settlement which represents the cost of performance of the *insured's* original contractual obligations, non-fulfilment or negligent performance of which has given rise to the *claim*;
- (iii) any aggravated, punitive or exemplary damages or any civil or criminal penalties, fines or sanctions.

For the purpose of the *limit of liability*, sub-limits and other applicable terms and conditions of the policy, *loss* also includes all other amounts covered by the policy, including those amounts which are not dependent upon the making of a *claim* against any *insured*.

1.26 Malpractice

malpractice means the breach of a duty of care or a statutory duty (including but not limited to obligations arising under the Competition and Consumer Act 2010 (Cth) and related or similar legislation) owed solely and specifically to any person admitted to the care of the *insured* in the capacity of a person or entity providing the nursing and related *professional business practice*, other than *medical services*, associated with the conduct of the *professional business practice*, toward a recipient of those services.

1.27 Medical personnel

medical personnel means any person, whether authorised and legally licensed to do so or not, who provides *medical services* in connection with the *professional business practice* or at any premises at which the *professional business practice* is carried on.

1.28 Medical services

medical services means advice, treatment or other services provided to any person admitted to the care of the *insured*, of a sort which may only be provided by a duly qualified and licensed medical practitioner.

1.29 Molestation

molestation means any assault or abuse of a sexual nature, sexual molestation, indecent exposure, sexual harassment or intimidation, whether such act is the subject of criminal investigation or not.

1.30 Motor vehicle

motor vehicle means any type of machine and attachments thereto including a trailer designed for use on land only, and which travels on wheels or on self laid tracks and is propelled by other than manual or animal power.

1.31 North America

North America means:

- 1.31.1 the United States of America and Canada; and
- 1.31.2 any state or territory incorporated in, or administered by, the United States of America or Canada.

1.32 Occurrence

occurrence means an event, including continuous or repeated exposure to conditions, which results in *personal injury*, *property damage* or *advertising liability* neither expected nor intended from an *affiliated carer's* standpoint, during the *period of insurance*.

With respect to *personal injury* or *property damage*, all such exposure to substantially the same general conditions shall be deemed one *occurrence*.

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

1.33 Period of insurance

period of insurance means the Period of Insurance stated in the *schedule*.

1.34 Personal injury

personal injury means:

- 1.34.1 bodily injury, death, disease, illness, disability, nervous shock, mental anguish or mental injury or loss of consortium;
- 1.34.2 false arrest, false detention, wrongful imprisonment, malicious prosecution or humiliation;
- 1.34.3 wrongful entry or wrongful eviction or other invasion of privacy;
- 1.34.4 defamation, libel or slander; and
- 1.34.5 assault and/or battery committed by or at the direction of an *affiliated carer* whilst engaged in the *business* and for the purpose of preventing or eliminating danger to persons or property.

1.35 Policy owner

policy owner means Better Caring Pty Limited, ABN 80 162 890 379.

1.36 Pollutants

pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

1.37 Privacy costs and expenses

privacy costs and expenses means legal costs and expenses reasonably and necessarily incurred by the *affiliated carer* with our written consent arising out of:

- 1.37.1 an *affiliated carer'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 patient arising at law or any unintentional breach of the Privacy Act 1988 (Cth), 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; and
- 1.37.2 an *affiliated carer's* attendance or representation before any Privacy Commissioner, Private Code Adjudicator, Administrative Tribunal or Court in relation to the unintentional breach of any of the above legislation.

Privacy costs and expenses 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*.

1.38 Products

products means any goods or products manufactured, grown, extracted, produced, processed, treated, altered, handled, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by the *affiliated carer* (including packaging and containers) in connection with the *business* in or from the *territorial limits*, and after it has ceased to be the *affiliated carer's* property, or in the *affiliated carer's* custody or legal control.

1.39 Professional business practice

professional business practice means the activities conducted by the *affiliated carer* as specified in the *schedule* and or certificate of currency. It does not include the provision of services as a superannuation trustee in any respect, nor acting in a capacity as a director or officer.

1.40 Property damage

property damage means:

- 1.40.1 physical damage to, or loss of or destruction of tangible property, including the subsequent loss of use of that property;
- 1.40.2 loss of use and/or loss of value of tangible property that has not been physically damaged, physically lost or physically destroyed provided such loss of use and/or loss of value is caused by physical damage to, physical loss of or physical destruction of other tangible property; and includes denial of access to property, premises, services or facilities, interference with or stoppage of vehicular or pedestrian traffic; and
- 1.40.3 trespass, nuisance or interference with right of way or right to light air or water, easement or quasi-easement.

1.41 Retroactive date

retroactive date means the Retroactive Date specified in the *schedule*.

1.42 Schedule

schedule means the Schedule attaching to and forming part of this policy, including any Schedule substituted for the original Schedule.

1.43 Territorial limits

territorial limits means anywhere in the world, except *North America*, where the policy will only apply in respect of:

- 1.43.1 *products* exported to *North America*; and
- 1.43.2 *business visits* to *North America* by executives or sales persons normally resident in the Commonwealth of Australia or New Zealand.

1.44 Watercraft

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

2. General Extensions of Cover – Section 1 and 2

Cover is automatically provided on the same terms and in the same manner as in the Insuring Clauses for both Section 1 and 2 (except as stated), for the features described below. Each feature is subject to all provisions of this policy, including any additional terms stipulated in connection with it, and no feature shall increase our *limits of liability* unless expressly stated otherwise.

2.1 Additional payments

In addition to the *limit of liability*, we agree to pay the *claim expenses* in the settlement or defence of any *claim* for *compensation* in respect of which the *insured* is entitled to indemnity under this policy, or if sustained, would be so entitled of any *claim* which is the subject of indemnity under the Insuring Clauses, except:

- 2.1.1 where the *insured's* liability exceeds the available *limit of liability*, we shall only pay such proportion of the *claim expenses* as the available *limit of liability* bears to the *insured's* liability;
- 2.1.2 where the amount we have paid or incurred as *claim expenses* exceeds the share that we are obliged to pay, the *insured* shall upon demand pay to us the excess amount or alternatively, we may deduct the excess amount from any entitlements the *insured* may have at any time under this policy; and
- 2.1.3 in respect of any *loss* or *occurrence* in *North America*, or *losses* or *occurrences* in respect of which a *claim* for *compensation* is brought in a court of law in *North America*, the *limit of liability* specified in the *schedule* shall be inclusive of all such additional payments.

2.2 Claims preparation costs

We pay all reasonable and necessary out of pocket costs incurred by the *insured* at our request in the preparation of a defence to a *claim* covered by this policy, up to \$25,000 per *affiliated carer* with a total aggregate liability of \$250,000 for all *insureds* during any one *period of insurance* (which is included within and not in addition to the *limit of liability*) in respect of all *claims* covered by this policy.

Notwithstanding the *deductible* specified in the *schedule* this extension will be subject to an excess of \$1,000.

Payments provided under this extension, shall not include any *claim expenses*.

2.3 Court attendance costs

We agree to provide up to \$250 per day for an *insured* who is or was an *employee* of the *insured* and \$500 per day for any person who is or was a principal, partner or director of the *insured* for court attendance costs incurred by the *insured*, if the *employee*, principal, partner or director of the *insured* is legally compelled to attend a civil proceeding as a witness in a *claim* covered by this policy.

Our liability provided under this Extension of Cover shall not exceed \$25,000 per *affiliated carer* with a total aggregate liability of \$250,000 for all *insureds* during any one *period of insurance* and shall be part of and not in addition to the *limit of liability*.

2.4 Estates and legal representatives

We agree to indemnify the estate, heirs, legal representatives or assignees of any *insured* who is incapable of managing their own affairs by reason of mental disorder or other incapacity or who is deceased, insolvent or bankrupt, in the same manner and to the same extent that the relevant *insureds* would be entitled to be indemnified in respect of *claims* made against them. This clause only provides an indemnity in accordance with the Insuring Clauses in respect of *claims* solely based on the conduct of the relevant *insured* or *affiliated carer*. It does not respond where the conduct is that of the *insured's* estate, heir, legal representative or assignee.

2.5 Good Samaritan Acts

We agree to pay on behalf of any *insured* in respect of legal liability arising from the rendering of emergency first aid assistance, known as *good samaritan acts*, to any person other than relatives of the *insured* who reside with him/her provided, however, that we shall not be liable where the *insured* was acting at the time under a contract of employment with any employer other than the *affiliated carer*.

2.6 Inquiries

We will pay on behalf of the *insured* the *inquiry costs* which the *insured* incurs in preparing for and attending an *inquiry* provided that a notice requiring the *insured* to attend the *inquiry* is first served upon the *insured* during the *period of insurance* and reported to us during the *period of insurance*.

Our liability provided under this Extension of Cover shall not exceed \$50,000 per *affiliated carer* with a total aggregate liability of \$500,000 for all *insureds* during any one *period of insurance* and shall be part of and not in addition to the *limit of liability*.

2.7 Molestation by unknown offenders

Notwithstanding General Exclusions – Section 1 and 2, 3.9. 'Molestation', we will provide liability and *civil liability* attaching to the *insured* for *molestation* where the perpetrator of the *molestation* was:

- 2.7.1 a principal, partner, director or *employee* of the *affiliated carer*; and
- 2.7.2 the *affiliated carer* had in place the necessary protocols required by legislation to limit or prevent such abuse.

However, we will not pay any *compensation* where:

- (i) the *molestation* is committed with the *insured's* consent or through deliberate neglect on the *insured's* part;
- (ii) *molestation* is committed by the *insured* against any principal, partner, director or *employee*;
- (iii) the *insured* knew or ought reasonably to have known that the perpetrator of the *molestation* had previously:
 - (a) committed *molestation*; and/or
 - (b) been convicted of *molestation*; and/or
 - (c) whilst being a principal, partner, director or *employee* of the *insured*, been the subject of a prior complaint in respect of a *molestation* which had not been appropriately investigated by the *insured* or *affiliated carer*.

Our liability provided under this Extension of Cover shall not exceed \$2,000,000 per *affiliated carer* with a total aggregate liability of \$10,000,000 for all *insureds* during any one *period of insurance* and shall be part of and not in addition to the *limit of liability*.

Notwithstanding the *deductible* specified in the *schedule* this extension will be subject to an excess of \$10,000.

2.8 Public relations expenses

Where the *insured* retains the services of a public relations consultant for the sole purpose of protecting the *insured's* reputation that has been brought to question as a direct result of a *claim* covered by this policy, we agree to pay any reasonable fee, costs and expenses of such public relations consultant. However:

2.8.1 the *insured* must notify us within 30 days of first becoming aware of the *insured's* reputation being brought into question and provide full written details outlining the circumstances surrounding the event; and

2.8.2 we must have given prior written consent to retain the services of such public relations consultants; and

Our liability provided under this Extension of Cover shall not exceed \$15,000 per *affiliated carer* with a total aggregate liability of \$100,000 for all *insureds* during any one *period of insurance* and shall be part of and not in addition to the *limit of liability*.

3. General Exclusions – Section 1 and 2

We will not pay anything under this policy, including *claim expenses*, in respect of:

3.1 AIDS / HIV

any *claim* directly or indirectly arising from or in connection with any condition caused by or associated with Human Immunodeficiency Virus (HIV) or Lymphadenopathy Associated Virus (LAV) or the mutants derivatives or variations thereof or in any way related to the Acquired Immune Deficiency Syndrome (AIDS) or any syndrome or condition of a similar kind however named.

3.2 Asbestos

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from asbestos or asbestos products or asbestos contained in any products.

However, this Exclusion does not apply to actual or alleged loss, cost, expenses or liability where such loss, cost, expense or liability is not related to asbestos content of goods, materials or products or completed operations.

3.3 Contractual liability

any liability or obligation assumed by the *affiliated carer* under any agreement or contract except to the extent that:

3.3.1 the liability or obligation would otherwise have been implied by law;

3.3.2 the liability or obligation arises from a provision in a contract for lease of real or personal property other than a provision which obliges the *affiliated carer* to effect insurance or provide indemnity in respect of the subject matter of contract;

3.3.3 the liability or obligation is assumed by the *affiliated carer* under any warranty under the requirement of Federal or State legislation in respect to product safety;

3.3.4 the liability or obligation arises from a provision in a written contract with any public supplier for the supply of water, gas, electricity, fuel, sewerage or waste removal services, telephone and communications services, except contracts with such suppliers for the performance of work by the *affiliated carer*; or

3.3.5 the liability or obligation arises from a provision in a written contract with any railway authority, railway company or other independent carrier for the loading, unloading and/or transport of the *affiliated carer's products*, including any such contracts relating to the operation of railway sidings.

3.4 Deliberate acts

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 3.4.1 any deliberate act or omission of the *insured* or their *employee* and which could reasonably have been expected, having regard to the nature and circumstances of such an act or omission; or
- 3.4.2 any wilful breach of any statute, contract or duty by the *insured*.

3.5 Electromagnetic fields

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from electromagnetic fields (EMF) or electromagnetic interference (EMI).

3.6 Fraud and dishonesty

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any actual dishonest, fraudulent, criminal, wilful or malicious conduct of any *insured*.

3.7 Injury to employees

any liability to indemnify or pay *compensation* arising out of:

- 3.7.1 *personal injury* where any *insured* or *employee* is indemnified or entitled to be indemnified under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not the *insured* is a party to such contract of insurance;
- 3.7.2 any scheme created by legislation to provide compensation to persons who sustain *personal injury* arising out of or in the course of their employment; or
- 3.7.3 any claim for *employment practices*.

This policy shall not be drawn into contribution with such insurance or scheme.

This Exclusion does not apply with respect to liability of others assumed by the *affiliated carer* under any written contracts.

However, if the *insured*:

- (i) is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or any common law liability (whether limited or not) for *personal injury*; or
- (ii) is not required to so insure or otherwise fund such liability by reason only that the *personal injury* is to a person who is not a 'worker' or 'employee' within the meaning of the relevant workers' compensation law or the *personal injury* is not an injury which is subject to such law,

then Section 1 of this policy will cover liability for *personal injury* to the extent that the *insured's* liability would not have been covered under any such fund, scheme, policy of insurance or self insurance arrangement had the *insured* complied with its obligations pursuant to such law.

3.8 Liquidated or punitive damages

any liability or *claim* arising out of, based upon, attributable to or as a consequence of:

- 3.8.1 fines, taxes, penalties, treble or other multiple compensatory damages, exemplary, punitive, liquidated or aggravated damages; or
- 3.8.2 the return, restitution, or offset of fees, expenses or costs paid to an *insured*; or
- 3.8.3 any other damages deemed uninsurable in law.

3.9 Molestation

any *claim* arising from actual or alleged *molestation*.

3.10 Radioactive contamination

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 3.10.1 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- 3.10.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

However, this Exclusion shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical, scientific or research pursuits.

3.11 Terrorism

any injury, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any *act of terrorism* regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Exclusion also excludes injury, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

If Zurich alleges that, by reason of this Exclusion, any injury, loss, damage, cost or expense is not covered by this policy the burden of proving the contrary shall be upon the *insured*.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

3.12 War

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

4. General Conditions – Section 1 and 2

The following General Conditions apply to both Section 1 and 2 of this policy.

4.1 Action against Zurich

Zurich shall not be liable unless the *policy owner, affiliated carer and insured* have complied fully with all provisions of this policy nor until the amount of *compensation* has been finally determined, either by judgment against the one or more of *policy owner, affiliated carer or insured* or by written agreement with one or more of the *policy owner, affiliated carer, insured, claimant and Zurich*.

4.2 Assignment

This policy and any rights thereunder shall not be assigned without our prior written consent.

4.3 Cancellation / Termination

- 4.3.1 The *policy owner* may cancel this policy by giving notice in writing to us at any time;
- 4.3.2 We may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (as amended), such cancellation to take effect 30 days from the time of receipt of notification by the *policy owner*;
- 4.3.3 After cancellation by the *policy owner* a refund of premium will be allowed pro rata of 80 percent of the premium for the unexpired *period of insurance*;
- 4.3.4 After cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*.

4.4 Change of risk

Every change materially affecting the facts or circumstances degree or amount of risk existing at the commencement of this insurance or at any subsequent renewal date shall be notified in writing to us as soon as such change comes to the notice of an *affiliated carer* or the *policy owner* including their officers or representatives. On receipt of such notice we may vary the terms of this policy and/or charge such additional premium as we may determine appropriate in the circumstances.

4.5 Changes to the policy

The terms and conditions of this policy may only be altered by a written endorsement issued by us.

4.6 Insurance Contracts Act

Nothing contained in this policy intends to reduce or waive our, the *policy owner's* or an *insured's* privileges, rights or remedies available under the Insurance Contracts Act 1984 (Cth) as amended.

4.7 Liability not to be admitted

The *insured* shall not admit liability for or offer to or agree to settle any *claim* without Zurich's written consent. Zurich shall be entitled to take over and defend any *claim* with full discretion in the conduct of that *claim*.

4.8 Misrepresentation, misdescription, non-disclosure

This policy is voidable in the event of fraudulent misrepresentation, misdescription or non-disclosure. We may deny a *claim* or reduce a *claim* amount if the *policy owner*, *affiliated carer* or an *insured* has failed to comply with the duties of utmost good faith or disclosure or if the *policy owner*, *affiliated carer* or an *insured* has made a false statement to us before the contract was entered into. In determining whether any non disclosures or representations are grounds for not meeting a *claim* or reducing the *claim* amount we shall rely upon the relevant provisions of the Insurance Contracts Act 1984 (Cth).

4.9 No cover under this policy

Where the *insured* is not entitled to be indemnified under this policy, Zurich owes no duty of any kind and has no liability of any kind to the *insured*.

4.10 Notice and Authority of Policy Owner

The *policy owner* acts on behalf of all *insured's* for all purposes, including but not limited to the payment of *deductible*, payment or return of premium, receipt and acceptance of any extension issued to form a part of this policy, giving and receiving notice of cancellation or non-renewable, and the exercise of the rights provided in *extended reporting periods*.

It is further agreed that the *policy owner* must obtain an insurance application from each *affiliated carer* through the *policy owner's* 'Better Caring' website before cover to that *affiliated carer* is provided.

4.11 Payments in respect to Goods and Services Tax

When we make a payment to the *insured*, or on behalf of the *insured*, under this policy for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

When we make a payment to the *insured*, or on behalf of the *insured*, under this policy as *compensation* instead of payment for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or supply.

4.12 Plurals and titles

The proposal, this policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- 4.12.1 headings are descriptive only, not an aid to interpretation;
- 4.12.2 singular includes the plural, and vice versa);
- 4.12.3 the male includes the female and neuter; and
- 4.12.4 after references to positions, offices or titles shall include their equivalents in any jurisdiction in which a *claim* is made.

4.13 Proper law and jurisdiction

The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with Australian law.

In the event of any dispute arising under this policy, including but not limited to its construction and/or validity and/or performance and/or interpretation, you will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

4.14 Sanctions regulation

Notwithstanding any other terms or conditions under this policy, Zurich shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any *insured* or any other party to the extent that such cover, payment, service, benefit and/or any *business* or activity of the *insured* would violate any applicable trade or economic sanctions, law or regulation.

4.15 Valuation and foreign currency

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in Australian currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of loss under this policy is stated in a currency other than Australian dollars, payment under this policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars as reported in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

Section 1 – Combined General Liability

Introduction

Section 1 only forms part of this policy when Combined General Liability Section is shown in the *schedule* and is limited to the *period of insurance* indicated.

1. Insuring Clause

Zurich, subject to the terms and conditions of this policy, will indemnify the *insured* for all amounts which the *insured* becomes legally liable to pay as *compensation* arising out of:

- 1.1 *personal injury*;
- 1.2 *property damage*; or
- 1.3 *advertising liability*,

happening during the *period of insurance* within the *territorial limits* as a result of an *occurrence* in connection with the *business or products*.

2. Limits of Liability

Zurich's liability, in respect of all *compensation* for:

- 2.1 Public Liability;
- 2.2 Products Liability; and
- 2.3 Advertising Liability;

under this policy as a result of any one *occurrence* and in the aggregate where applicable, shall not exceed the *limits of liability* specified in the *schedule*.

3. Extensions of Cover

In addition to the General Extensions of Cover – Section 1 and 2, the following cover is automatically provided on the same terms and in the same manner as in the Insuring Clause for Section 1 (except as stated), for the features described below. Each feature is subject to all provisions of this policy, including any additional terms stipulated in connection with it, and no feature shall increase our *limit of liability* unless expressly stated otherwise.

3.1 Claims series clause

- 3.1.1 An *occurrence* or series of *occurrences* which are attributable directly or indirectly or allegedly to the same event, condition, defect or hazard, or failure to warn shall be added together and treated as one *occurrence*, irrespective of the period of time after the commencement of the *period of insurance* or the number of persons or entities that sustain *property damage* and/or *personal injury*.
- 3.1.2 All such *occurrences* shall be deemed to have occurred on the day of the first of such *occurrences*.
- 3.1.3 The *limits of liability* specified in the *schedule* are non-cumulative.
- 3.1.4 We shall not indemnify the *insured* for any liability of whatsoever nature in connection with *personal injury* or *property damage* where such *personal injury* or *property damage* is in any way connected with or related to an *occurrence* or events or circumstances, whether of a continuous, intermittent or repeated exposure, which had occurred or commenced or existed prior to the date of inception of this policy.

3.2 Dishonesty

Notwithstanding General Exclusions – Section 1 and 2, 3.6 'Fraud and dishonesty', we agree to reimburse the *insured* for reasonable legal costs and expenses necessarily incurred with our prior written consent, in successfully defending any action or allegation, where the *insured* has been accused of theft of any property, by a client. Provided that:

3.2.1 Zurich has the right at anytime to take over the defence on behalf of the *insured*;

3.2.2 no indemnity is available where the dishonest was proven to be correct.

Our liability provided under this Extension of Cover shall not exceed \$25,000 per *affiliated carer* with a total aggregate liability of \$250,000 for all *insureds* during any one *period of insurance* and shall be part of and not in addition to the *limit of liability*.

3.3 Overseas personal liability

Zurich will indemnify the *insured* for legal liability incurred in connection with the *business* which may be deemed to include any liability incurred in a personal capacity by an *employee* or director (including the spouse or any *family member* of any such person while accompanying such *employee* or director) whilst travelling outside his or her country of domicile in connection with the *business*, provided that the *employee* or director is not entitled to indemnity under any other policy of insurance, self insurance or deductible programme effected in the *insured's* name or *affiliated carer's*.

4. Exclusions

Zurich will not be liable under this policy in respect of:

4.1 Advertising liability

advertising liability directly or indirectly caused by, in connection with or contributed to by or arising from:

4.1.1 failure of performance of contract, but this shall not relate to claims resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;

4.1.2 incorrect description of any article or commodity; or

4.1.3 mistake in advertised price.

4.2 Aircraft products

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any of the *affiliated carer's products* which, with the *affiliated carer's* knowledge, are intended for incorporation into any critical part, the structure, machinery or controls of any *aircraft*.

4.3 Aircraft, watercraft, hovercraft

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the ownership, maintenance, possession, use or operation, loading or unloading, of any *aircraft*, *watercraft* or *hovercraft* (other than *watercraft* not exceeding 15 metres in length for use on inland or coastal waters).

4.4 Custody and control

property damage to property owned by, hired to or in the custody or control of the *insured* or any *employee* or any party acting on behalf of the *insured*, other than:

4.4.1 guests', visitors', directors', officers', employees' or partners' personal effects;

4.4.2 *motor vehicles* in a car park, unless the car park is owned or operated by the *insured* for reward;

4.4.3 premises at which the *insured* is undertaking work in connection with the *business*;

4.4.4 any building (including its fixtures and fittings) leased, hired or rented to the *insured* provided Zurich shall not be liable in respect of liability assumed by the *insured* under a tenancy or other agreement which would not have attached in the absence of such agreement; or

- 4.4.5 other property in the *insured's* charge or control (except while undergoing any process or being worked upon) for which the *insured* has not assumed any responsibility to obtain insurance, subject to a limit of \$50,000 for any one *occurrence* per *affiliated carer* and \$500,000 for all *insureds* in the aggregate during any one *period of insurance*.

4.5 Information technology hazards

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 4.5.1 the *affiliated carer's internet operations*; or
- 4.5.2 *property damage* to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
- (a) the use of any computer hardware or software;
 - (b) the provision of computer or telecommunication services by the *affiliated carer* or on the *affiliated carer's* behalf; or
 - (c) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any *computer virus*.

However, this Exclusion does not apply to:

- (i) *personal injury, property damage or advertising liability* arising out of any material which is already in print by the manufacturer in support of any of its products, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site; or
- (ii) liability which arises irrespective of the involvement of the *affiliated carer's internet operations*.

4.6 Loss of use

any liability for any amount in respect of loss of use of tangible property which has not been damaged, lost or destroyed as a result of:

- 4.6.1 a delay in or lack of performance by or on behalf of any *insured* in respect of any contract or agreement; or
- 4.6.2 the failure of the *products* to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by an *affiliated carer*.

However, Exclusion 4.6.2 above does not apply to loss of use of other tangible property resulting from the sudden and accidental damage to or destruction of the *products* after such *products* have been put to use by any person or organisation other than the *insured*.

4.7 Motor liability

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the use of a *motor vehicle* owned by, or in the physical or legal control of any *insured*:

- 4.7.1 which is required by law to be registered; or
- 4.7.2 in respect of which insurance is required by virtue of any legislation.

However, this Exclusion does not apply to:

- (i) a *motor vehicle* (other than a *motor vehicle* owned or used by or on behalf of the *insured*) whilst that *motor vehicle* is in a car park owned or operated by the *insured* other than for income or reward as a car park operator;
- (ii) *personal injury or property damage* occurring during the loading or unloading of a *motor vehicle* caused by or arising from the collection or delivery of any goods from or to the *motor vehicle* where such *personal injury or property damage* occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability; or
- (iii) accidental or erroneous failure to maintain such statutory insurance;

4.8 North America

any liability in *North America* directly or indirectly caused by, in connection with or contributed to by or arising from:

- 4.8.1 the manufacture in or supply to *North America* of:
 - (a) any alcohol products;
 - (b) firearms;
 - (c) any product containing or made of latex;
 - (d) silica or any product containing silica;
 - (e) welding rod products.
- 4.8.2 the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to existence of, or presence of any:
 - (a) fungi or bacteria;
 - (b) substance, vapour or gas produced by or arising out of any fungi or bacteria.
- 4.8.3 the costs or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposing of, or in any way responding to, or assessing the effects of, fungi or bacteria, by the *insured* or by any other person or entity.

4.9 Pollution

any liability arising out of:

- 4.9.1 *personal injury or property damage* directly or indirectly caused by, in connection with or contributed to by or arising from the discharge, seepage, migration, dispersal, release or escape of *pollutants* into or upon any property, land the atmosphere or any watercourse or body of water (including ground water);
- 4.9.2 *personal injury or property damage* directly or indirectly caused by, in connection with or contributed to by or arising from the discharge, seepage, migration, dispersal, release or escape of *pollutants* caused by any product that has been discarded, dumped, abandoned or thrown away by others;
- 4.9.3 the cost of removing, nullifying or cleaning up *pollutants*; or
- 4.9.4 the cost of preventing the escape of *pollutants*.

Exclusions 4.9.1 and 4.9.3 above shall not apply where the claim arises from a sudden identifiable, unintended and unexpected event from the *affiliated carer's* standpoint which takes place in its entirety at a specific time and place during the *period of insurance* and occurs outside of *North America*. However the total aggregate Limits of Liability during any one *period of insurance* shall not exceed the Limits of Liability.

4.10 Professional, Treatment risk and Medical malpractice

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the rendering or failure to render and/or administer care services, professional advice or service by an *insured*, or any error or omission in connection therewith.

4.11 Repair and replacement

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 4.11.1 the cost of rectifying defective work carried out by or on behalf of the *affiliated carer*;
- 4.11.2 *property damage* to any of the *affiliated carer's products* causing *personal injury or property damage*; and
- 4.11.3 the costs or expenses of recalling, removing, repairing, recovering, altering or replacing the *affiliated carer's products* arising from a defect in or an error in connection with the sale or supply of such *products* or the guaranteed performance of the *affiliated carer's products* or the unsuitability thereof for the use for which they are supplied.

4.12 Specific products and substances

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 4.12.1 urea formaldehyde;
- 4.12.2 silicon based human implants;
- 4.12.3 AIDS, HIV or HIV related illness;
- 4.12.4 contraceptives and RU 486;
- 4.12.5 human biological materials including extracts thereof (e.g. blood, plasma, plasmaproteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);
- 4.12.6 genetically modified seeds or organisms;
- 4.12.7 vaccines;
- 4.12.8 application or use of polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;
- 4.12.9 tobacco and tobacco related products;
- 4.12.10 the manufacture or supply of all pharmaceutical active ingredients including medical implants; or
- 4.12.11 DES and orally taken oxychinoline.

Please refer to the additional General Exclusions applicable to the whole policy.

5. Claims Conditions

The following Claims Conditions apply to Section 1 of this policy.

5.1 Claims assistance and cooperation

The *insured* must assist and cooperate with Zurich fully and promptly in relation to a *claim*, including:

- 5.1.1 supplying us with all information and assistance we may reasonably require;
- 5.1.2 allowing us to negotiate, defend or settle the *claim*:
 - (a) in the *insured's* name and on the *insured's* behalf; or
 - (b) in the name of and on behalf of any other party covered by this policy;
- 5.1.3 sending to us any *claim*, writ, summons, or full details of other relevant legal or other proceedings such as an impending prosecution or inquest the *insured* receives or becomes aware of; and
- 5.1.4 as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until Zurich has had an opportunity of inspection.

5.2 Control of claims

- 5.2.1 The *insured* shall not, without Zurich's written consent, admit or repudiate liability, negotiate or make any offer, promise or payment in connection with any *claim*.
- 5.2.2 Zurich shall be entitled, but not obligated, to take over and conduct in the *insured's* name, the defence or settlement of any *claim* or to prosecute in the name of the *insured* at its own expense and for its own benefit any *claim*, for indemnity or damages or otherwise against any persons, and shall have full discretion in the conduct of any proceedings and in the settlement of any *claim*.
- 5.2.3 The *insured* shall give all such information and assistance as Zurich may require.

5.3 Discharge of any liability

Zurich may at any time pay the *limits of liability* (after deduction of sum or sums already paid), or any lesser sums for which any *claim* or *claims* can be settled, and shall then be under no further liability in respect thereof except for the payment under for General Extensions of Cover – Section 1 and 2, 2.1 'Additional payments' incurred prior to such payment.

In the event of a *claim* or series of *claims* arising from an *occurrence* resulting in liability of the *insured* to pay a sum in excess of the *limits of liability*, Zurich's liability for General Extensions of Cover – Section 1 and 2, 2.1 'Additional payments' shall not exceed an amount being in the same proportion as Zurich's payment bears to the total payment made by or on behalf of or to be made by the *insured* in satisfaction of the *claim* or *claims*.

5.4 Notice and proof of claim

Upon the discovery of any *personal injury*, or *property damage* loss or circumstance giving rise or which may give rise to a *claim* (whether or not the *insured* believes the *claim* amount might fall below the applicable *deductible*) under this policy, the *insured* shall:

- 5.4.1 give notice in writing to Zurich as soon as practicable after the *insured* becomes aware of such loss or circumstance and within 30 days thereafter provide, at the *insured's* own expense, a written statement detailing all relevant information;
- 5.4.2 advise of the cause and the amount of loss and any other proof or information with respect to the *claim* that may be reasonably required;
- 5.4.3 furnish to us details of any other insurance covering or which may cover the same loss;
- 5.4.4 take reasonable steps to prevent further loss; and
- 5.4.5 at all reasonable times permit us or our agents to inquire into, investigate and examine the circumstances of any loss.

5.5 Subrogation

Zurich waives all rights of subrogation under this policy against:

- 5.5.1 any corporation or organisation the majority of whose capital stock is owned or controlled by the *affiliated carer*.
- 5.5.2 any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this policy, except that if such corporation, organisation or person is protected from such loss by any other policy of indemnity or insurance, Zurich's right of subrogation is not waived to the extent and up to the amount of such other policy.

6. Additional Conditions

In addition to the General Conditions, the following Additional Conditions apply to Section 1 of this policy.

6.1 Cross liability

Subject to Additional Conditions apply to Section 1, 6.3 'Joint insured' for the purpose of this policy, when an *affiliated carer* consists of more than one party, the *insured* shall be considered as a separate *insured* as though a separate policy had been issued to each of the said parties but nothing herein contained shall operate to increase our *limits of liability*.

6.2 Inspection and audit

Zurich shall be permitted but not obligated to inspect the *affiliated carer's* property and operations at any reasonable time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of an *affiliated carer* or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation.

Zurich may examine and audit the *affiliated carer's* books and records at any time during the *period of insurance* and within three years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

6.3 Joint insured

Where the *affiliated carer* is comprised of more than one legal entity, information supplied to us shall be deemed to have been furnished by and on behalf of all such entities, and any information supplied to us or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such entities.

6.4 Joint responsibility and liability

Any and all *insureds* and any persons deriving benefit under this insurance are jointly liable and responsible for any breach of any terms of this policy and/or misrepresentation and/or non-disclosure and/or fraud. For the avoidance of doubt this clause survives avoidance of the policy.

6.5 Premium

Unless otherwise stated, the premium is adjustable. The *policy owner* shall, within 60 days after the expiry of each *period of insurance*, provide such information as Zurich may require to adjust the premium.

Any difference in premium shall be paid by or allowed to the *policy owner*, provided that the adjusted premium will not be less than any minimum premium specified in the *schedule*. The *policy owner* shall at all times allow Zurich to inspect such records.

6.6 Reasonable precautions

It is a condition precedent to Zurich's liability under this policy that the *affiliated carer* shall, at its own expense:

- 6.6.1 take, and cause to be taken, reasonable precautions to prevent *personal injury, property damage and/or advertising liability*;
- 6.6.2 comply with all statutory or local authority law, obligations and requirements or equivalent;
- 6.6.3 prevent the manufacture, sale or supply of defective *products*; and
- 6.6.4 withdraw, inspect, repair, replace, trace, recall or modify any of the *products* containing any defect or deficiency of which the *affiliated carer* has knowledge or has reason to suspect.

Section 2 – Professional Indemnity Insurance

Introduction

Section 2 only forms part of this policy when Professional Indemnity Insurance Section is shown in the *schedule* and is limited to the *period of insurance* indicated.

1. Insuring Clause

Subject to the terms and conditions of this policy, we agree to pay on behalf of the *insured loss* arising from any *claim*, first made against the *insured* and notified to us during the *period of insurance*, in respect of:

1.1 *malpractice*; and;

1.2 *civil liability*,

committed or alleged to have been committed by the *insured* or for which the *insured* is responsible, in the conduct of the *professional business practice*.

2. Limits of Liability

Our total liability toward any and all *insured* in respect of all *loss*, directly or indirectly arising out of or in connection with:

2.1 any single *claim*;

2.2 all *claims* referable to the *period of insurance*; and

2.3 all *losses* otherwise covered under the policy,

shall not exceed the respective *limit of liability* or other applicable sub-limit prescribed in the policy and/or *schedule* and shall apply only to the amount by which such *loss* exceeds the prescribed amount of the applicable *deductible*.

For the purposes of application of the *limit of liability* and the *deductible*, all *claims* arising directly or indirectly out of or in connection with the same source or originating cause shall be deemed to be a single *claim*.

3. Extensions of Cover

In addition to the General Extensions of Cover – Section 1 and 2, the following cover is automatically provided on the same terms and in the same manner as in the Insuring Clause for Section 2 (except as stated), for the features described below. Each feature is subject to all provisions of this policy, including any additional terms stipulated in connection with it, and no feature shall increase our *limit of liability* unless expressly stated otherwise.

3.1 Compensatory penalties

Notwithstanding General Exclusions – Section 1 and 2, 3.8 'Liquidated or punitive damages', we cover *claims* for compensatory civil penalties. Our total liability for the payment of compensatory civil penalties and all associated *claim expenses* under the policy shall not exceed \$150,000 per *affiliated carer* with a total aggregate of \$1,000,000 for all claims for all *insureds* during any one *period of insurance* and shall be part of and not in addition to the *limit of liability*.

However, we will not be liable to cover the *insured* for any compensatory civil penalty:

3.1.1 for which we are legally prohibited at law from indemnifying the *insured*;

3.1.2 based upon, attributable to or in consequence of any:

- (a) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
- (b) gross negligence or recklessness; or
- (c) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

3.2 Continuous cover

If an *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 us of the same type as this one, then provided that the *insured* has maintained uninterrupted insurance of the same type with us since the expiry of that earlier policy we will, notwithstanding Exclusion 4.12 'Prior and pending', permit the matter to be reported under this policy and indemnify *insureds* in respect of any *claim* arising from the matter on the conditions that:

- 3.2.1 the indemnity will be subject to the applicable *limit of liability* of the earlier policy under which the matter should have been reported to us;
- 3.2.2 we may reduce the indemnity entitlement by the monetary equivalent of any prejudice which we have suffered as a result of the delayed notification;
- 3.2.3 the indemnity will be subject to all of the terms, conditions, definitions and exclusions, other than the *limit of liability*, contained in this current policy; and
- 3.2.4 an *insured* hereby agrees not to seek indemnity from us in respect of any such *claim* under both policies issued by Zurich.

3.3 Dishonesty

Notwithstanding General Exclusions – Section 1 and 2, 3.6 'Fraud and dishonesty', we agree to indemnify the *affiliated carer* for loss resulting from a *claim* alleging conduct of an *employee* in the provision of *professional business practice* that falls or may fall within that exclusion. Provided that:

- 3.3.1 no indemnity is available to the dishonest *employees* themselves, or at all where the *affiliated carer* has knowingly engaged in or condoned such conduct;
- 3.3.2 no indemnity is available in respect of a *claim* arising from or in any way connected with the loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes.

3.4 Extended notification period

In the event that this insurance is not renewed or is cancelled for any reason other than non-payment of premium then the *insured* has until such time that the *policy owner, affiliated carer* or *insured* effects another professional indemnity insurance policy either with us or any other insurer or a period of 60 days commencing on the day immediately following expiry of this policy, whichever is the lesser period, during which to notify us of any *claim* first made against the *insured* in writing within such 60 day or lesser period (as the case may be). Provided always that it is understood and agreed that:

- 3.4.1 we will treat that *claim* as if it had been made against the *insured* and notified to us during the immediately preceding *period of insurance*; and
- 3.4.2 coverage afforded thereunder does not reinstate or increase the *limit of liability* or the Aggregate *limit of liability* or extend the *period of insurance*; and
- 3.4.3 coverage afforded thereunder will only apply to acts, errors or omissions committed or alleged to have been committed by the *insured* before the end of the *period of insurance* or the cancellation date of this policy where this policy has been cancelled and not before the *retroactive date*.

3.5 Intellectual property

We agree to indemnify the *affiliated carer* in accordance with the Insuring Clause for any *civil liability claim* resulting from any unintentional infringement of copyright, trade marks, service marks, registered designs, patents or any unintentional plagiarism or unintentional breach of confidentiality by the *insured*.

Provided always that no indemnity shall be afforded to any *insured* intentionally committing, assisting or condoning such conduct.

3.6 Libel, slander and defamation

We agree to indemnify the *affiliated carer* in respect of any *civil liability claim* for unintentional libel, unintentional slander or other unintentional defamation by an *affiliated carer* in the provision of the *professional business practice*.

3.7 Loss of documents

Notwithstanding Exclusion 4.11 'Personal injury / property damage', we agree to indemnify the *affiliated carer* in respect of:

- 3.7.1 any *civil liability claim* made against the *affiliated carer* for loss, damage or destruction of any documents and/or computer records belonging to the *affiliated carer* or for which the *affiliated carer* is legally responsible, where the loss, damage or destruction occurs in the provision of the *professional business practice* after the *retroactive date*; and
- 3.7.2 all reasonable costs and expenses incurred by the *affiliated carer* in replacing and/or restoring such documents.

However,

- (i) we shall only be liable where any such loss, damage or destruction is notified to us within the *period of insurance* and rectification of which is undertaken as soon as practicable by the *affiliated carer* with our prior written consent, such consent not to be unreasonably withheld;
- (ii) we shall not be liable for any claim in 3.7.1 or costs and expenses in 3.7.2 directly or indirectly arising out of or in connection with *computer virus*, operational wear and tear or gradual deterioration however caused;
- (iii) we shall not be liable for any claim in 3.7.1 or costs and expenses in 3.7.2 directly or indirectly arising out of or in connection with any loss of money, negotiable instruments (including shares), bearer bonds, coupons, stamps, bank or currency notes.

The *limit of liability* for this Extension of Cover applies to all *claims* covered under 3.7.1 above, inclusive of *claim expenses*, and costs and expenses in 3.7.2 above, are in the aggregate.

Notwithstanding the *deductible* specified in the *schedule* this extension will be subject to an excess of \$2,000.

3.8 Outgoing principal

We agree to pay on behalf of any former principal, partner, director or *employee* of the *affiliated carer* for any legal liability arising from *malpractice* committed or alleged to have been committed in the conduct of the *professional business practice* carried on by or on behalf of the *affiliated carer*.

3.9 Privacy complaints and claims

We agree to indemnify the *affiliated carer* in respect of any *civil liability claim* for *compensation* for any *privacy costs and expenses* arising from any *claim* or written complaint made against the *affiliated carer* for unintentional breach of any duty of confidentiality owed to any patient arising at law or any unintentional breach of the Privacy Act 1988 (Cth), 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.

The following terms apply to this coverage:

- 3.9.1 the *claim* or complaint is first made against the *affiliated carer* during the *period of insurance* and notified to us during the *period of insurance*; and

- 3.9.2 we shall not be liable for:
- (a) any civil or criminal fines or penalties;
 - (b) non compensatory damages, including punitive or exemplary damages; or
 - (c) the costs of compliance with any regulatory, administrative, Court or Tribunal directives or with any injunctive or non-compensatory relief; or
 - (d) any liability, loss, cost or expense that is uninsurable under the laws of Australia; and
- 3.9.3 the *deductible* shall apply to each and every claim or complaint covered by this feature.

Our liability provided under this Extension of Cover in respect of all *claims* and complaints covered, including all *privacy costs and expenses*, shall not exceed \$50,000 per *affiliated carer* with a total aggregate liability of \$500,000 for all *insureds* during any one *period of insurance* and shall be part of and not in addition to the *limit of liability*.

3.10 Reinstatement

In the event that the *limit of liability* under this section has been entirely exhausted during the *period of insurance*, by *claims* or *loss* indemnified or for which we have agreed to indemnify, the *limit of liability* will be reinstated in the same amount, once only, conditional upon the following:

- 3.10.1 the reinstated *limit of liability* shall only apply to *claims* or *loss* which do not arise out of and do not have any connection with the source or originating cause of any of the *claims* or *loss* already paid or payable out of the original *limit of liability*;
- 3.10.2 all other terms, conditions, exclusions and limitations of the policy shall continue to apply, in the same manner, in respect of *claims* and *loss* to which the reinstated *limit of liability* applies;
- 3.10.3 the *policy owner* has satisfied us that they have no other valid and collectible excess or other insurance to call upon, after exhaustion of the original *limit of liability*, or that all such insurance (including any automatic reinstatement entitlement to which those policies may be subject) has also been exhausted by *claims* or *losses* indemnified or for which the insurers in question have agreed to indemnify;
- 3.10.4 the request for reinstatement must be made by the *policy owner*, and all requirements relating to it be satisfied by it, before the expiry of the *period of insurance*; and
- 3.10.5 there shall be no reinstatement at all of any sub-limit.

3.11 Students

We agree to pay on behalf of any student practitioner seconded to and under the supervision of the *affiliated carer* from any University, College of Advanced Education, T.A.F.E. College or similar educational body, for any legal liability arising from *malpractice* committed or alleged to have been committed on behalf of the *insured* named in the *schedule* in the course of the *professional business practice*.

4. Exclusions

We will not be liable under this policy in respect of:

4.1 Abnormal duty

any *claim* directly or indirectly arising from or in connection with any duty or obligation assumed by the *insured*, which is not assumed in the normal conduct of the *professional business practice*.

4.2 Commercial risks

any *claim* arising from or in connection with any trading debt incurred by the *insured*.

4.3 Directors and officers

any *claim* directly or indirectly arising from or in connection with any *insured* acting in the capacity of a director or officer of a company, association or other legal entity.

4.4 Insolvency

any *claim* made against the *insured*, where all or part of such *claim* is directly or indirectly based upon or attributable to the insolvency of the *insured* or the suppliers of the *insured*.

4.5 Intoxicants and drugs

any *claim* directly or indirectly arising from or in connection with conduct or activities of any *insured* while under the influence of intoxicants and/or drugs or any *malpractice* or other failure to carry out the *professional business practice* competently or at all due to such influence, if such behaviour took place with the knowledge of a principal, partner, director, or supervisor of the *affiliated carer*.

4.6 Licensing inquires

any prosecution, *inquiry*, hearing, commission or other investigation in relation to any *insured* failing to be properly licensed, registered or accredited to provide *professional business practice* as required by any Acts, rules, regulations or industry codes of practice.

4.7 Manufacturing / efficacy / faulty workmanship

any *claim*, *loss* or other amount comprising, directly or indirectly arising out of or in connection with:

- 4.7.1 the repair, replacement, diminished utility or lack of efficacy for their intended purpose of any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the *insured*;
- 4.7.2 the cost of remedying any defect in any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the *insured*;
- 4.7.3 any cost of or expense incurred in withdrawing a product or good from sale or recalling any product or good; or
- 4.7.4 any elements of any *insured's* own costs or profit that may be included in the cost of rectifying any defects in work performed by or on behalf of an *insured*.

4.8 Medical personnel / medical services

any *claim* directly or indirectly arising from or in connection with any *medical services* or other act, error or omission of any *medical personnel*.

4.9 Money and negotiable instruments

any *claim* directly or indirectly arising from or in connection with any loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes.

4.10 Owners and occupiers liability

any *claim* directly or indirectly arising from or in connection in any way whatsoever with the occupation, leasing or ownership of any real or other property (whether mobile or immobile) by any *insured*.

4.11 Personal injury / property damage

4.11.1 any liability for *personal injury* suffered or incurred by any entity or person; and/or

4.11.2 any loss of property or *property damage*,

except and only to the extent that such *personal injury* or *property damage* has resulted or is alleged to have resulted solely from *malpractice* committed or alleged to have been committed in the conduct of the *professional business practice*.

4.12 Prior and pending

any *claim* made against or in any way intimated to the *affiliated carer* or the *insured* prior to the commencement of the *period of insurance* or directly or indirectly arising from or attributable to:

- 4.12.1 any facts or *circumstances* of which the *affiliated carer* or the *insured* was aware or of which a reasonable person in the circumstances would have been aware, prior to the commencement of the *period of insurance*, as matters out of which a *claim* against any *insured* might arise;
- 4.12.2 any facts or *circumstances* reported to an insurer under any insurance policy entered into before the commencement of the *period of insurance*; or
- 4.12.3 any facts disclosed to any insurer in any proposal for insurance prior to the commencement of the *period of insurance*.

4.13 Related entities

any *claim* made against the *insured* by or on behalf of:

- 4.13.1 any *insured*, business venture or related entity of any *insured* which is owned, managed or operated directly or indirectly by any *insured*; or
- 4.13.2 any person who at the time of the conduct giving rise to the *claim*, is a *family member*, unless such person is acting without the co-operation or solicitation of any *insured*;
- 4.13.3 any parent or controlling entity, successor or assign of any *insured*;
- 4.13.4 any other person or entity, including but not limited to a trustee:
 - (a) who or which is controlled or operated by any *insured*; or
 - (b) where any *insured* has a direct or indirect financial interest, including but not limited to where any *insured* is a beneficiary of a trust.

4.14 Retroactive date

any *claim* directly or indirectly arising from or in connection with any conduct, act, error or omission which has taken place or is alleged to have taken place prior to the *retroactive date*.

4.15 Superannuation trustee

any *claim* directly or indirectly arising from or in connection with conduct of any *insured* in the capacity of a superannuation trustee, including but not limited to in connection with any employee benefit plan or superannuation fund.

4.16 North America exposure

- 4.16.1 any *claim* directly or indirectly arising out of or in connection with conduct of any *insured* anywhere within *North America*;
- 4.16.2 any legal proceedings which are brought before any court or tribunal having actual or purported jurisdiction within *North America*;
- 4.16.3 the enforcement of any judgment, order or award in or in connection with any proceeding brought before any court or tribunal having actual or purported jurisdiction within *North America*;
- 4.16.4 any *claim* which is pursued by way of Arbitration, Mediation, Conciliation, Expert Determination or any other form of alternative dispute resolution procedure taking place within or under the jurisdiction of *North America*, or for the recovery of any Award or costs issued or incurred in connection with any such procedure.

Please refer to the additional General Exclusions applicable to the whole policy.

5. Claims Conditions

The following Claims Conditions apply to Section 2 of this policy.

5.1 Advance payment of claim expenses

We will advance the *claim expenses* incurred by an *insured* in the defence of a *civil liability claim*, as they are incurred and prior to the final adjudication of the *claim*, where:

5.1.1 indemnity under this policy is confirmed in writing by us; or

5.1.2 at our absolute discretion, without admitting indemnity, we agree to advance such *claim expenses*.

All such payments shall be repaid to us by the *insured* (or where more than one *insured* has received such payments, by such *insured* severally and according to their respective interests) in the event and to the extent that the *insured* is not entitled to payment of such *claim expenses* under the terms and conditions of this policy.

5.2 Allocation

If both *loss* covered by this policy and *loss* not covered by this policy are incurred, either because a *claim* includes both covered and uncovered matters or because a *claim* is made against both *insureds* and others who are not insured under this policy (including those persons or entities referred to in the *schedule* as the *insured*), the *insured* and Zurich shall use their best efforts to agree upon a fair and proper allocation between covered *loss* and uncovered *loss* having regard to the relative legal and financial exposures attributable to the covered and uncovered parties and/or matters. We are only liable under this policy for amounts attributable to covered matters and parties, and own liability for *loss*, including *claim expenses*, otherwise payable by us shall be reduced to reflect such fair and proper allocation.

If we and the *insured* agree on an allocation of *claim expenses*, we shall, subject to Claims Condition 5.1 'Advance payment of claim expenses', advance *claim expenses* in accordance with that agreement. If the parties cannot agree on allocation, we shall, subject to Claims Condition 5.1 'Advance payment of claim expenses', advance *claim expenses* which we believe to be covered under the policy until a different allocation is negotiated, arbitrated, judicially or otherwise determined.

We, if requested by the *insured*, shall submit any dispute on allocation 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 his or her 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 referred to in this clause. The costs of Senior Counsel shall constitute *claim expenses* for the purposes of the policy and be part of and not in addition to the *limit of liability*.

Any such determined allocation of *claim expenses* on account of a *claim* shall be applied retroactively to all *claim expenses* on account of such *claim*, notwithstanding any prior advancement on a different basis. Any advancement of *claim expenses* shall be repaid to us by the *insureds* severally according to their respective interests, if and to the extent that we determine that such amounts paid by us are not insured by this policy.

Any allocation or advancement of *claim expenses* in connection with a *claim* shall not pre-determine the allocation of other *loss* on account of such *claim*. In any arbitration, suit or other proceedings between Zurich and the *insureds* no presumption shall exist concerning what is a fair and proper allocation between covered *loss* and uncovered *loss*, but will be governed by the intention set out in this clause.

5.3 Defence and settlement

The *insured* shall not admit liability for or settle any *claim* without our consent or incur any costs or expenses without our consent, which shall not unreasonably be withheld.

The *insured* shall assert all appropriate defences and cross-claims for contribution, indemnity or damages and shall take all reasonable steps in defence of the *claim*.

We shall not settle any *claim* against any *insured* without the consent of the relevant *insured*, which shall not unreasonably be withheld. We shall retain the right to actively participate in the defence and settlement of any *claim* in respect of which indemnity is sought under this policy.

If we and the *insured* cannot agree upon the appropriateness or otherwise of a settlement, then the matter will be determined in accordance with advice of Senior Counsel, the choice of whom shall be mutually agreed by the *insured* and us and whose fee shall be paid by us, in addition to the *limit of liability*.

5.4 Handling and co-operation

An *insured* shall, at its own cost, upon our request give all such information and assistance to us as we may reasonably require, to enable us to investigate and to defend a *claim* and to make any cross-claim for contribution, indemnity or damages and/or to enable us to determine our liability under this policy. In particular, an *insured* shall inform us of any other insurance, indemnity or other source of compensation, statutory, contractual or otherwise, pursuant to which the *insured* may be entitled to any benefit in respect of the *claim*.

We shall be entitled at our option (but not obliged) at any time to take over and conduct in the name of the *insured* the defence or settlement of any *claim* against the *insured*, and to claim indemnity or contribution at any time, in the name of the *insured*, from any party against whom the *insured* may have such rights.

If we wish to settle a *claim* and the *insured* is opposed to such settlement, our total aggregate payments for damages and *claim expenses* under this policy shall be limited to the amount by which the *claim* could have been settled in our opinion.

Legal fees and costs awarded to the *insured* shall pass to us to the extent of our payments under this policy.

5.5 Multiple insured, claims and claimants

All *claims* arising directly or indirectly out of or in connection with the same source or originating cause shall be considered to constitute a single *claim* for the purposes of the *limit of liability* and the *deductible*.

5.6 Other insurance

If *loss*, *claim expenses* or any other amounts insured under this policy are also potentially insured under any other insurance policy or policies, then the *insured* must advise us at the time of making a *claim* under this policy, and provide us with details of the other insurance.

This policy does not cover any *claim* or *loss* in respect of which the *insured* is entitled to indemnity under any other insurance.

5.7 Reporting and notice

The *insured* shall as a condition precedent to their right to be indemnified under this policy, give to us written notice as soon as practicable of any *claim* made against the *insured* or *loss* for which indemnity is sought.

All notices under any provision of the policy shall be put in writing and given by courier, certified mail or fax properly addressed to the appropriate party. Any notice under or in connection with this policy that relates to a *claim* or *loss* shall be given to the appropriate Zurich branch office, addressed as follows:

Zurich Australian Insurance Limited
Attention: Financial Lines, Claims Manager
General Insurance

All other notices shall be given to the Financial Lines Underwriter at the appropriate Zurich branch office. Notice shall be deemed to be received and effective upon actual receipt thereof by the addressee.

5.8 Subrogation

If we grant indemnity under this policy in respect of any *claim* or *loss* then we shall be subrogated to all the *insured's* rights of recovery in respect of such *claim* or *loss* regardless of whether or not any payment has been made or the *insured* has been compensated in full for their *loss*. The *insured* will give all such assistance in the exercise of rights of recovery as we may reasonably require.

The *insured* must refrain from doing anything that might prejudice our actual or potential rights of recovery against any party. Any amounts recovered by us, shall be allocated in the following order; recovery costs, uninsured loss, *limit of liability* and *deductible*.

We agree not to exercise any such right of subrogation against any of the *insured's* directors, officers or *employees* unless the *claim* is brought about or contributed to by the dishonest, fraudulent, reckless, criminal or malicious act or omission of the director, officer or *employee*.

6. Additional Conditions

In addition to the General Conditions, the following Additional Conditions apply to Section 2 of this policy.

6.1 Deductible

Our obligation to pay *loss* (including *compensation* and *claim expenses*) in connection with any *claim*, or other amount under this policy, shall only be in excess of the *deductible* as stated the *schedule* or as otherwise stated in this policy.

The *deductible* shall be paid by the *insured* and shall be applicable to each *claim* and shall include *loss* and *claim expenses*. The *deductible* will be the first amount borne by the *insured* and shall remain uninsured.

Where we make a payment in relation to a *claim* which includes payment of part or all of the *deductible* the *insured* shall, within 30 days of being notified from us, reimburse us for the amount of the *deductible* paid by us.

6.2 Medical personnel insurance

It is a condition precedent to the right of the *affiliated carer* to be indemnified under this policy that the *affiliated carer* shall ensure that, and record the basis of its assurance that, any and all *medical personnel* who provide services for or on behalf of, are employed by or utilise the facilities of the *affiliated carer* are members in good standing of a Medical Defence Organisation recognised by the Australian Medical Association and regulated by the Australian Health Practitioner Regulation Agency (AHPRA), or are otherwise fully insured against all liability for their professional acts, errors, omissions and/or negligence.

6.3 Nursing staff

It is a condition precedent to the right of the *affiliated carer* to be indemnified under this policy that the *affiliated carer* ensure that, and record the basis of its assurance that, any and all nursing staff who provide services for or on behalf of, are employed by or utilise the facilities of the *affiliated carer* are fully qualified, registered and licensed to perform all relevant activities as required by applicable legislation.

6.4 Records

The *policy owner* and each *affiliated carer* shall at all times:

- 6.4.1 maintain accurate descriptive records of all services and equipment used in procedures which shall be available for inspection and use by us or our duly appointed representatives insofar as they pertain to any *claim* hereunder; and
- 6.4.2 retain the records referred to in Additional Conditions 6.2 'Medical personnel insurance' and 6.3 'Nursing staff' for a period of at least seven (7) years from the date of treatment and, in the case of treatment of a minor, for a period of at least seven (7) years after that minor would attain majority; and
- 6.4.3 give us or our duly appointed representatives such information, assistance, signed statements or depositions as we may require; and
- 6.4.4 assist in the defence of any *claim* without charge to us.

6.5 Severability and non-imputation

Where this policy insures more than one party, the application for insurance is construed as a separate application by each *affiliated carer*. When determining whether coverage is available under this policy:

- 6.5.1 any failure by an *affiliated carer* to comply with the duty of disclosure shall not be imputed to any other *insured*, where the other *insured* is innocent of and had no prior knowledge of the failure; and
- 6.5.2 for the purposes of the exclusions (other than Exclusion 4.12 'Prior or pending'), no facts pertaining to, conduct of or knowledge possessed by an *insured* shall be imputed to any other *insured*.

6.6 Worldwide territorial / jurisdictional limits

Subject to the terms and conditions of the policy (including but not limited to Exclusion 4.16 'North America exposure') and anything specified to the contrary in the *schedule*, this policy shall apply to:

- 6.6.1 conduct committed, attempted or alleged to have been committed or attempted, anywhere in the world;
- 6.6.2 *claims* made and actions brought anywhere in the world.

If the *schedule* specifies a Territorial or Jurisdictional Limit, then coverage under this policy is restricted to the specified Limits. However, that specified Limit does not restrict the operation of Exclusion 4.16 'North America exposure'.

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