



**Professional Indemnity and
Public & Products Liability
Insurance Policy Wording**

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Important Information

Duty of Disclosure

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

You have this duty until we agree to insure you.

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

You do not need to tell us anything that:

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

If you do not tell us something

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

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

Claims Made Policy

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

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

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

Privacy

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

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

We may disclose the personal information we collect:

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

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

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

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

From time to time, we may use your personal information to send you details of new insurance products or other insurance related information that may be of interest to you. If you do not wish to receive such information, please contact BMS.

General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

Complaints and disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact BMS Risk Solutions in the first instance:

Complaints Officer
BMS Risk Solutions Pty Ltd
Email: enquiries_au@bmsgroup.com
Phone: 1800 931 070
360 Little Collins Street, Melbourne

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited
Email: ldraustralia@lloyds.com
Telephone: (02) 8298 0783
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Insurance agree that:

(i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

(ii) any summons notice or process to be served upon the Underwriters may be served upon:

*Lloyd's Underwriters' General Representative in Australia
Suite 1603
Level 16
1 Macquarie Place
Sydney NSW 2000*

who has authority to accept service on the Underwriters' behalf;

(iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to:

Proclaim

Email. bmsgroup@proclaim.com.au

LMA 5544
17 May 2021

Policy Wording

This Policy is underwritten by Certain Underwriters of Lloyd's.

OUR AGREEMENT

This Policy is a legal contract between **you** and **us** and is made up of the Policy Wording and the **member schedule**. **You** pay **us** premium and **you** may access the benefit of cover under the Policy, provided that **you** meet the eligibility criteria at the time.

There Are Also:

- conditions and exclusions which apply to specific covers or sections;
- general exclusions,
- general conditions,
- claims conditions,
- and other terms,

which apply to how this Policy operates.

Deductible

If **you** make a claim, **you** must pay the **deductible** set out in the **member schedule** for every claim **you** make unless specified otherwise. The **deductible** is inclusive of **costs and expenses**.

How Much We Will Pay

The most we will pay in respect of any **claim** is the **limit of indemnity** or any applicable **sublimit**.

The most **we** will pay in the **policy period** is the **aggregate limit**.

The most **we** will pay for cover under the Additional benefits where a **sublimit** applies is set out in the **member schedule**.

Section 1: Insuring Clause

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

A. PROFESSIONAL INDEMNITY	We will pay your civil liability for loss arising: <ul style="list-style-type: none">• from any claim first made against you during the policy period, and• solely out of the performance of your professional services in connection with your business.
B. PUBLIC LIABILITY	We will pay your civil liability for loss : <ul style="list-style-type: none">• arising from any claim first made against you during the policy period, and• for bodily injury or property damage, and• as a result of an occurrence in connection with your business.
C. PRODUCTS LIABILITY	We will pay your civil liability for loss : <ul style="list-style-type: none">• arising from any claim first made against you during the policy period, and• for bodily injury or property damage, and• as a result of an occurrence arising directly from products sold or supplied by you in connection with your business.

Section 2: Sublimits

Sublimits

ADVANCE CLAIM PROTECTION	\$10,000 each claim and in the aggregate for the policy period for costs and expenses only
INQUIRY COSTS AND EXPENSES	\$10,000,000 each claim and \$30,000,000 in the aggregate for the policy period inclusive of costs and expenses
LOSS OF DOCUMENTS	\$100,000 each claim and in the aggregate for the policy period for costs and expenses only
PENALTIES	\$200,000 each claim and in the aggregate for the policy period inclusive of costs and expenses
PUBLIC RELATIONS EXPENSES	\$50,000 each claim and in the aggregate for the policy period for costs only
DISHONESTY	\$100,000 each claim and in the aggregate for the policy period inclusive of costs and expenses
INTELLECTUAL PROPERTY	\$50,000 each claim and in the aggregate for the policy period inclusive of costs and expenses
CONTINUOUS COVER	\$10,000,000 each claim and \$30,000,000 in the aggregate for the policy period inclusive of costs and expenses
SPOUSAL LIABILITY	\$10,000,000 each claim and \$30,000,000 in the aggregate for the policy period inclusive of costs and expenses
JOINT VENTURES	\$10,000,000 each claim and \$30,000,000 in the aggregate for the policy period inclusive of costs and expenses
PRINCIPALS' PRIOR BUSINESS	\$10,000,000 each claim and \$30,000,000 in the aggregate for the policy period inclusive of costs and expenses
COURT ATTENDANCE COSTS	Up to \$250 per day for court attendance costs incurred by employees of the insured or subsidiary ; or up to \$500 per day for court attendance costs incurred by directors, partners or principals of the insured or subsidiary

Extensions of Cover Sublimits

LIBEL AND SLANDER	\$100,000 each inquiry inclusive of costs and expenses and \$100,000 in the aggregate for the policy period.
CRIMINAL PROCEEDINGS COSTS AND EXPENSES	\$200,000 each criminal proceeding and \$200,000 in the aggregate for costs and expenses only.
CORONIAL INQUIRY COSTS AND EXPENSES	\$200,000 each criminal proceeding and \$200,000 in the aggregate for costs and expenses only.

Section 3: Additional Benefits

ADVANCE CLAIM PROTECTION

If **you** notify **us** of a **claim** or an **inquiry**, we will pay **your costs and expenses**, prior to acceptance that coverage applies under this Policy, which **you** incur with a lawyer on **our** legal panel up to the **sublimit** while **we** determine whether or not the Policy responds, provided invoices are sent to **us** for payment.

CONTINUOUS COVER

We will pay **your** civil liability for **loss** arising out of any circumstance giving rise to a **claim** first made against **you** during the **policy period**, or **your costs and expenses** for any circumstance giving rise to an **inquiry** first commenced during the **policy period**, which circumstance ought to have been notified to **us** under a prior policy but wasn't provided that **you** have been continuously insured by **us** since the date when the circumstance should have been notified and the failure to notify **us** was not deliberate or fraudulent. **We** will have the discretion to apply to this claim the limit of indemnity and the deductible under the prior policy in place when the circumstance should have been notified.

COURT ATTENDANCE COSTS

We will pay, up to the **sublimit**, for court attendance costs incurred by **your employees** or **your** directors, partners or principals if they attend a civil proceeding as a witness in any **claim** or **inquiry** for which **we** have agreed to indemnify **you**.

You do not have to pay any **deductible** if **you** claim under this additional benefit.

DISHONESTY

Notwithstanding the Dishonesty and Recklessness Exclusion, **we** will pay **your** civil liability for **loss** from any **claim** first made against **you** during the **policy period** arising out of the performance of **your professional services** in connection with **your business** up to the **sublimit** for **your** actual or alleged dishonest, criminal, malicious or fraudulent acts or omissions. **We** will not indemnify any person who commits or condones such conduct.

EXTENDED REPORTING PERIOD

If this Policy is:

- not renewed; or
- cancelled (for any reason other than non-payment of premium);

then **we** will, subject to the full terms and conditions of this Policy, indemnify **you** for any **claim** first made within 60 days after the expiration or cancellation of this Policy and arising **solely out of the performance of** your professional services, **prior to the expiration or cancellation of this Policy**. This additional benefit ceases once **you** are insured under another insurance policy.

GOOD SAMARITAN ACTS

We agree to indemnify **you** for **your** civil liability for **loss** arising from any **claim** first made against **you** during the **policy period** and solely out of **your** performance of a **good samaritan act**.

HEIRS AND ESTATES

In the event of the death or mental incapacity of any director, **employee**, partner or principal of the **insured** or a **subsidiary** or a former director, employee, partner or principal of the **insured** or a **subsidiary**, **we** agree to extend the definition of **you** and **your** to include their heirs, estate, legal representatives or assignees.

INTELLECTUAL PROPERTY

We agree to indemnify **you** for any **claim** first made against **you** during the **policy period** arising in the conduct of **your business** up to the **sublimit** for infringement or alleged infringement of copyright, trademarks, registered designs or patents, provided that **your** infringement is unintentional.

INQUIRY COSTS AND EXPENSES

We will pay **your costs and expenses**, up to the **sublimit**, resulting from **your** response or attendance at any **inquiry** into the performance of **your professional services**, first commenced during the **policy period** or arising out of a **claim** made or circumstance notified during the **policy period**. This additional benefit does not apply in relation to **your** appeal of any **inquiry** or any finding of any **inquiry** except with **our** prior written consent which is within **our** absolute discretion.

JOINT VENTURE

We agree to indemnify **you** in respect of any **claim** made against you for that proportion of any civil liability for **loss** arising out of the performance of **your professional services** in connection with **your business** in which you are engaged as a joint venturer or as a partner. No cover is provided to **your** associate or joint venture partner.

LEGAL ASSISTANCE

We will pay for a single consultation with a member of **our** legal panel on any matter related to the risks insured under the Policy, except in relation to the scope of the Policy.

LOSS OF DOCUMENTS

(i) Restoration Costs

We will pay **your** costs incurred by **you** to replace or restore **documents**, resulting from the loss of any **documents** (including **your** own):

- for which **you** are legally responsible; and
- which have been unintentionally destroyed, damaged, lost or mislaid in the performance of **your professional services**.

You must:

- undertake a diligent search to attempt recovery of the lost **documents**; and
- discover and report **your** loss during the **policy period**.

We will not pay for:

1. any consequential or indirect loss arising out of or in connection with the loss of any **documents**; or
2. loss of **documents** arising out of the theft, corruption or erasure of any data by a computer virus or by any intentional or malicious erasure by **your** current or former director, **employee**, partner or principal.

**LOSS OF DOCUMENTS
(CONTINUED)**

(ii) Civil Liability

We will pay **you** civil liability for **loss** arising from:

- any **claim** first made against **you** during the **policy period**; and
- as a consequence of **documents**, the property of or entrusted to **you** in the performance of **your professional services**, and which should be in **your** custody but which have been destroyed, irrecoverably damaged, lost or stolen, and after diligent search cannot be found.

The definition of **documents** is amended for the purposes of this additional benefit (ii) only as follows:

documents means deeds, wills, maps, plans, records, books, letters, certificates, forms and documents of any nature whether written, printed or reproduced by any other method (other than bearer bonds, coupons, tickets, bank notes, currency notes, negotiable instruments, computer systems' records and medical records).

We will not liable under this additional benefit (ii) for:

- any **claim** arising from, based upon, attributable to or in consequence of any actual or alleged defamation, libel or slander;
- any **claim** arising from, based upon, attributable to or in consequence of an actual or alleged breach of confidentiality or privacy.

You do not have to pay an **deductible** if **you** claim under this additional benefit.

The maximum amount payable under additional benefit (i) and (ii) shall be the amount shown in the **sublimit**.

We will extend the definition of **subsidiary** to include any **subsidiary** created or acquired by **you** during the **policy period**.

The cover under this additional benefit:

- ceases after 30 days from the creation or acquisition of that **subsidiary**, unless we have agreed to insure that **subsidiary** and **you** have paid **us** any additional premium;
- does not apply to **claims** or loss arising from acts, errors or omissions occurring prior to the acquisition of such **subsidiary**; and
- only applies to the same **professional** services as provided by the **insured**.

**NEWLY CREATED OR
ACQUIRED SUBSIDIARIES**

PENALTIES

We will indemnify **you** for **Penalties** up to the **sublimit**, which **we** are not prohibited by law from paying, arising out of a **claim** first made or **inquiry** first commenced during the **policy period** and arising solely out of the performance of **your professional services**.

**PUBLIC RELATIONS
EXPENSES**

**UNLIMITED RUN OFF
COVER**

We will pay reasonable costs up to the **sublimit** of a public relations consultant **you** engage to protect **your** reputation from damage if an allegation has been made against **you** about the quality of **your professional services** which may result in a **claim**.

The **policy period** may be extended with **our** agreement to any person insured under this Policy, provided that:

- the insured person has ceased to provide **professional services** in connection with **your business**; and
- **you** are insured with **us** as at the date he or she ceased to provide **professional services** in connection with **your business**;
- he or she confirmed the above in writing to **us** prior to the expiration of the **policy period** and he or she has received written confirmation from **us** that the run-off cover has been activated; and
- this clause does not increase the **limit of indemnity** or the **aggregate limit**;

provided that:

- any cover will only apply in respect of any **claim** arising from the **professional services** provided prior to the date that he or she ceased to provide **your professional services** in connection with **your business**; and
- any cover will only apply for as long as **we** continue to provide uninterrupted cover to the **insured** or **subsidiary**.

An additional premium may apply in order to obtain this unlimited run off cover.

Section 4: Exclusions

We will not be liable under this Policy in respect of any **claim, inquiry or loss**, or **our** liability to indemnify under any extension or additional benefit, unless expressly stated to the contrary:

ABUSE

arising directly or indirectly, based upon, attributable to or in consequence of any actual or alleged verbal, physical or sexual abuse, act of molestation or physical interference of or with any person.

ASBESTOS

arising directly or indirectly from, based upon, attributable to, or in any way connected with asbestos other than in respect to the provision of **your professional services** for an asbestos-related disease.

ALCOHOL, NARCOTICS AND INTOXICANTS

arising directly or indirectly from, based upon, attributable to or in consequence of **you** being under the influence of alcohol, intoxicants or narcotics.

CONTRACTUAL LIABILITY

arising directly or indirectly, from any liability assumed under a contract or agreement or guarantee (including but not limited to an indemnity and liquidated damages) or warranty which **you** have agreed to give in the course of **your professional services** unless:

- **you** have assumed a liability under contract by reason of having contracted out of the operation of proportional liability legislation; or
- such liability would have attached in the absence of such contract or agreement.

CYBER LIABILITY

Cyber Liability.

DAMAGE TO PRODUCTS

arising directly or indirectly from:

- property damage to **products** if the damage is attributed to any defect in them or to their inherent nature or unsuitability; or
- repairing or replacing **products** as a result of **your** workmanship or **your** supervision of workmanship.

DIRECTORS AND OFFICERS AND SUPERANNUATION TRUSTEE

arising directly or indirectly from, based upon, attributable to, or in consequence of **you** acting in the capacity of a director or officer of a company, association or other legal entity or in the capacity of a superannuation trustee.

DISHONESTY AND RECKLESSNESS

arising directly or indirectly from, based upon, attributable to or in consequence of the performance of **your professional services** that is:

- criminal, dishonest, fraudulent, malicious or reckless;
- a deliberate breach of contract, professional duty or any law; or
- a deliberate infringement of copyright, trademark, registered designs or patent.

**GENERAL
ANAESTHESIA**

arising directly or indirectly from any operation or procedure carried out under general anaesthesia unless performed in a hospital.

JURISDICTIONAL LIMITS

- I. brought in a court of law within the territorial limits of the United States of America or its territories or protectorates; or
- II. arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to the laws of the United States of America or its territories or protectorates; or
- III. which **we** are prohibited from paying by law in the jurisdiction concerned.

LICENSING

arising directly or indirectly from, based upon, attributable to, or in consequence of **you** or **your** contractors actually or allegedly not being licensed, registered, or accredited to provide the **professional services**.

NUCLEAR

arising directly or indirectly from, based upon, attributable to, or in consequence of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste which is from the combustion of any nuclear fuel.

**OBLIGATIONS TO
EMPLOYEES**

arising directly or indirectly from, based upon, attributable to, or in consequence of

- **bodily injury** of any **employee**; or
- damage to or destruction of any property of any **employee** including loss of use of property, arising out of, or in the course of their employment with **you**; or
- any dispute in connection with employment.

POLLUTION

arising directly or indirectly from, based upon, attributable to, or in consequence of the actual or alleged discharge, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkali, chemicals or waste including, but not limited to asbestos or toxic mould. Waste includes materials to be recycled, reconditioned or reclaimed.

PRIOR OR PENDING

- I. made, threatened or intimated against **you** prior to the **policy period**; or
- II. arising directly or indirectly from, based upon, attributable to, or in consequence of any fact or circumstance or **occurrence**:
 - of which notice has been given, or ought reasonably to have been given, under any previous policy, or disclosed in a proposal form; or
 - of which **you** first became aware prior to the **policy period**, and which **you** knew or ought reasonably to have known had potential to give rise to a **claim** or **inquiry**.

PRODUCT RECALL

arising directly or indirectly from, or in any way involving withdrawing a good or product from sale or recalling any good or product.

REFUNDS OF FEES OR CHARGES

for return or refund of any professional fees, charges, commissions or other remuneration received by, paid by or payable to **you** unless otherwise stated in this policy.

RELATED OR ASSOCIATED ENTITIES

brought or maintained by or on behalf of:

- **you**;
- any parent company or other entity which owns, controls or manages **you**;
- any successor or assign of **you**; or
- any person who, at the time the **professional services** giving rise to the **claim** were provided, was a family member of **yours**.

RADIOACTIVITY

arising directly or indirectly from, caused by, contributed to by, or in connection with or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

But this exclusion does not apply to any **claim** or **inquiry** arising from the use of radium, radium compounds or radioisotopes when used away from the place where such are made or produced and used exclusively for the provision of **professional services** and in the conduct of your **business**.

RETROACTIVE DATE

arising directly or indirectly from:

- the performance of **your professional services**; or
- an **occurrence**;

prior to the Retroactive Date stated in the **member schedule**.

TERRORISM

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

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

TRADING DEBTS

arising directly or indirectly from, based upon, attributable to, or in consequence of any trading debt, liability or losses incurred by **you** or any guarantee given by **you** for a debt or **your** insolvency, administration, receivership or bankruptcy.

USE OF HEAT

arising directly or indirectly from, or in any way involving the use of heat including but not limited to the use of a kiln, direct flame, or fire or smoke art. This exclusion only applies to Insuring Clause B & C.

VEHICLES

arising directly or indirectly from:

- the ownership, possession or use by **you** or on **your** behalf of any motor vehicle or trailer for which compulsory insurance is required by law, other than that arising from damage to any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking; or
- ownership, possession or use by or on **your** behalf of any aircraft, watercraft or hovercraft, other than that arising from the emergency transportation of any patient accompanied by **you**.

WAR

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

CYBER LIABILITY EXCLUSION

Any Claim directly or indirectly or in any manner whatsoever arising out of, caused by or connected with;

- 1.1 failure of any programme, instruction or data, for use in any computer or other electronic processing device, equipment or system, to function in the way expected or intended;
- 1.2 transmission or receipt of any virus programme or code that causes loss or damage to any Computer System or prevents or impairs its proper function or performance; or
- 1.3 the use of, or inability to use, any application, software or programme in connection with any computer or other electronic processing device.

For the purpose of this exclusion, the following definitions apply:

Claim:

A written demand for compensation or damages (including claimants' costs and expenses) against the Insured.

Computer System:

Any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system or similar device, or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode.

Section 5: Claims Conditions

WHAT YOU NEED TO TELL US

When making a claim, **you** must have met and then continue to comply with the conditions of this Policy.

If **you** do not meet these conditions or make a fraudulent claim **we** may:

- a. refuse to pay **your** claim or reduce what **we** pay for **your** claim;
- b. cancel **your** Policy.

ASSISTANCE AND CO-OPERATION

You must provide **us** with all reasonable assistance **we** require when **you** deal with **us** and **you** will:

- be truthful and frank;
- not behave in a way that is abusive, dangerous, hostile, improper or threatening;
- co-operate fully with **us**, even after **we** have paid a claim.

CLAIMS

Where **we** have accepted **your** claim we will pay **your costs and expenses** in advance provided that the tax invoices are made out to **us**.

NOTIFICATION

You must notify **us** as soon as you become aware of a **claim** or **inquiry** by sending **us** email.

To report an incident or claim you must notify us in writing. In the first instance please notify BMS via the contact details below:

Phone 1800 931 071

Email anzacata@bmsgroup.com

You may also ask **your** financial services provider to notify **us** on **your** behalf. **You** are responsible for ensuring **your** financial services provider complies with the notification provisions of this Policy.

You must provide **us** with:

- all documentation in **your** possession; and
- information **you** are aware of;

which relates to the **claim** or **inquiry you** have notified to **us**.

ALLOCATION

Where a **claim** or **inquiry** is covered only in part by this Policy, **we** and **you** will use best efforts to agree a fair and proper allocation of amounts that are covered and those that are not covered under this Policy.

If **we** and **you** cannot agree on a fair and proper allocation then the matter will be referred to **Senior Counsel** (to be mutually agreed upon by **you** and **us**) whose opinion will be binding.

DEFENCE AND SETTLEMENT

The costs of Senior Counsel's opinion will be regarded as part of the **costs and expenses**.

We may:

- instruct **you** to conduct the defence of a **claim** if **we** believe that it will not exceed the **deductible**, in which case **you** will be responsible for **your** own **costs and expenses** and any settlement up to the amount of the **deductible**. In the event that **your** reasonable **costs and expenses** or payment made to dispose of the **claim** exceeds the **deductible**, **we** will reimburse **you** those reasonable **costs and expenses**;
- instruct **you** to conduct **your** response and attendance for an **inquiry** if **we** believe that it will not exceed the **deductible**, in which case **you** will be responsible for **your** own **costs and expenses** up to the amount of the **deductible**. In the event that **your** reasonable **costs and expenses** exceed the **deductible** **we** will reimburse **you** those reasonable **costs and expenses**;
- at **our** sole discretion take over and conduct, in **your** name, the defence or settlement of any **claim** at any time, in which case **we** will then have sole control of that **claim**;
- at **our** sole discretion take over **your** response and attendance for an **inquiry**, in which case **we** will then have sole control of that **inquiry**.

You agree:

1. not to negotiate or settle any **claim**, incur any **costs and expenses** or investigation or other costs and expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **claim**, **inquiry** or **loss** without **our** prior written consent, provided that **we** shall not unreasonably withhold such consent;
2. that any information that is received by **our** external lawyers in the course of investigating, defending or settling any **claim** made against **you** or **inquiry** can be provided to **us** and relied upon by **us** in relation to any issue that may arise regarding **our** liability to indemnify **you**;
3. that **our** external lawyers may provide advice to **us** on any issue regarding **our** liability to indemnify **you** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **claim** or **inquiry**;
4. further, in the circumstances described under items 2, 3 above, **you** agree:
 - a. that **our** communications with **our** external lawyers are privileged and that **you** are not entitled to obtain any such communications;
 - b. to waive any entitlement that **you** may have for legal professional privilege between **you** and **our** external lawyers;
 - c. if any actual or apparent conflict arises between **our** interests and **your** interests, **our** external lawyers may

cease acting on **your** behalf and may continue to act on **our** behalf.

YOUR RIGHT TO CONTEST

In the event that **we** recommend a settlement in respect of any **claim** and **you** do not agree that such **claim** should be settled, then **you** may elect to contest such **claim**, provided that **our** liability in connection with such **claim** shall not exceed the amount for which the **claim** could have been so settled plus the **costs and expenses** incurred with **our** written consent up to the date of such election, less the **deductible**.

SENIOR COUNSEL CLAUSE

We shall not require **you** to contest any **claim** unless a **Senior Counsel** (to be mutually agreed upon by **you** and **us**) shall advise that such **claim** should be contested.

In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the claimant, the likely **costs and expenses** and the prospects of **you** successfully defending the **claim**.

The cost of such **Senior Counsel's** opinion shall be regarded as part of the **costs and expenses**.

Section 6: General Conditions

These conditions apply to **your** policy.

ASSIGNMENT

No assignment of any rights under this Policy shall be effective except when made by written endorsement to this Policy and signed by **us**.

CANCELLATION

The **insured** can cancel this Policy at any time by telling **us** in writing.

We may cancel this Policy in any of the circumstances permitted by law by informing the **insured** in writing. **We** will give the **insured** notice in person or send it to the **insured's** address (including an electronic address) last known to **us**.

If **you** have paid **your** premium in advance, **we** will refund **you** the proportion of the premium for the remaining **policy period**.

REASONABLE CARE

You must take reasonable care to prevent or minimise any **loss** that might give rise to a **claim** or **inquiry** under this Policy. At all times, **you** must:

- minimise the cost of any **claim** under this Policy; and
- comply with all laws.

RELATED CLAIMS

For the purposes of applying any **deductible** or **limit of indemnity** or **sublimit**, all **loss** otherwise recoverable under this Policy resulting from or in connection with:

- one and the same act, error or omission or **occurrence**; or
- a series of acts, errors or omissions or **occurrences** arising out of or attributable to the same originating cause, or source,

shall be deemed to be one **claim** or **inquiry**.

We agree that where this Policy insures more than one party, where one party:

- failed to comply with the duty of disclosure; or
- made a misrepresentation to **us** before the Policy was entered into;

this shall not prejudice the right of any other insured person to indemnity as may be provided by this Policy;

Provided that:

- **you** were not aware of the failure or misrepresentation;
- as soon as is reasonably practicable upon becoming aware of any such conduct, **you** advise **us** in writing of all known facts in relation to such conduct; and
- the conduct of the principals, partners and directors of the **insured** are imputed to the **insured**.

SEVERABILITY/NON- IMPUTATION/INNOCENT NON-DISCLOSURE

CLAIMS MITIGATION AND CO-OPERATION

If **you**, either prior to or during the **policy period** become aware of a situation which could, if not rectified, lead to a **claim** or increase the quantum of a **claim**, **you** must use due diligence and do all things reasonably practicable to avoid or diminish any **loss**.

REASONABLE ASSISTANCE

If at the time of any **loss**, damage or liability there is any other insurance (whether effected by **you** or by any other person) which covers the same **loss**, damage or liability **you** must provide **us** with any reasonable assistance we require to make a claim for contribution from any other insurer(s).

OTHER INSURANCE

This Policy does not cover any **claim, inquiry** or **loss** or **our** liability to indemnify for which **you** are entitled to be indemnified under any other insurance.

RECOVERY ACTION AND UNINSURED LOSS

You must not do anything that may prejudice **our** rights of recovery against any third party, including but not limited to agreeing not to seek any compensation from any other person that is or is potentially liable to compensate **you** for any **loss**.

If **we** pay your **claim**, **we** may seek to recover the amount paid to **you** from the third party who caused the loss. **We** will do this in **your** name and **you** must assist **us** with any reasonable requests.

If **you** have suffered loss which is not covered by this Policy, **we** may offer to attempt to recover this for **you**. **You** may specifically ask **us** to recover this for **you**. **You** will need to give **us** documents supporting **your** loss. Before **we** include any uninsured loss in the recovery action **we** will also ask **you** to agree to the basis on which **we** will handle **your** recovery action. **You** may need to contribute to legal costs in some circumstances.

MATERIAL ALTERATION TO RISK

You will give **us** notice in writing as soon as possible of any material alterations to the risk that is the subject of this Policy including but not limited to:

- a. any change in the **professional services** offered by **you**;
- b. **you** going into bankruptcy, receivership, liquidation or any other form of external administration.

GOVERNING LAW

This Policy is governed by the law of the Australian State or Territory in which this Policy is issued.

POLICY INTERPRETATION

The headings in this Policy do not form part of the Policy wording and are for descriptive purposes only.

**LLOYD'S SERVICE OF
SUIT**

In accepting this Insurance we agree that :

- I. if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and we will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- II. any summons notice or process to be served upon us may be served upon:

Lloyd's Underwriters' General Representative in Australia
Level 9, 1 O'Connell Street,
Sydney, NSW 2000
who has authority to accept service;

if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

Section 7: Extensions to Cover - Endorsements

CONTRACTOR AND LOCUM LIABILITY EXTENSION

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

We will pay **your** civil liability for loss arising:

- from any claim first made against **you** during the **policy period**, and
- as a result of the conduct of **your** contractor or locum (but excluding any **medical practitioner**) in connection with **your business**.

No cover is provided to **your** contractor or locum.

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

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

CORONIAL INQUIRY COSTS AND EXPENSES EXTENSION

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

We will pay **your costs and expenses**, up to the **sublimit**, resulting from your response or attendance at any inquiry by a Coroner arising out of **your professional services** in connection with **your business**, first commenced during the **policy period** or arising out of a **claim** made or circumstance notified during the **policy period**.

We will not be liable under this extension for any **costs and expenses** arising directly or indirectly from an **occurrence** prior to the Retroactive Date stated in the **member schedule** or arising directly or indirectly from the performance of **your professional services** prior to the Retroactive Date stated in the **member schedule**.

We will not be liable under this extension for any **costs and expenses** in relation to **your** appeal of any inquiry by a Coroner or any finding at any inquiry by a Coroner except with **our** prior written consent which is within **our** absolute discretion.

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

CRIMINAL PROCEEDINGS COSTS AND EXPENSES EXTENSION

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

Subject to the condition that **you** must be finally acquitted or found not guilty in the **criminal proceeding**, we will reimburse **your costs and expenses**, up to a **sublimit**, resulting from **your** defence of a **criminal proceeding** first commenced during the **policy period** or arising out of a **claim** made or circumstance notified during the **policy period**.

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

We will not be liable under this extension in respect of any **costs and expenses** arising directly or indirectly from the performance of **your professional services** prior to the Retroactive Date stated in the **member schedule**.

Definitions

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

Criminal Proceeding

Criminal proceeding means any prosecution commenced in Australia seeking criminal sanctions against **you** resulting solely from the performance of **your professional services** in connection with **your business**.

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

LIBEL, SLANDER AND DEFAMATION EXTENSION

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

We will pay **your** civil liability for **loss** from any **claim** first made against **you** during the **policy period** up to the **sublimit**:

- for any actual or alleged defamation, libel or slander committed by **you** without animosity; and
- solely in the conduct of **your business**; and
- only where, upon **our** reasonable request, **you** issue an apology or expression of regret, the form and content of which are to be approved by **us**.

We will not be liable to pay your civil liability for **loss** under this extension:

- if **you** refuse to issue such an apology or expression of regret upon **our** reasonable request;
- for any **claim** arising from the contents of any journal or publication, or in any communication or contribution to the press or media; or
- for any actual or alleged defamation, libel or slander committed prior to the Retroactive Date stated in the **member schedule**.

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

PRINCIPALS' PRIOR BUSINESS EXTENSION

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

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

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

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

SPOUSAL LIABILITY EXTENSION

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

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

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

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

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

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

DEFINITIONS

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

spouse

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

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

Section 8: Additional Policy Clauses

SANCTIONS LIMITATION AND EXCLUSION CLAUSE

Sanctions Limitation and Exclusion

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

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(RE)INSURERS LIABILITY CLAUSE

(Re)insurers Liability several not joint

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd’s syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning “signing” below.

In the case of a Lloyd’s syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member’s proportion. A member is not jointly liable for any other member’s proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd’s, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd’s syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd’s, at the above address.

**(RE)INSURERS LIABILITY
CLAUSE
(CONTINUED)**

Proportion of liability

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a member schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the member schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

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Several Liability Notice

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

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LSW1001 (Insurance)

Section 9: Words With Special Meanings

Some key words and terms used in the Policy have special meaning. Wherever the following words or terms appear in bold in the policy, they mean what is set out below:

Word	Specific meaning
Aggregate limit	the amount shown as the Aggregate limit of indemnity in the member schedule .
Bodily injury	physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any natural person.
Claim	the receipt of any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice, or written demand for compensation.
Business	the Business as stated in the member schedule .
Costs and expenses	the reasonable legal costs including reasonable appeal costs and other necessary expenses incurred by you or on your behalf. Costs and expenses does not include your overheads or any salaries, wages, fees or benefits of your directors, employees , partners or principals.
Documents	any documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material. Documents does not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.
Deductible	the amount shown as the deductible in the member schedule .
Employee	any natural person employed under a contract of service or apprenticeship with you , or any person under your direction, supervision or control including employed students who are gaining experience with you as part of a University, College, including the College of Advanced Education, TAFE, Association or government accredited training course; employee does not include a medical practitioner or any contractor.
Good Samaritan act	emergency first aid or medical assistance administered at the scene of a medical emergency, accident or disaster by you who are present either by chance, or in response to an S.O.S call and for which you have no expectation of payment or other reward.
Inquiry	an investigation, examination or inquiry by a regulatory authority or disciplinary committee of any association or professional body of which you are a member; inquiry does not include any audit of you or any inquiry by a Coroner.
Insured	the insured named on the member schedule .

Insured member	a legal entity or natural person who has paid and been accepted to be covered under the Policy or who is an accepted student or retired member of the Australian, New Zealand & Asian Creative Arts Therapy Association Arts Therapy Association.
Limit of indemnity	the amount shown as the limit of indemnity in the member schedule .
Loss	means damages, costs and expenses and awards of damages and costs. Loss does not include taxes, fines or penalties (except for Penalties) payable by you , non-compensatory damages including exemplary, aggravated, punitive, multiple or liquidated damages, or restitutionary relief.
Medical practitioner	a person registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners.
Occurrence	means an event, including continuous or repeated exposure to conditions, which results in bodily injury or property damage , neither expected nor intended from your standpoint.
Penalties	any civil penalty imposed by a regulatory authority or a disciplinary committee of any association or professional body of which you are a member.
Period of cover	the period specified in the member schedule .
Products	anything which: <ul style="list-style-type: none"> • has been sold, supplied, repaired, altered, treated, manufactured, constructed, installed or maintained by you in connection with your business, and • has ceased to be in your possession or control. Products does not include: <ul style="list-style-type: none"> • anything sold or supplied to anyone other than retail customers including patients, and/or • anything which requires regulatory approval for sale, supply or use in Australia and is not so approved.
Property damage	the damage to or loss of or destruction of tangible property or loss of use of tangible property resulting directly from property damage to other tangible property.
Schedule	the member schedule to this Policy, including any endorsement.
Premium	the amount shown as premium in the tax invoice..
Professional services	the professional service(s) specified in the member schedule .
Regulatory authority	a person or entity appointed, constituted or acting under a delegation pursuant to any legislation for the purposes of enforcement of such legislation.
Sublimit	the amount shown as a sublimit of indemnity in the member schedule .
Senior counsel	a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court.

Subsidiary	a company or entity of which the insured <ol style="list-style-type: none"> 1. is the sole owner; or 2. controls the composition of the board of directors; or 3. controls more than half the voting power; or 4. holds more than half of the issued share capital; as at the inception date of the policy period .
Terrorism	an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear.
Our, us, we	Certain Underwriters at Lloyd's
You, your	the insured, subsidiary , and their <ul style="list-style-type: none"> • directors, employees, partners or principals; and • former directors, employees, partners or principals. you and your does not include a medical practitioner .



BMS Risk Solutions Pty Ltd

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