

# Australis Care Providers

## Combined Liability Insurance Policy

POLICY

QM2118

# CARE PROVIDERS COMBINED LIABILITY INSURANCE

## Important Information

### The Insurer

These Policies are insured by :-

QBE Insurance (Australia) Limited AFS Licence Number: 239545 of 82 Pitt Street, Sydney, NSW 2000, ABN 78 003 191 035 of 82 Pitt Street Sydney.

In arranging and effecting these policies, InterPacific Underwriting Agencies Pty Limited trading as Australis Group Underwriting ABN 38 077 515 327, AFS Licence Number 234964 of Level 3, 117 Clarence Street Sydney, NSW 2000 hereafter referred to as "Australis Care" will be acting under authority given to it by QBE. It will be acting as agent of QBE not as agent of the Insured.

For the purpose of this section the term you / your / Insured means the Insured as defined in:

1.5 of Policy 1; and/or

7.6 of Policy 2; and/or

7.5 of Policy 3.

For the purpose of this section the term we / our / us means Australis Care; Australis Group (Underwriting) Pty Ltd and/or QBE Insurance (Australia) Limited.

### Please Check the Schedule Details

Please check that the Schedule accurately states what you have insured. Especially check that the Limits of Liability are adequate and please confirm The Named Insured and both Professional Business Practice and The Business is fully described.

### Your Duty of Disclosure

The law requires you to tell us everything you know (or could reasonably be expected to know in the circumstances) which is relevant to our decision to insure you and the terms on which you are insured.

This duty applies before you enter into a contract with us, that is before we accept your application for insurance and also before each time you renew, extend, vary or reinstate a Policy of insurance.

Each person named as the Insured has the same duty.

### Penalty for Non-Disclosure

If you do not tell us everything that is relevant, the insurer may:

- reduce or refuse to pay a claim;
- cancel your Policy; or
- if you act fraudulently, invalidate the Policy from its beginning and not be bound by it.

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QM2118-0310

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## You don't need to tell us anything which

- reduces the risk;
- is of common knowledge;
- we already know, or ought to know in the ordinary course of our business, or
- we indicate we do not want to know.

If you are not sure that something is relevant, it is best to disclose it anyway.

Also be sure to notify us of any changes which affect any of the Policies insured herein.

## Privacy

### Australis Care

At Australis Care, we are committed to protecting your privacy in accordance with the Privacy Act 1988 (Cth). This Privacy Policy describes our current policies and practices in relation to the handling and use of personal information.

We strive to ensure that you are comfortable in the knowledge that personal information you supply us will be treated sensitively and with the appropriate degree of privacy.

### What information do we collect and how do we use it?

To enable us to quote on and insure risks, we collect the information we need to assess the risk and whether and on what terms we will insure it. We may need to provide this information to our risk carriers and reinsurers. Some of these companies may be located outside Australia.

When a claim is made under the policy, to enable us to assess the claim, we and our representatives (including loss adjustors, investigators, medical advisers and lawyers) collect information about the claim, some of which may be personal information. We may collect the information from our insured or from third parties. We provide this information to those we have appointed to assist us to consider the claim. Again this information may be passed on to our risk carriers and reinsurers.

We may use your personal information internally to help us improve our services and help resolve any problems.

### What if you don't provide some information to us?

We can only issue insurance cover and assess claims under the policy if we have all relevant information. The insurance laws also require the insured to provide us with all the information we need in order to be able to decide whether to insure and on what terms.

### How do we hold and protect your information?

We hold the information we collect from you in our Policy or Claim files.

We keep your information safe by security password protecting our computer workstations whilst placing hard copy into a filing system that is inaccessible to the general public. All of our staff have pledged confidentiality in respect of the material they deal with at Australis. Our offices are protected by security devices such as a monitored electronic key card system in order to gain entry during business hours. The office is alarmed and monitored outside of business hours in conjunction with the

building's security system which includes key operated lifts to each floor and monitored, alarmed stairwells.

### Will we disclose the information we collect to anyone?

We do not sell, trade, or rent your personal information to others.

We may need to provide your information to contractors who supply services to us, e.g. to handle mailings on our behalf or to other companies in the event of a corporate sale, merger, reorganisation, dissolution or similar event. However, we will do our best to ensure that they protect your information in the same way that we do.

We may provide your information to others if we are required to do so by law or under some unusual other circumstances which the Privacy Act permits.

### How can you check, update or change the information we are holding?

Upon receipt of your written request and enough information to allow us to identify the information, we will disclose to you the personal information we hold about you. We will also correct, amend or delete any personal information that we agree is inaccurate.

On occasions, we may refuse to provide some personal information because it bears upon litigation with you or there is another specific reason. Should access to your information be denied, we will always provide you with the reasons why.

If you wish to access or correct your personal information please write to The Privacy Officer, Australis Group Underwriting, GPO Box 247, Sydney, NSW 2001. We do not charge for providing access to personal information or for complying with a correction request.

### Your consent

By asking us to quote or insure you, you consent to the collection and use of the information you have provided to us for the purposes described above.

### Tell us what you think

We welcome your questions and comments about privacy. If you have any concerns or complaints, please contact the Privacy Officer, Australis Group Underwriting, GPO Box 247, Sydney, NSW 2001.

For more information on our privacy policy please visit our website at [www.ausuw.com](http://www.ausuw.com)

## QBE Insurance (Australia) Limited "QBE"

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. QBE is bound by the Privacy Act 1988 (CTH) and its principles when collecting and handling your personal information. QBE has developed a privacy policy which explains what sort of personal information QBE holds about you and what QBE can do with it.

QBE will only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including any claims you make. QBE may need to disclose personal information to reinsurers, (who may be located overseas), insurance intermediaries, insurance reference bureaus, credit reference agencies, QBE

advisers and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting QBE and them in providing relevant services and products, or for the purpose of litigation.

By providing your personal information to QBE, you consent to QBE making these disclosures. Without your personal information QBE may not be able to issue insurance cover to you or process your claim.

For further information about our Privacy Policy, or to access or correct your personal information, please contact the Compliance manager, QBE Insurance (Australia) Limited, GPO Box 82, Sydney NSW 2001. Telephone (02) 9375-4656; Facsimile (02) 8275 9022 or Email: [compliance.manager@qbe.com](mailto:compliance.manager@qbe.com)

## The General Insurance Code of Practice

QBE Insurance (Australia) Limited is a signatory to the General Insurance Code of Practice. The Code aims to:

- promotes more informed relations between insurers and their customers;
- improve consumer confidence in the General Insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- commit insurers and the professionals they rely upon to higher standards of customer service.

## Dispute resolution

We and QBE will do everything possible to provide a quality service to you. However, we and QBE recognise that occasionally there may be some aspect of services provided or a decision we or QBE make that you wish to query or draw to our or QBE's attention.

QBE have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to your complaint within 15 working days.

If you would like to make a complaint or access QBE's internal dispute resolution service please contact your nearest QBE office and ask to speak to a dispute resolution specialist.

## Preventing the insured's right of recovery

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

## Other party's interests

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

## Contracts or Agreements

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

## Important Information about Goods and Services Tax

This policy has provision for payment of Goods and Services Tax:

- by you in relation to premiums;
- by us in relation to claims.

## Goods and Services Tax

The amount of premium payable by you for this Policy includes an amount on account of the GST on the premium.

When QBE pay a claim, your GST status will determine the amount QBE pay.

When you are:

- (a) not registered for GST, the amount QBE pay is the sum insured/limit of indemnity or the other limits of insurance cover including GST.
- (b) registered for GST, QBE will pay the sum insured/limit of indemnity or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a damaged item insured under the Policy) QBE will pay for the GST amount.

QBE will reduce the GST amount QBE pay by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise QBE of your correct Australian Business Number & Taxable Percentage. Any GST liability arising from your incorrect advice is payable by you. Where the settlement of your claim is less than the sum insured/limit of indemnity or the other limits of insurance cover, QBE will only pay an amount for GST (less your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, QBE will only pay the GST relating to QBE's settlement of the claim.

QBE will (where relevant) pay you on your claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to your claim.

**GST, Input Tax Credit, Business Activity Statement (BAS) and Acquisition** have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax), ACT 1999 and related legislation as amended from time to time.

**Taxable Percentage** is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

## Wording/Schedule/Endorsements/Marginal Notes

The Policy wording, Schedule and endorsements (if any) are to be read together as one Policy. Any word or expression which has been given a specific meaning in any section shall have that meaning throughout the Policy.

Marginal notes and Headings are only used to help the Insured read this Policy and do not form a part of this Policy.

## Claims Made

Policy 2 and Policy 3 operate on a “claims made and notified basis. This means that the Policy covers you for claims made against you and notified to us during the period of insurance.

Policy 2 and Policy 3 do not provide cover in relation to:

- acts errors or omissions actually or allegedly committed prior to the retroactive date of the Policy (if such date is specified)
- claims made after the expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance
- claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy
- claims made, threatened or intimated against you prior to the commencement of the period of insurance
- facts or circumstances of which you first became aware prior to the period of insurance, and which you knew or ought reasonably to have known had the potential to give rise to a claim under this Policy
- claims arising out of circumstances noted on the proposal form for the current period of insurance or on any previous proposal form.

Where you give notice in writing to us of any facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts but before the expiry of the period of insurance, you may have rights under Section 40(3) of the insurance Contracts Act 1984 to be indemnified in respect of any claim subsequently made against you arising from those facts notwithstanding that the claim is made after the expiry of the period of insurance. Any such rights arise under the legislation only. The terms of the policy and the effect of the policy is that you are not covered for claims made against you after the expiry of the period of insurance.

## Paying your premium

You must pay your premium by the due date. If we do not receive your premium by this date or your payment is dishonoured this Policy will not operate and there will be no cover.

## Policy Sections Covered

Only those Policy/ies which have a sum insured noted in the “Limit of Indemnity” in their respective Schedule are included in this policy.

If no sum insured is specified in the Schedule under Limit of Indemnity then that Policy will not provide Indemnity or Defence Costs or any other additional payments in respect to coverage otherwise afforded by that Policy.

# POLICY 1 CARE PROVIDERS PUBLIC & PRODUCTS LIABILITY INSURANCE

## Introduction

The BROADFORM Liability Policy is in four sections

1. Definitions
2. Cover
3. Exclusions
4. Conditions

## 1. Definitions

Any word or expression which this Policy defines as having a particular meaning will have that meaning everywhere it appears.

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

- 1.1.1 Defamation except arising out of the publication or utterance of defamatory statements or disparaging material prior to the inception date of this Policy or made at the Insured’s direction with the Insured’s knowledge of the falsity of the statement or material;
- 1.1.2 infringement of copyright, title or slogan;
- 1.1.3 unfair competition, misappropriation of advertising ideas or style of doing business or
- 1.1.4 invasion of privacy;

committed or alleged to have been committed in any advertisement and arising out of any advertising activities conducted by the Insured or on the Insured’s behalf, in the course of carrying out the Business.

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

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

**1.3** Good Samaritan Acts means assisting at the scene of a medical emergency, accident or disaster by the Insured or any employee present either by chance, or in response to an S.O.S. call following a disaster or accident whilst at or in transit to or from the address of the Business provided however, that QBE shall not be liable where the employee was acting at the time under a contract of employment with any employer other than the Insured.

**1.4** Hovercraft means any vessel, craft or thing made or intended to float on or in or through the atmosphere or water.

**1.5** Insured wherever used in the Policy means:

- 1.5.1 the Insured named in the Schedule;
- 1.5.2 any subsidiary company (including subsidiaries thereof) of the Insured so named, and any other entity controlled by it and over which it assumes

- active management whose places of incorporation are within Australia or any Mandated Territories and protectorates of Australia;
- 1.5.3 every director, executive officer, employee, partner or shareholder, of any one of the Insured's designated in paragraphs 1.5.1 or 1.5.2 or any voluntary worker, social worker, advisory board member, the resident association or resident ancillary, any committee member, counsellor or person undertaking work experience, or any resident, but only whilst acting within the scope of their duties in such capacity for and on behalf of any such board, association, committee, ancillary or otherwise for the insured noted in 1.5.1 & 1.5.2;
- 1.5.4 any principal but only arising out of the actions of the Insured's designated in paragraphs 1.5.1, 1.5.2 & 1.5.3, subject always to the extent of indemnity and the Limit of Liability provided by this Policy, (for the purpose of this definition principal shall mean anyone for whom the Insured performs work whether voluntary or otherwise);
- 1.5.5 the officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and welfare organisations formed with the consent of the Insured (other than an insured designated in paragraph 1.5.4) in respect of claims arising from duties connected with activities of any such club or organisation.
- 1.5.6 the legal personal representative of any person entitled to indemnity under this Definition 1.5 in circumstances giving rise to indemnity under this Policy.
- 1.5.7 any resident of the insured's nursing home and/or hostel, whilst under care or supervision of the Insured, for the purpose of this clause 1.5.7 the definition of the Business is deemed to include personal activities of residents.
- 1.5.8 each partner, joint venturer, co-venturer or joint lessee of the Insured named in the Schedule but only
- (i) with respect to liability incurred as the partnership, joint venture, co-venture, joint lease, and
  - (ii) provided the partnership, joint venture or co-venture or joint lease has been notified to Australis Care within 60 days of formation and has been endorsed on the Schedule;
- 1.5.9 any director or senior executive of the Insured in respect of private work undertaken by the Insured's employees for such director or senior executive.
- 1.5.10 any company which is created, formed or acquired during the period of insurance but only if the Business activities of the new company is similar to the Business shown in the current Schedule of Insurance, and has not incurred losses/claims over the past 3 years and only then if the fair value of the new company is 20 percent or less of the value of the Named Insured prior to the creation, formation or acquisition of the new company.
- The Insured must advise Australis Care as soon as practical but no later than 60 days at which time the Insured will pay a pro rata premium from the date of acquisition for the remaining Period of Insurance but never beyond the expiry date of the Period of Insurance.
- 1.6** Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage neither expected nor intended from the standpoint of the Insured.
- With respect to Advertising Liability all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants shall be deemed to arise out of the one occurrence.
- 1.7** Period of Insurance means the period shown in the Schedule.
- 1.8** Personal Injury means death, bodily injury, sickness or disease to any person, disability, shock, mental anguish or mental injury, false arrest, wrongful detention, false imprisonment or malicious prosecution, wrongful entry or eviction or other invasion of the right of privacy, defamation of character or invasion of the right of privacy, and assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property. In the event of claims for Personal Injury arising from latent injury, latent disease or latent sickness, such injury, disease or sickness in respect of each claim shall be deemed to have first happened on the day such injury, disease or sickness was first medically diagnosed.
- 1.9** Product means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured, including any container thereof (other than a vehicle) in the course of the Business.
- 1.10** Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- 1.11** Property Damage means:
- (i) physical damage to or loss or destruction of tangible property including any resulting loss of use of that property, or
  - (ii) loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an Occurrence.
- 1.12** The Business Means the business as shown in the Schedule including the ownership and/or tenancy including maintenance and repair of real property, fundraising activities including a fete, the provision and management of canteens, and the activities of social, sport, welfare

clubs, organizations or committees or the like, for the benefit of the Insured's employees and/or residents, Good Samaritan acts, first aid, fire and ambulance services and/or;

Activities such as lawn bowls, badminton, tennis, swimming (including water aerobics), indoor bowls, snooker, darts, croquet, table tennis, dancing or dance/exercise (Pilates) classes, or similar activities organized in connection with the business shown in the schedule.

**1.13 QBE means:**

QBE Insurance (Australia) Limited  
AFS Licence Number 239545  
ABN 78 003 191 035 of 82 Pitt Street, Sydney.  
NSW 2000

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

**1.15 Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through water.

**1.16 Wrongful Employment Act** shall mean any of the following actual or alleged conduct by an employee in the course of their duties to the Named Insured, or by the Named Insured:

- (a) (i) discharge or termination, either actual or constructive, of an employment relationship;
- (ii) breach of any oral or written, express or implied, employment contract or quasi-employment contract;
- (iii) misleading representation or advertising relating to employment.
- (b) (i) failure to employ or promote;
- (ii) unfair deprivation of a career opportunity;
- (iii) unfair discipline;
- (iv) failure to grant tenure;
- (v) negligent employee evaluation.
- (c) workplace harassment of any kind (whether sexual or otherwise), including the alleged creation or permission of a harassing workplace environment.
- (d) employment-related:
  - (i) denial of natural justice;
  - (ii) invasion of privacy;
  - (iii) defamation;
  - (iv) infliction of emotional distress;
  - (v) discrimination on any legally prohibited basis.

**2. Cover**

In consideration of the payment of premium and subject to the terms definitions, conditions, exclusions and Limits of Liability incorporated herein, QBE will pay to or on behalf of the Insured all amounts which the Insured shall become legally liable to pay for compensation in respect of Personal Injury; Property

Damage; Advertising Liability happening during the Period of Insurance and caused by an Occurrence in connection with the Business.

**2.1 Limit of Liability**

- 2.1.1 QBE's liability to pay compensation and/or claimant's costs and expenses shall not exceed the Limit of Liability in respect of any one claim or series of claims arising from one Occurrence.
- 2.1.2 QBE's total aggregate liability for any one Period of Insurance for all claims arising from the Insured's Products shall not exceed the sum in the Schedule.

**2.2 Additional Payments**

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

- 2.2.1 defend any suit against the Insured claiming compensation for Personal Injury; Property Damage; Advertising liability and seeking damages on account thereof, even if such suit is groundless, false or fraudulent: and QBE may investigate, negotiate and settle any claim or suit as QBE deems expedient;
- 2.2.2 pay all expenses incurred by QBE, including all interest accruing after entry any judgement until QBE has paid, tendered or deposited in court such part of the judgement as does not exceed QBE's Limit of Liability thereon;
- 2.2.3 reimburse the Insured for all reasonable expenses, other than loss of earnings, incurred by the Insured with QBE's consent;
- 2.2.4 pay reasonable expenses incurred by the Insured for first aid to others at the time of any Personal Injury for which the Insured is entitled to compensation.

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

QBE will not be obliged to pay any claim or judgment or defend any claim or legal action after the limit of Liability has been exhausted by payment of judgements or settlement.

**2.3 Deductible**

The Deductible specified in the Schedule shall be to the Insured's own account and shall include additional payments under 2.2.1; 2.2.2; 2.2.3 and 2.2.4.

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

### 3. Exclusions

QBE shall not be liable for claims in respect of:

#### 3.1 Employees

liability for personal injury imposed:

- 3.1.1 by any workers' compensation law
- 3.1.2 by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination or contract of employment or workplace agreement, or

provided that if the Insured is:

- 3.1.3 required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such personal injury, or
- 3.1.4 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 for the purposes of the relevant worker's compensation law or the personal injury is not an injury which is subject to such law

then this Policy Section will respond to the extent that the Insured's liability would not be covered under such fund, scheme, policy of insurance or self insurance arrangement had the Insured complied with their obligations pursuant to such law.

There is no cover under this Policy 1 for and in respect of Wrongful Employment Acts.

#### 3.2 Property in the Insured's Physical or Legal Control

Property Damage to:

- 3.2.1 Property owned by the Insured; or
- 3.2.2 Property in the physical or legal control of the Insured.

Exclusion 3.2.2 shall not apply to liability for Property Damage to:

- (i) Property in the physical or legal control of the Insured up to a maximum of \$100,000 or up to the amount stated in the Policy Schedule, any one Occurrence and in the aggregate during any one Period of Insurance. However QBE shall not be liable for Property Damage to that part of any property upon which the Insured is or has been working where such Property Damage arises from such work of the Insured.
- (ii) Premises which are leased or rented to the Insured.
- (iii) Employees property.
- (iv) Vehicles (not belonging to or used by or on behalf of the Insured) in the physical or legal control of the Insured where such Property Damage occurs whilst any such vehicle is in a car park owned or operated by the Insured, provided that the Insured as part of his Business does not own or operate a car park for reward.

#### 3.3 Damage to the Insured's Products (Product Defect)

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

#### 3.4 Loss of Use

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

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

#### 3.5 Recall of Products

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

#### 3.6 Aircraft, Hovercraft and Watercraft

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

- 3.6.1 any Aircraft or Hovercraft; or
- 3.6.2 any Watercraft exceeding 10 metres in length.

#### 3.7 Aircraft Parts

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

#### 3.8 Vehicles

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

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

Exclusion 3.8 shall not apply to Personal Injury or Property Damage arising from:

- (i) the delivery or collection of goods to or from any Vehicle where such Personal Injury or Property Damage occurs beyond the limits of any carriageway or thoroughfare.
- (ii) the loading or unloading of any vehicle.

Exclusion 3.8.1 and 3.8.2 above do not apply to:

3.8.3 personal injury where:

- (i) that compulsory liability insurance or statutory indemnity does not provide indemnity, and
- (ii) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by you of legislation relating to vehicles.

**3.9 War**

Personal Injury or Property Damage arising out of or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, expropriation, confiscation, nationalisation destruction or damage to property by or under the order of any government or public or local authority.

**3.10 Nuclear Fuel/Weapons**

Personal Injury or Property Damage directly or indirectly caused by or contributed to by or arising from:

- 3.10.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion combustion shall include any self-sustaining process of nuclear fission.
- 3.10.2 nuclear weapons material.

**3.11 Contractual Liability**

Liability assumed by the Insured under any contract or agreement except to the extent that such liability would have been implied by law. Exclusion 3.11 shall not apply to:

- (i) those written contracts designated in the Schedule
- (ii) liability assumed by the Insured under a warranty of fitness or quality as regards the Insured's products.
- (iii) liability assumed by the Insured under any lease of real or personal property other than a provision which obliges the Insured to effect insurance or provide indemnity in respect of the subject matter of that contract.

**3.12 Professional Advice**

Liability directly or indirectly arising from or in connection with;

- 3.12.1 Professional services, treatment, advice or any act error or omission of a Medical Practitioner;
- 3.12.2 The provision of or failure to provide professional services, advice, treatment to any person admitted to the Insured's care or in the Insured's care.

This exclusion does not apply to the provision of first aid to persons who are not residents of the Insured's aged care facility or retirement village facility.

**3.13 Pollution**

Personal Injury or Property Damage arising out of the discharge, dispersal, release or escape of Pollutants

into or upon land, the atmosphere or any watercourse or body of water. QBE shall also not be liable to pay any costs and expenses incurred in the prevention, removal, or clean-up of such Pollutants.

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

**3.14 Defamation**

Liability arising out of the utterance of any defamatory or disparaging material:

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

**3.15 Asbestos**

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

**3.16 Fines and Penalties**

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

**3.17 Faulty Workmanship**

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

**3.18 Territorial Limits**

Personal Injury or Property Damage:

- 3.18.1 occurring in the United States of America or Canada. This exclusion shall not apply to claims arising from the presence of any person who is normally resident in Australia or New Zealand and who is not a manual worker or a supervisor of work, however the Limits of Liability for such claims are inclusive of all law costs and expenses as set out in Clause 2.2 of the Policy;
- 3.18.2 caused by or arising out of the Insured's products knowingly exported by the Insured or his agents to the United States of America or Canada;
- 3.18.3 where claims are made upon the Insured outside Australia or New Zealand in any country where the Insured is represented by a branch or company or firm or individual holding the Insured's power of attorney;
- 3.18.4 where such claims arise out of any contract entered into by the Insured under the terms of which work is to be performed outside Australia or New Zealand.

**3.19 Legal Jurisdiction**

Personal Injury or Property Damage where the action is brought against the Insured in any country outside Australia.

### 3.20 Terrorism

Death, injury, illness, loss, damage, liability, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any act of terrorism, as defined herein, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

An act of terrorism includes 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:

- (i) involves violence against one or more persons; or
- (ii) involves damage to property; or
- (iii) endangers life other than that of the person committing the action; or
- (iv) creates a risk to health or safety of the public or a section of the public; or
- (v) is designed to interfere with or to disrupt an electronic system.

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

### 3.21 Information Technology Hazards, Computer Data, Program and Storage Media Exclusion

Liability in respect of:

3.21.1 Personal Injury or Property Damage arising, directly or indirectly, out of, or in any way involving the Insured's "Internet Operations". This exclusion does not apply to Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site.

**"Internet Operations" means the following:**

- (i) Transfer of computer data or programs by use of electronic mail systems by the Insured or the Insured's employees, including part-time and temporary staff, contractors and others within the Insured's organisation whether or not such data or programs contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or Trojan horse;
- (ii) not limited to computer virus, worm, logic bomb, or Trojan horse;
- (iii) Access through the Insured's network to the world wide web or a public internet site by the Insured's employees, including part-time and temporary staff, contractors and others within the Insured's organisation;

- (iv) Access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for the Insured's customers or others outside the Insured's organisation; and
- (v) The operation and maintenance of the Insured's web site.
- (vi) Nothing in this exclusion shall be construed to extend indemnity under this Policy to any liability, which would not have been covered in the absence of this exclusion.

This exclusion does not apply to liability which arises irrespective of the involvement of your Internet Operations.

3.21.2 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:

- (i) the use of any computer hardware or software;
- (ii) the provision of computer or telecommunication services by the Insured or on the Insured's behalf
- (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

### 3.22 Construction

Personal Injury or Property Damage arising directly or indirectly out of or caused by or in connection with the erection, demolition, alteration of and/or addition to buildings by or on the Insured's behalf except such erection, demolition, alteration or addition not exceeding the sum of \$500,000 in total contract value.

### 3.23 Fundraising

Personal Injury or Property Damage arising directly or indirectly out of any fundraising activity in respect of:-

- 3.23.1 persons actually participating in any performance, sport, game or display involving athletic, acrobatic, military or equestrian skill or the use of firearms, missiles of any kind, explosives or combustibles and /or;
- 3.23.2 the use of mechanical amusement devices. However this exclusion 3.23.2 shall not apply to your vicarious liability arising from the hire of such devices from other parties provided that you have obtained certificates of currency confirming such parties hold valid and collectable liability insurance for a minimum of \$5,000,000 any one occurrence.

### 3.24 Advertising liability

arising out of:

- (i) breach of contract, other than misappropriation of advertising ideas under an implied contract
- (ii) the wrong description of price of your product, or
- (iii) the failure of Your product to conform with advertised performance or quality.

## 4. Conditions

### 4.1 Claims

- 4.1.1 Notice in writing shall be given to QBE as soon as possible of every Occurrence, claim, writ, summons, proceedings, impending prosecution or inquest and all information in relation thereto in respect of which a claim may result under this Policy;
- 4.1.2 In the event of an Occurrence, the Insured shall at its expense take all reasonable steps to prevent other Personal Injury or Property Damage from arising out of the same or similar conditions, but such expense shall not be recoverable under this Policy.
- 4.1.3 The Insured shall not without QBE's consent make any admission, offer promise or payment in connection with any Occurrence or claim.
- 4.1.4 The Insured shall use his best endeavours to preserve any Products or property which may assist in the defence or investigation of a claim and so far as may be reasonably practical no alteration or repair shall be made without QBE's consent or until QBE shall have had an opportunity of inspection.
- 4.1.5 QBE shall be entitled to prosecute in the name of the Insured at QBE's expense and for QBE's benefit any claim for indemnity or damages or otherwise.
- 4.1.6 The Insured shall give all information and assistance as QBE may require in the prosecution defence or settlement of any claim, or in any recovery actions.
- 4.1.7 QBE may at any time pay the Insured in respect of all claims against the Insured arising directly or indirectly from one source or original cause the amount of the Limit of Liability or such other amount specified in respect thereof (after deduction of any amounts already paid as compensation in respect thereof) or any lesser sum for which the claim or claims can be settled. Upon such payment QBE shall relinquish conduct or control of and be under no further liability under this Policy in connection with such claim or claims except for costs, charges and expenses:
- 4.1.7.1 recoverable from the Insured in respect of the period prior to the date of such payment;
- 4.1.7.2 incurred by QBE;
- 4.1.7.3 incurred by the Insured with QBE's consent prior to the date of such payment.

### 4.2 Subrogation

In the event of a payment under this Policy to or on behalf of the Insured QBE shall be subrogated to all the Insured's rights of recovery against all persons or organisations.

### 4.3 Reasonable Precautions

The Insured shall take all reasonable precautions to:

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

### 4.4 Change of Facts or Circumstances

Notice in writing shall be given to QBE as soon as possible of every change materially varying any of the facts or circumstances existing at the commencement of this Policy that shall come to the knowledge of the Insured.

### 4.5 Inspection of Property

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

### 4.6 Joint Insureds

Where the Insured is comprised of more than one party information supplied to QBE shall be deemed to have been furnished by and on behalf of all such parties and any information supplied to QBE or any omission or non-disclosure in relation to any renewal or extension thereof shall likewise be deemed to have been furnished, omitted or withheld by and on behalf of all such parties.

### 4.7 Cross Liability

Where the Insured is comprised of more than one party each of the parties shall be considered as a separate legal entity and the word Insured shall apply to each party as if a separate policy had been issued to each party but nothing contained in this Condition 4.7 shall result in an increase in QBE's Limit of Liability in respect of any Occurrence or Period of Insurance.

### 4.8 Adjustment of Premium

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

#### 4.9 Cancellation

- 4.9.1 The Insured may cancel this Policy at anytime by forwarding a written request to QBE. QBE will refund 90% of the pro-rata premium calculated for the unexpired Period of Insurance.
- 4.9.2 QBE may cancel this Policy in any of the circumstances detailed in the Insurance Contracts Act 1984. QBE will refund the pro-rata premium calculated for the unexpired period of insurance.

#### 4.10 Jurisdiction

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

## POLICY 2 CARE PROVIDERS' PROFESSIONAL INDEMNITY AND MALPRACTICE INSURANCE POLICY

### Preamble

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

## Section 1: Insuring Clauses

### Insuring Clause A

#### 1.1 Act, Error or Omission Insuring Clause

QBE agrees to indemnify the Insured against legal liability for any Claim for compensation first made against the Insured during the Period of Cover and which is notified to QBE during the Period of Cover arising from Malpractice in the conduct of the Professional Business Practice carried on by or on behalf of the Insured by reason of any act, error or omission.

### Insuring Clause B

#### 1.2 Costs and Expenses Insuring Clause

QBE agrees to pay the Costs and Expenses incurred with the written consent of QBE in the defence or settlement of any Claim covered by this policy.

See Clause 5.1 (c) for details of Costs and Expenses if in addition to the limit of Indemnity

#### 1.3 Retroactive Date

- (a) "Unlimited Retroactive" -unless a Retroactive Date is specified in the Schedule, this Policy shall provide indemnity in respect of acts, errors or omissions committed (or alleged to have been committed) irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).
- (b) "Limited Retroactive" -where a Retroactive Date is specified in the Schedule, then this Policy shall only provide indemnity in respect of acts, errors or omissions committed or alleged to have been committed after the Retroactive Date.

## Section 2: Automatic Extensions

### 2.1 Preamble

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

- (a) each Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise stated herein);
- (b) the inclusion of any Extension shall not increase the Limit of Indemnity.

### 2.2 Severability and Non-Imputation

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

- (a) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
- (b) made a misrepresentation to QBE before this contract of insurance was entered into; or
- (c) failed to comply with any terms or conditions of this Policy; shall not prejudice the right of the remaining parties to indemnity as may be provided by this Policy. PROVIDED ALWAYS THAT such remaining parties shall:
  - (i) be entirely innocent of and have had no prior knowledge of any such conduct; and
  - (ii) as soon as is reasonably practicable upon becoming aware of any such conduct, advise QBE in writing of all known facts in relation to such conduct.

### 2.3 Trade Practices and Related Legislation

QBE agrees to provide indemnity in respect of any Claim for damage or compensation made against the Insured under the terms of the Trade Practices Act 1974 (Commonwealth), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria) or similar legislation enacted by the other states or territories of the Commonwealth of Australia or the Dominion of New Zealand.

### 2.4 Defamation

QBE agrees to provide indemnity in respect of any Claim made against the Insured, by any person, for unintentional defamation by reason of words written or spoken.

### 2.5 Fraud and Dishonesty

QBE agrees to provide indemnity in respect of any Claim which would otherwise be excluded by reason of Exclusion 3.2 (Fraud and Dishonesty).

PROVIDED ALWAYS THAT:

- (a) such indemnity shall not be provided to any person committing or condoning any act, omission or breach excluded by reason of Exclusion 3.2 (Fraud and Dishonesty);
- (b) such indemnity shall not apply to loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

### 2.6 Previous Business

QBE agrees to provide indemnity in respect of any Claim made against any person who is a partner, director, principal of the Insured for Malpractice by reason of any act, error or omission incurred on the part of such person in the conduct of the same profession as the Insured's Professional Business Practice before that person joined the Insured.

### 2.7 Outgoing Principals/Employees

QBE agrees to provide indemnity in respect of any Claim made against any former principal, partner, director or Employee of the Insured for Malpractice by reason of any act, error or omission incurred on the part of such person in the conduct of the Professional Business Practice carried on by or on behalf of the Insured.

### 2.8 Loss of Documents

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

PROVIDED ALWAYS THAT:

- (a) the discovery of such loss of Documents occurred during the Period of Cover and was notified in writing to QBE within twenty-eight (28) days after the date of such discovery;
- (b) such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring such Documents and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by QBE with the approval of the Insured;
  - (i) which were in the physical custody or control of the Insured or any other person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business;
  - (ii) which occurred within the territorial limits of the Commonwealth of Australia or the Dominion of New Zealand.
- (c) QBE shall not be liable under this Policy Extension to provide indemnity in respect of that proportion of any costs, charges and expenses of whatsoever nature arising directly or indirectly out of:
  - (i) corruption, erasure, theft, alteration of, or
  - (ii) access or lack of access to, or
  - (iii) interference with electronically stored data of the Insured or held by the Insured wholly or partly caused by:
    - any computer virus; or
    - any person who is not a current principal, partner, director or Employee of the Insured

where such costs, charges and expenses relate to the Insured replacing and/or restoring such data

after a period of 48 hours following the time when the virus or act took effect; and

- (d) such indemnity shall be limited to the loss of any Documents:
- (i) which were in the physical custody or control of the Insured or any person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business; and
  - (ii) which occurred within the territorial limits of the Commonwealth of Australia or the Dominion of New Zealand; and
- (e) QBE's aggregate liability in respect of all losses under this Policy Extension shall not exceed:
- (i) the sub-limit shown in the Schedule for Loss of documents; or
  - (ii) if no amount is shown, the sum of \$100,000.

## 2.9 Consultants, Sub-Contractors and Agents

QBE agrees to provide indemnity in respect of any Claim made against the Insured arising from any act, error or omission committed or alleged to have been committed on the part of any consultant, sub-contractor or agent for whose acts, errors or omissions the Insured is legally liable. PROVIDED ALWAYS THAT such indemnity shall not extend to any such consultant, sub-contractor or agent.

## 2.10 Intellectual Property

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

## 2.11 Joint Venture Liability

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

## 2.12 Coronial Enquiries & Official Investigations

QBE agrees to pay Investigation Costs & Expenses.

PROVIDED ALWAYS THAT:

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

- (d) QBE's total liability in respect of Investigation Costs & Expenses for all claims made under this Policy Extension shall not exceed \$250,000.

For the purpose of this Policy Extension, an official investigation, examination or enquiry includes an investigation, examination or enquiry by way of a Royal Commission or Coronial Enquiry or conducted by a regulatory authority such as the Australian Securities and Investments Commission or enquiry conducted by a parliament or any disciplinary committee of any association or professional body of which the Insured is a member.

## 2.13 Emergency First Aid / Good Samaritan Act

QBE agrees to provide indemnity in respect of any Claim made against any medically qualified Employee of the Insured in respect of Malpractice arising from the rendering of emergency first aid assistance provided, that QBE shall not be liable where the employee was acting at the time under a contract of employment with any employer other than the Insured.

## 2.14 Students

QBE agrees to provide indemnity in respect of any claims made against any student/practitioner of a university or college of advanced education or a T.A.F.E. college, where such Claim arises from Malpractice on the part of the student in the conduct of the Professional Business Practice.

## 2.15 Board of Management and Committees

QBE agrees to provide indemnity in respect of any Claim made against any member of any board of management of the Insured or "Committee" established by the Insured, in respect of Malpractice arising out of the conduct of the business or activities of such board of management or Committee for the Insured.

For the purpose of this extension, "Committee" shall mean:

- (a) any auxiliary committee, association, foundation, trust (other than a superannuation trust), or fund raising committee;
- (b) any disciplinary, ethics, examining or research body or committee;
- (c) any sporting or social club committee.

## 2.16 Newly Created or Acquired Entity or Subsidiary

- (a) QBE agrees to provide indemnity to any entity or Subsidiary acquired or created by the Insured during the Period of Cover for a period of up to sixty (60) days (but never beyond the expiry date of the Period of Cover) from the date of such acquisition or creation.
- (b) QBE may, at its discretion, agree to provide further indemnity beyond a period of sixty (60) days (but never beyond the expiry date of the Period of Cover) where:
  - (i) the Insured has notified QBE of the acquisition or creation of the entity or Subsidiary and has provided all information requested by QBE; and

- (ii) any terms imposed by QBE including the charging of any additional premium considered appropriate, have been agreed by the Insured.

PROVIDED ALWAYS THAT any indemnity provided under this Extension will only apply in respect of legal liability for Malpractice by reason of any act, error or omission occurring subsequent to the date of acquisition or creation, it is a prerequisite to cover under this extension that the business of the new entity is the same as the Professional Business Practice shown in the policy schedule.

**2.17 Estates and Legal Representatives**

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

**2.18 Run-off Cover Insured Entity or Subsidiary**

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

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

**2.19 Increased Aggregate Limit of Indemnity**

QBE agrees to increase the Limit of Indemnity under this Policy by an amount equal to the Limit of Indemnity.

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

- (a) in respect of any one Claim, the Limit of Indemnity as specified in the Schedule; and
- (b) in respect of all Claims, an amount equal to the Aggregate Limit of Indemnity as specified in the Schedule.

**2.20 Continuous Cover**

QBE shall, notwithstanding Exclusion 3.1 (Prior or Pending) and Claims Made notice, provide indemnity in respect of any Claim made against the Insured where such Claim arises from a fact or circumstance ("Circumstance"):

- (a) of which the Insured first became aware prior to the Period of Cover and which the insured knew, or ought to have reasonably known, had potential to give rise to a Claim; and
- (b) which should have, but was not, notified to QBE under an earlier policy under which QBE was indemnifying the Insured.

Provided always that:

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

- (ii) QBE has continued as the insurer of the Insured's Professional Indemnity and Malpractice policy in uninterrupted succession between the date when the Circumstance should have been notified and the date the Claim was actually notified;

- (iii) such indemnity shall be subject to the terms, conditions, limit of indemnity and Deductible applicable to this Policy.

For the purpose of this clause only QBE shall include Australis Underwriting Agency and Aged Care Insurance Services.

**2.21 Fidelity**

QBE agrees to provide indemnity to the Insured against any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally liable, where such loss is sustained in consequence of any dishonest or fraudulent act or omission of any Insured.

PROVIDED ALWAYS THAT:

- (a) such loss is first discovered by the Insured during the Period of Cover and is notified in writing to QBE within twenty-eight (28) days after the date of such discovery;
- (b) QBE shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or of reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the Insured concerned;
- (c) QBE shall not be liable to indemnify any Insured committing or condoning any dishonest or fraudulent conduct;
- (d) the Insured shall bear the burden of adducing satisfactory proof to substantiate any loss hereunder (including any costs incurred in such process) and QBE will be under no obligation to provide indemnity to the Insured until such time as QBE is satisfied that such loss has, in fact, been sustained;
- (e) the inclusion of this Extension shall not increase the Limit of Indemnity;
- (f) the deductible in the schedule shall apply to all related dishonest or fraudulent acts or omissions;
- (g) QBE's liability for each loss under this Extension and QBE's aggregate liability for all losses under this Extension shall be the Fidelity Sub-Limit of Indemnity as noted within the Schedule.

**2.22 Advancement of Defence Costs**

QBE agrees to advance Defence Costs within a reasonable time frame following receipt of invoices specifying such Defence Costs and prior to determining the entitlement of the Insured to indemnity for the Claim. In determining the entitlement of the Insured to indemnity under this Policy in respect of such Claim, QBE agrees that it will not rely on Exclusion 3.2 (Fraud and Dishonesty) unless and until:

- (a) an Insured makes an admission of any conduct described in Exclusion 3.2 (Fraud and Dishonesty); or

- (b) it has been established through a judicial process that such Insured has committed any conduct described within Exclusion 3.2 (Fraud and Dishonesty).

**PROVIDED ALWAYS THAT:**

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

if 2.22 (a) or (b) above applies, QBE may cease to advance Defence Costs for any such Insured, unless QBE at its sole discretion, continues to pay Defence Costs resulting from such Claim;

where either 2.22 (a) or (b) above applies, such Insured(s) (for their respective rights and interests) shall refund Defence Costs advanced by QBE, unless QBE agrees in writing to waive recovery of such Defence Costs.

### 2.23 Online Medicare Benefit Fraud

QBE agrees to provide indemnity to the Insured against:

- (a) civil liability for compensation; and
- (b) Costs & Expenses incurred with the written consent of QBE

arising from any Claim made against the Insured based upon or attributable to the Commonwealth Health Insurance Commission having transferred or paid any benefit or funds to any person (other than the Insured) who had no legal entitlement to such benefit or funds as the direct result of the dishonest or fraudulent input, deletion or modification of data on HIC Online by an Employee,

**PROVIDED ALWAYS THAT:**

- (i) such Claim is first made against the Insured during the Period of Cover and notified to QBE during the Period of Cover; and
- (ii) QBE shall not be liable for any loss of money, negotiable instruments, bearer bonds, coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally liable; and
- (iii) QBE shall not be liable to indemnify any Insured who committed, participated in or condoned such dishonest or fraudulent conduct; and
- (iv) QBE shall not be liable for any liability, loss, cost or expense sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable suspicion of, dishonest or fraudulent conduct on the part of the Employee concerned; and
- (v) the Deductible shall apply to each and every individual dishonest or fraudulent act or omission; and
- (vi) QBE's total liability in respect of all Claims covered by this Extension, including all Costs & Expenses, shall not exceed \$100,000.

### 2.24 Privacy Complaints and Claims

QBE agrees to provide indemnity to the Insured against:

- (a) civil liability for compensation; and
- (b) any Privacy Costs & Expenses

arising from any Claim or written complaint made against the Insured for unintentional breach of any duty of confidentiality owed to any patient arising at law or any unintentional breach of the Privacy Act 1988 (Commonwealth), Health Records & Information Privacy Act 2002 (NSW), Health Records Act 2001 (Victoria) or Health Records (Privacy and Access) Act 1997 (ACT) or similar privacy legislation in any state or territory of the Commonwealth of Australia or the Dominion of New Zealand,

**PROVIDED ALWAYS THAT:**

- (a) such Claim or complaint is first made against the Insured during the Period of Cover and notified to QBE during the Period of Cover; and
- (b) QBE shall not be liable for:
- (i) any civil or criminal fines or penalties
- (ii) non compensatory damages, including punitive or exemplary damages; or
- (iii) the costs of compliance with any regulatory, administrative, Court or Tribunal directives or with any injunctive or non-compensatory relief or;
- (iv) any liability, loss, cost or expense that is uninsurable under the laws of Australia or New Zealand; and
- (v) the Deductible shall apply to each and every Claim or complaint covered by this Extension; and

QBE's total liability in respect of all Claims and complaints covered by this Extension, including all Privacy Costs & Expenses, shall not exceed \$100,000.

### 2.25 Statutory Liability Fines and Penalties

QBE agrees to indemnify the Insured against legal liability, which would otherwise be excluded by reason of Exclusion 3.9 'Fines and Penalties' or Exclusion 3.16 (a) & (b) only (Pollutants), for any Penalty arising from the conduct of the Named Insured's business and first imposed against the Insured during the Period of Cover and notified to QBE during the Period of Cover as a result of

- (a) a Penalty imposed upon the Insured by any Regulatory Authority arising from any actual or alleged breach of any occupational health & safety or environmental legislation; and
- (b) any costs and expenses incurred with the written consent of QBE in the defence or settlement of any Penalty indemnified by this Extension.

**PROVIDED ALWAYS THAT:**

- (i) the Insured first became aware of the existence of such Penalty during the Period of Cover and notified QBE of such Penalty during the Period of Cover; and
- (ii) the act, error or omission giving rise to the Penalty did not arise from gross negligence or an intentional, wilful, reckless, or deliberate act, error, or omission; and
- (iii) QBE's total liability in respect of all claims made under this Policy Extension shall not exceed \$250,000.

### 3. Exclusions

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

#### 3.1 Prior or Pending

- (a) made, threatened or intimidated against the Insured prior to the Period of Cover;
- (b) directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:
  - (i) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
  - (ii) of which the Insured first became aware prior to the Period of Cover, and which the Insured knew or ought reasonably to have known had the potential to give rise to a Claim.

#### 3.2 Fraud and Dishonesty

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

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

#### 3.3 Assumed Duty or Obligation

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

#### 3.4 Trading Debts

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

#### 3.5 Related or Associated Entities

brought or maintained by or on behalf of:

- (a) any Insured, Subsidiary or parent of the Insured; or
- (b) any person who, at the time of the act, error or omission giving rise to the Claim, is a "Family Member" unless such person is acting without any prior direct or indirect solicitation or co-operation of any Insured. For the purpose of this Exclusion, "Family Member" means:
  - (i) any spouse, domestic partner, or companion;
  - (ii) any parent, or parent of the spouse, domestic partner or companion;

- (iii) any sibling or child; of the Insured who permanently resides with the Insured.

#### 3.6 Obligations to Employees

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

#### 3.7 Occupiers Liability and Property Damage

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

- (a) any liability incurred or alleged to have been incurred as a result of any occupation or ownership of any real property by the Insured.
- (b) physical loss of, damage to, or destruction of, any tangible property (other than any Document), including loss of use thereof or any consequential loss.

#### 3.8 Intoxicants and Drugs

arising out of services rendered by any Insured while under the influence of intoxicants or drugs.

#### 3.9 Fines and Penalties

for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law, including but not limited to, civil penalties.

#### 3.10 Nuclear

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

#### 3.11 War

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

#### 3.12 Terrorism Exclusion

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

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

If QBE asserts that this Exclusion applies, then in any action, suit, proceedings or claim brought by or on behalf of the Insured in connection with this Exclusion, the burden of proving that this Exclusion does not operate shall be upon the Insured. QBE is not required to prove that this

Exclusion applies. If the Insured brings any action, suit, proceedings, or claim against QBE in connection with the operation of this Exclusion, and the Insured does not prove that this Exclusion does not apply, the Insured shall pay QBE's costs of responding to the action, suit, proceedings or claim on an indemnity basis. This Exclusion is in addition to, and not in derogation of, any other exclusion in the Policy or in any other endorsement.

### 3.13 Aircraft and Watercraft

directly or indirectly based upon, attributable to, or in consequence of the ownership, lease, operation or use of any aircraft or watercraft by an Insured.

### 3.14 Territorial Limit

directly or indirectly based upon, attributable to, or in consequence of Malpractice committed within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

### 3.15 Jurisdictional Limit

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

- (a) within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) such Claim arises out of the enforcement of any judgement, order or award obtained within, or determined pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

### 3.16 Pollutants

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

- (a) the actual or alleged discharge, release or escape of Pollutants; or
- (b) any enforcement action or proceeding in connection with the containment, clean up, removal or treatment of such Pollutants.

### 3.17 Medical Practitioners

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

- (a) made against an Insured that is a Qualified Medical Practitioner in relation to:
  - (i) Health Care Incidents; or
  - (ii) any Incident directly attributable to the Insured acting in their capacity as a Qualified Medical Practitioner.
- (b) which is brought or maintained by or on behalf of a Qualified Medical Practitioner against the Insured in relation to claims that may be made against the Qualified Medical Practitioner in relation to Health Care Incidents (including but not limited to any Claim in respect of the enforcement of any indemnity between the Insured and a Qualified Medical Practitioner).

For the purposes of this exclusion:

“Qualified Medical Practitioner” means a person with a doctor's qualification or higher, including but not limited to:

- (a) a medical practitioner as defined in section 4 of the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003; or
- (b) a registered health professional prescribed by the Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003 for a provision of Part 3 of the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003.

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

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

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

### 3.18 Asbestos

directly or indirectly based upon, attributable to, or in consequence of the manufacturing, mining, processing, treating, handling, installing, using, removing, transporting, selling, distributing, and/or storage of asbestos products or any product containing asbestos.

PROVIDED ALWAYS THAT this exclusion shall not apply to any Claim or part of a Claim for financial loss arising out of a breach of professional duty where the cause of the breach does not relate to any asbestos exposure. Further this exclusion shall not apply to any medical procedure or treatment performed in a hospital, clinic or similar establishment as a result of any injuries arising out of any effects of asbestos as described in the above paragraph.

## Section 4: Claims Conditions

### 4.1 Reporting and Notice

- (a) The Insured shall give written notice to Australis Care or QBE as soon as practicable of any Claim made against the Insured PROVIDED ALWAYS THAT such written notice is given to QBE during the same Period of Cover.
- (b) Notice of any Claim shall be given in writing to QBE, and delivered to:
- |                        |                        |
|------------------------|------------------------|
| The Claims Manager     | OR The Claims Manager  |
| Professional Liability | Australis Group        |
| Claims                 | (Underwriting) Pty Ltd |
| QBE Insurance          | Suite 14, 333          |
| (Australia) Ltd        | Canterbury Road,       |
| 85 Harrington St       | Canterbury             |
| Sydney NSW 2000        | Victoria 3126          |

### 4.2 Defence and Settlement

- (a) The Insured agrees not to settle any Claim, incur any Costs and Expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim without QBE's written consent, such consent not to be unreasonably withheld. QBE shall not be liable for any settlement, Costs and Expenses, admission, offer or payment, or assumed obligation to which it has not consented.
- (b) QBE shall be entitled at any time to conduct, in the name of the Insured, the defence or settlement of any Claim.
- (c) QBE may, if it believes that any Claim will not exceed the Deductible, instruct the Insured to conduct the defence of the Claim. In such situation, QBE will reimburse the Insured for all reasonable Costs and Expenses in the defence of the Claim in the event that any payment made to dispose of the Claim exceeds the Deductible.

### 4.3 Insured's Right to Contest

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

PROVIDED ALWAYS THAT QBE's 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 QBE's written consent up to the date of such election less any Deductible.

### 4.4 Senior Counsel Clause

- (a) QBE shall not require the Insured to contest any Claim unless a Senior Counsel (to be mutually agreed upon by the Insured and QBE) shall advise that such Claim should be contested.
- (b) In formulating such advice, Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Costs and Expenses and the prospects of the Insured successfully defending the Claim.

- (c) The cost of such Senior Counsel's opinion shall be regarded as part of the Costs and Expenses.

### 4.5 Claims Mitigation and Co-Operation

- (a) The Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.
- (b) The Insured shall frankly and honestly disclose to QBE all relevant information and, in addition shall provide assistance to QBE, as it may require to enable it to investigate and to defend any Claim under this Policy and/or to enable QBE to determine its liability under this Policy.
- (c) Other than Costs and Expenses incurred to enable QBE to determine its liability under this Policy, compliance with this Condition shall be at the Insured's own cost, unless otherwise agreed in writing by QBE.

### 4.6 Subrogation

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

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

## Section 5: General Conditions

### 5.1 Limit of Indemnity

- (a) QBE's total liability under this Policy for any one Claim, including Claimant's Costs and Expenses shall not exceed the Limit of Indemnity specified in the Schedule.
- (b) Where QBE has agreed to provide an increased Aggregate Limit of Indemnity, then QBE's total liability under this Policy for all Claims, including claimant's Costs and Expenses, shall not exceed the aggregate Limit of Indemnity specified in the Schedule.
- (c) Where the Limit of indemnity is expressed in the Schedule to be exclusive of Costs and expenses, QBE agrees to pay Defence Costs, in addition to the limit of indemnity (but only up to an amount equal to the Limit of indemnity ) or \$5,000,000, whichever is the lesser.

### 5.2 Deductible

- (a) In respect of each Claim made against the Insured the amount of the Deductible shall be borne by the Insured at their own risk and QBE shall only

be liable to indemnify the Insured for that part of any Claim which is in excess of the Deductible.

- (b) Where QBE has elected to pay all or part of the Deductible in respect of any Claim, the Insured shall, within seven (7) days from the date of such payment, reimburse QBE for such payment.
- (c) In respect of any Claim where the amount of the Claim is less than the amount of the Deductible, the Insured shall bear all Costs and Expenses associated therewith unless QBE shall have agreed to meet such Costs and Expenses pursuant to Insuring Clause B.
- (d) Where the Deductible is expressed in the Schedule to be inclusive of Costs and Expenses then the Insured will pay all Costs and Expenses, up to the amount of the Deductible, incurred by QBE pursuant to the engagement of advisers considered necessary by QBE to determine the liability of the Insured and to resolve the Claim.
- (e) Any Costs and Expenses incurred by QBE to determine whether QBE has a liability to indemnify the Insured under this Policy shall not be subject to the Deductible but shall be borne by QBE.

### 5.3 Multiple Claims

- (a) All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy.
- (b) Where a single act, error or omission gives rise to more than one Claim, all such Claims shall jointly constitute one Claim under the Policy, and only one Deductible shall be applicable in respect of such Claim. Furthermore, if there is an Aggregate Limit of Indemnity, only one Limit of Indemnity will be applicable in respect of such Claim.

### 5.4 Alteration to Risk

The Insured shall give to QBE written notice as soon as practicable of any material alteration to the risk during the Period of Cover including:

- (a) the Insured going into voluntary bankruptcy, receivership or liquidation or the Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- (b) any material change in the nature of or the services offered by the Insured's Professional Business Practice.

### 5.5 Assignment of Interest

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

### 5.6 Cancellation

- (a) The Insured may cancel this Policy at any time by notifying QBE in writing, and QBE will refund 90% of Premium for the unexpired Period of Cover.

- (b) QBE may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984 and QBE will provide a pro-rata refund of Premium for the unexpired Period of Cover.

### 5.7 Policy Construction and Interpretation

- (a) The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the law of the state, territory or country in which this Policy is issued, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country.
- (b) The marginal notes and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- (c) Under this Policy, the masculine includes the feminine, and the singular includes the plural and vice versa.

## Section 6: Definitions

### 6.1 Claim

- (a) the receipt by the Insured of any written notice of demand for compensation made by a third party against the Insured.
- (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the Insured.

### 6.2 Costs and Expenses

the expenses incurred by or on behalf of the Insured or QBE in the investigation or defence of a Claim and shall include legal costs and disbursements.

### 6.3 Deductible

the amount of deductible as specified in the Schedule.

### 6.4 Documents

deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

### 6.5 Employee

any person employed under a contract of service or apprenticeship during or prior to commencement of the Period of Cover.

### 6.6 Insured

- (a) the person, persons, partnership, company, corporation or other entity specified as the Insured in the Schedule including their predecessors in business; and (b) any person who is, during the Period of Cover, a Principal, Partner, Director or Employee of the Insured; and

- (c) any former principals, partners, directors or Employees of the Insured
- (d) any members of an ethics committee or advisory council set up by or serving the Named Insured and In respect to duties carried out for and on behalf of an Insured.
- (e) any current, or former, student/practitioner who is, during the Period of Cover, a student of a university or college of advanced education or a TAFE college but only in respect of work performed while a student/practitioner of the Insured;
- (f) Any current or former, volunteer worker authorised by the Insured to provide Medical Services on its behalf as the Insured.

**6.7 Investigation Costs & Expenses**

legal costs and other expenses incurred by or on behalf of the Insured or by QBE arising out of any legally compellable attendance by an Insured at any official investigation, examination or enquiry in relation to the conduct of the Insured's Profession where such investigation, examination or enquiry may lead to a recommendation in respect of civil liability or civil proceedings which would be the subject of a Claim covered by this Policy.

"Investigation Costs & Expenses" does not include any fine, penalty or order for the payment of monetary compensation.

**6.8 Limit of Indemnity**

the limit of liability under this Policy as specified in the Schedule.

**6.9 Malpractice**

- (a) a breach of duty of care in the rendering of, or failure to render; Medical Services
- (b) other breach of professional duty in the conduct of the Professional Business Practice carried on by or on behalf of the Insured.

**6.10 Medical Services**

nursing and other care related services.

**6.11 Period of Cover**

the period specified in the Schedule.

**6.12 Professional Business Practice**

the business conducted by the Insured, as specified in the Schedule, If the practice should change its name and there is no other change which materially alter the risk, the business will continue to be deemed to be the "Professional Business Practice".

**6.13 Policy**

- (a) the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein; and
- (b) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Cover; and
- (c) the Proposal.

**6.14 Premium**

the premium specified in the Schedule or in any endorsement to the Schedule.

**6.15 Proposal**

the written proposal or application made by the Insured to QBE containing particulars and statements which, together with other information provided by the Insured, are the basis of this Policy and are considered as incorporated herein.

**6.16 Schedule**

the Schedule to this Policy.

**6.17 Senior Counsel**

a barrister in active practice who is entitled to use the post nominal's Q.C. or S.C. in any one or more superior court in Australia or New Zealand.

**6.18 Subsidiary**

- (a) any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the Insured specified in the Schedule; or
- (b) any entity over which the Insured specified in the Schedule is in a position to exercise effective direction or control through ownership or control of more than fifty percent (50%) of the issued voting shares of such entity.

**6.19 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, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear.

**6.20 Regulatory Authority**

a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or other Act.

**6.21 Penalty**

any monetary sum payable by the Insured to any Regulatory Authority pursuant to any occupational health & safety or environmental legislation as a result of a breach by the Insured but excluding:

- (a) any amounts payable as compensation;
- (b) any compliance, remedial, reparation or restitution costs;
- (c) any damages, including any exemplary or punitive damages;
- (d) any consequential economic loss;
- (e) any legal costs and associated expenses.

## 6.22 Privacy Costs & Expenses

legal costs and expenses reasonably and necessarily incurred by the Insured with the written consent of QBE arising out of:

- (a) the Insured's defence or investigation of any Claim or written complaint made against the Insured for the unintentional breach of any duty of confidentiality owed to any patient arising at law or any unintentional breach of the Privacy Act 1988 (Commonwealth), Health Records & Information Privacy Act 2002 (NSW), Health Records Act 2001 (Victoria) or Health Records (Privacy and Access) Act 1997 (ACT) or similar privacy legislation in any state or territory of the Commonwealth of Australia or the Dominion of New Zealand; and
- (b) the Insured's attendance or representation before any Privacy Commissioner, Private Code Adjudicator, Administrative Tribunal or Court in relation to the unintentional breach of any of the above legislation.
- (c) Privacy Costs & Expenses shall not include any internal or overhead expenses of the Insured or the salaries, wages or benefits of any Insured, Employee or in-house lawyers or other in-house professional advisers of the Insured.

## POLICY 3 CARE PROVIDERS DIRECTORS & OFFICERS LIABILITY POLICY WORDING

### Section 1: Insuring Clauses

#### 1.0 Preamble

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

- (a) the inclusion of any Insuring Clause shall not increase the Limit of Indemnity or Aggregate Limit Of Indemnity under the Policy.
- (b) where an Insuring Clause (A-E) is not specified in the Schedule as 'included', then this Policy shall not provide any indemnity under such Insuring Clause.

QBE agrees to pay all Loss arising from a Claim against:

#### 1.1 INSURING CLAUSE A - Directors & Officers Insuring Clause

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

#### 1.2 INSURING CLAUSE B - Corporate Entity Insuring Clause

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

#### 1.3 INSURING CLAUSE C - Corporate Entity Liability Insuring Clause

the Corporation alleging a Wrongful Act,

#### 1.4 INSURING CLAUSE D - Employment Practices Liability Insuring Clause

the Insured alleging a Wrongful Act,

where such Claim is first made during the Period of Cover, and notified to QBE during the Period of Cover.

#### 1.5 INSURING CLAUSE E - Official Investigations and Inquiries - Costs & Expenses

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

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

## Section 2: Retroactive Date

### 2.0 Retroactive Date

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

## Section 3: Policy Extensions

### 3.0 Preamble

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

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

### 3.1 Advancement of Defence Costs

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

- (i) an Insured makes an admission of any conduct described in Exclusion 5.6 (Fraud and Dishonesty); or
- (ii) it has been established through a judicial process that such Insured has committed any conduct described within Exclusion 5.6 (Fraud and Dishonesty).

PROVIDED ALWAYS THAT:

- (a) the advance of such Defence Costs does not constitute an acceptance of indemnity under the Policy for such Claim; and
- (b) if 3.1 (i) or (ii) above applies, QBE may cease to advance Defence Costs for any such Insured, unless QBE, at its sole discretion, continues to pay Defence Costs resulting from such Claim;

- (c) where either 3.1(i) or (ii) above applies, such Insured(s) (for their respective rights and interests) shall refund Defence Costs advanced by QBE, unless QBE agrees in writing to waive recovery of such Defence Costs.
- (d) this advancement of Defence Costs will form part of and not in addition to the Limit of Indemnity.

### 3.2 Contractual Liabilities, Assumed Duty or Obligation

QBE agrees to provide indemnity under Insuring Clauses A and B in respect of any Claim against an Insured Person or Trustee for breach or alleged breach of any contract, other than a breach or alleged breach of a contract for the provision of professional services and/or professional advice which would otherwise be excluded by reason of Exclusion 5.3 (Contractual Liabilities, Assumed Duty or Obligation).

### 3.3 Estates and Legal Representatives

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

### 3.4 Extended Period of Cover for Retired Directors

QBE agrees that a director of the Corporation or a committee member of an incorporated association may (in accordance with Claims Condition 7.6 Reporting and Notice) notify under Insuring Clauses A or B a Claim made on them as an Insured Person in an extended period of cover of 60 months immediately following the Period Of Cover.

PROVIDED ALWAYS THAT:

- (a) no policy insuring directors’ and officers’ or committee members’ legal liability on or after expiry of the Period of Cover has been effected by the Insured with QBE or any other insurer (whether as a replacement policy or otherwise); and
- (b) indemnity will only be provided in respect of directors or committee members of an incorporated association who, prior to the expiry of the Policy, have permanently retired from all appointments and positions (not only with the Corporation or an association), other than from any ‘not for profit’ organisation; and
- (c) QBE’s aggregate liability in respect of all claims under this Policy Extension, including for Defence Costs, shall not exceed the lesser of the Limit of Indemnity or \$1,000,000.

### 3.5 Intellectual Property

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

### 3.6 Defamation

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

### 3.7 Penalties

QBE agrees to indemnify the Insured against any Penalty and Defence Costs resulting from a Claim by a Regulatory Authority for a Wrongful Breach which would otherwise be excluded by reason of Exclusion 5.5 (Fines & Penalties) where the Claim is first made on the Insured and notified in writing to QBE in the Period of Cover. PROVIDED ALWAYS THAT QBE shall not be liable to indemnify the Insured in respect of any Penalty or Defence Costs in respect of any such Claim arising directly or indirectly from or which is based upon, attributable to, or in consequence of any:

- (a) Dishonest, wilful, intentional or deliberate Wrongful Breach; or
- (b) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act; or
- (c) gross negligence or recklessness of an Insured; or
- (d) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost; or
- (e) breach of Sections 182 or 183 of the Corporations Act and any amendment, consolidation or re-enactment of any of these sections.

PROVIDED ALWAYS THAT QBE's aggregate liability for all claims under this Extension shall not exceed:

- (i) the sub-limit shown in the Schedule for Penalties; or
- (ii) if no amount is shown, a maximum of \$500,000

### 3.8 Pollution Liability

QBE agrees to indemnify the Insured under Insuring Clauses A, B and C for Defence Costs in respect of any Claim brought or maintained by a Regulatory Authority, which would otherwise be excluded by reason of Exclusion 5.12 (a) or (b) (Pollutants), where such Claim alleges a breach of Environmental Legislation. PROVIDED ALWAYS THAT:

- (a) such indemnity shall not extend to any Claim brought by a Regulatory Authority on behalf of, in the name of or as a representative of any other person(s), corporation or other entity; and
- (b) QBE's aggregate liability in respect of Defence Costs for all claims under this Extension shall not exceed:
  - (i) the sub-limit shown in the Schedule for Pollution Liability; or
  - (ii) if no amount is shown, the lesser amount of two million dollars (\$2,000,000) in the aggregate or the Limit of Indemnity.

### 3.9 Severability

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

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

### 3.10 Spousal Liability

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

- (a) marital community property; or
- (b) property jointly held by any Insured Person and the spouse; or
- (c) property transferred from any Insured Person to the spouse;

but only where such Claim is based on a Wrongful Act of the Insured Person which would otherwise be covered under this Policy. It does not provide cover in respect of any conduct of the spouse.

### 3.11 Subsidiary Created or Acquired

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

- (a) indemnity shall only apply in respect of a Wrongful Act occurring subsequent to the date of creation or acquisition; and
- (b) notification of any Subsidiary created or acquired during the Period of Cover shall be given in writing to QBE within 60 days of the creation or acquisition of the Subsidiary.

**3.12 Subsidiary Run-Off Cover**

QBE agrees that:

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

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

**3.13 Continuous Cover**

QBE shall, notwithstanding Exclusion 5.13 (Prior or Pending) and Claims Made notice, provide indemnity in respect of any Claim made against the Insured where such Claim arises from a fact or circumstance (“Circumstance”):

- (a) of which the Insured first became aware prior to the Period of Indemnity and which the insured knew, or ought to have reasonably known, had potential to give rise to a Claim; and
- (b) which should have, but was not, notified to QBE under an earlier policy under which QBE was indemnifying the Insured.

PROVIDED ALWAYS THAT:

- (c) such indemnity shall not apply to any Claim where the Insured’s failure to notify such Claim is fraudulent;
- (d) QBE has continued as the insurer of the Insured’s Directors and Officers Liability Policy in uninterrupted succession between the date when the Circumstance should have been notified and the date the Claim was actually notified;
- (e) such indemnity shall be subject to the terms, conditions, limit of indemnity and Deductible applicable to this Policy.

For the purpose of this clause only QBE shall include Australis Underwriting Agency and Aged Care Insurance Services .

**3.14 Not for Profit Outside Directorships**

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

- (a) such indemnity shall not be available to the Outside Entity in which such Outside Directorship is held or to any other director, officer, office bearer, or employee of such Outside Entity who is not also an Insured Person; and

- (b) such indemnity shall be specifically excess of any other indemnity available to such Insured Person by reason of serving in such Outside Directorship; and
- (c) this Extension shall only apply in respect of a Wrongful Act occurring during the period for which such Outside Directorship was held.

**3.15 Not for Profit Outside Directorship Run-Off Cover**

QBE agrees that:

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

PROVIDED ALWAYS THAT such indemnity shall be subject to the conditions of Extension 3.14 (Outside Directorship Cover).

**3.16 Preservation of Indemnity**

QBE agrees that if, for whatever reason, an Insured Person is unable to satisfy a right to indemnity against the Corporation, QBE shall provide indemnity to such Insured Person against Loss to the extent that the Corporation could have granted indemnity, as permitted or required by law. Any payment by QBE pursuant to this extension shall be subject to the Excess applying to Insuring Clause 1.2 (Insuring Clause B – Corporation Entity Insuring Clause) other than where the Corporation becomes Insolvent in which event any payment by QBE will be subject to the Excess applying to Insuring Clause 1.1 (Insuring Clause A – Directors & Officers Insuring Clause).

For the purpose of this policy extension Insolvent does not mean the voluntary liquidation, winding-up or dissolution of the Corporation.

**3.17 Waiver of Excess**

No Excess shall apply, or QBE will reimburse an Insured Person for any payments made within the Excess, in relation to a Claim where Final Judgment is obtained and no Insured Person is liable in respect of that Claim. Provided always that this extension does not apply to any Claim that is settled prior to such Final Judgement being obtained.

**3.18 Extended Reporting Period**

QBE agrees to amend the Period of Cover for the purposes of Insuring Clauses A and B for Claims on Insured Persons by extending the expiry date by 12 months such that the Insured may (in accordance with Claims Condition 7.5 (Reporting and Notice)) notify a Claim within 12 months after the Original Expiry Date.

PROVIDED ALWAYS THAT:

- (a) QBE has refused to offer terms for another policy of the same or lesser limit of indemnity for the Insured (whether a replacement policy or otherwise) incepting on or from the expiry date of the Period of Cover incepting from the expiry date of the Period of Cover; and
- (b) the Insured has requested the purchase of the Extended Reporting Period in writing prior to the expiry of the Period of Cover; and
- (c) the Insured pays an additional premium of 50% of the annualised Premium; and
- (d) indemnity shall not be provided for any Wrongful Act committed or allegedly committed after the Original Expiry Date; and
- (e) this Extension is not available if:
  - (i) the Insured have effected another policy with any insurer (whether a replacement policy or otherwise) incepting at any time on or after the Original Expiry Date and which insures directors and officers legal liability; or
  - (ii) this Policy is cancelled or avoided.

## Section 4: Optional Extensions

### 4.0 Preamble

It is agreed that:

- (a) the indemnity provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein); and
- (b) other than by operation of Optional Extension 4.1 (Aggregate Limit of Indemnity), the inclusion of any Optional Extension shall not increase the Limit of Indemnity; and
- (c) where an Optional Extension is not specified in the Schedule as 'Included' then this Policy shall not provide any indemnity under such Optional Extension.

### 4.1 Aggregate Limit of Indemnity

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

- (a) in respect of any one Claim or loss covered by this Policy, the Limit of Indemnity as specified in the Schedule; and
- (b) in respect of all Claims and losses covered by this Policy, the Aggregate Limit of Indemnity.

### 4.2 Outside Directorship Cover (other than Not for Profit Organisation)

QBE agrees to provide indemnity under Insuring Clauses A and B in respect of a Claim arising from any Outside Directorship which is held by an Insured Person at the commencement of the Period of Cover or which is assumed by an Insured Person during the Period of Cover. PROVIDED ALWAYS THAT:

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

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

QBE agrees that:

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

PROVIDED ALWAYS THAT such indemnity shall be subject to the conditions of Extension 4.2 (Outside Directorship Cover).

### 4.4 Corporate Crisis Cover

QBE agrees to provide indemnity to the Corporation for any Crisis Loss which the Corporation incurs by reason of a Crisis and which is notified to QBE during the Period of Indemnity.

For the purposes of this optional policy extension only "Crisis" means any of the following events which first occurs during the Period of Indemnity and which in the agreement of the majority of the Board Members that a crisis has happened, and the Corporation can demonstrate it has the real potential of reducing the consolidated annual revenue of the Corporation by more than 30% if left unmanaged:

- (a) The Corporation loses its ability to operate to optimum capacity due to unforeseen bodily injury or property damage happening at the Corporation's premises;
- (b) The Corporation suffers bad publicity which is out of its control;

- (c) Discovery of unauthorised intrusion into the Corporation's computer network or loss or theft of any of the Corporation's computers containing commercial-in-confidence information or information governed by privacy laws;
- (d) Commencement of a criminal investigation into any Director or Officer or Employee of the Corporation arising from their duties to the Corporation.

For the purposes of this extension only, "Crisis Loss" means the reasonable and necessary fees, costs and expenses paid by the Corporation for an external crisis management consultant for a period not exceeding 30 calendar days after the Crisis first happens to mitigate the effects of the Crisis on the Corporation's consolidated annual revenue.

QBE's total liability for all Claims under this extension shall not exceed \$100,000 in the aggregate in this period of insurance, and shall form part of and not in addition to the Limit of Indemnity specified in the Schedule.

#### 4.5 Solvency Protection

QBE agrees to provide indemnity under Insuring Clauses A and B in respect of any Claim made against an Insured Person/Trustee where such Claim is attributable to the Corporation/Trust becoming insolvent.

Indemnity is provided under the following options:

- (a) Payment of Defence Costs where 'Insolvency Defence Costs' cover is specified in the Schedule as 'Included',  
 PROVIDED ALWAYS THAT:
  - (i) the advance or payment of such Defence Costs for such a Claim will cease immediately upon the Insured Person/Trustee who is subject to the Claim admitting that the subject Corporation / Trust was known by such Insured Person/Trustee to have been trading while insolvent; and
  - (ii) the advance or payment of such Defence Costs for such a Claim will immediately cease upon establishment through a judicial process that the subject Corporation/Trust was known by such Insured Person/Trustee to have been trading while insolvent; and
  - (iii) QBE's maximum liability for Defence Costs under (i) and (ii) above shall not exceed \$250,000.
- (b) Payment for Loss where 'Solvency Protection' cover is specified in the Schedule as 'Included' after presentation to QBE of any information requested by it and written offer by QBE for such cover.

## Section 5: General Exclusions

QBE shall not be liable under this Policy to make any payment for Loss arising from any Claim against any Insured:

### 5.0 Bodily Injury

directly or indirectly based upon, attributable to or in consequence of Bodily Injury. However, this Exclusion shall not apply to:

- (a) Penalties and Defence Costs resulting from a Claim by a Regulatory Authority; or
- (b) Investigation Costs & Expenses as a result of an alleged contravention of any Commonwealth, State or Territory occupational or workplace health and safety legislation, PROVIDED ALWAYS THAT indemnity shall not extend to Defence Costs incurred in relation to any civil proceeding or Claim seeking damages or compensation in connection with such alleged contravention.

### 5.1 Breach of Professional Duty

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

### 5.2 Capital Raising Disclosure Document

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

### 5.3 Contractual Liability, Assumed Duty or Obligation

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

### 5.4 Wrongful Employment Act

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

### 5.5 Fines & Penalties

for, directly or indirectly based upon, attributable to or in consequence of any punitive, aggravated, multiple, or exemplary damages, or fines or penalties imposed by law including but not limited to civil penalties. This exclusion does not apply to any cover afforded by Extensions 3.7 (Penalties) or 3.8 (Pollution Liability).

### 5.6 Fraud and Dishonesty

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

- (a) actual or alleged dishonest, fraudulent, criminal or malicious act or omission of an Insured or their consultants, sub-contractors or agents; or

- (b) actual or alleged act or omission by an Insured or their consultants, sub-contractors or agents with a reckless disregard for the consequences thereof; or
- (c) actual or alleged act or omission by an Insured Person within Section 199B (1)(a) and/or Section 199B(1)(b) of the Corporations Act 2001 or any legislation which supersedes or replaces this section of the Corporations Act 2001; or
- (d) actual or alleged improper use of position or information to gain, or attempt to gain, any profit or advantage or cause, or attempt to cause, detriment to the Corporation or
- (e) wilful violation or wilful breach of any statute or regulation, or any wilful breach of any contract.

### 5.7 Insolvency

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

### 5.8 Insured v Insured

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

- (a) Defence Costs;
- (b) any Claim brought by an Insured Person against another Insured Person for contribution or indemnity if such Claim directly results from another Claim covered under Insuring Clause A (Directors & Officers and Trustees Liability);
- (c) any Claim brought or maintained against an Insured Person in the name of the Corporation;
- (d) as a shareholder derivative action, provided that such shareholder is not also an Insured and is acting without any prior direct or indirect solicitation or enticement or with any other Insured; or
- (e) pursuant to Section 50 of the Australian Securities & Investment Commission Act 1989; or at the instigation of a receiver, a receiver and manager, an administrator or liquidator formally appointed by the court.

### 5.9 Joint Venture

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

### 5.10 Jurisdictional Limits

- (a) brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) 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 the Dominion of Canada or their territories or protectorates.

### 5.11 Nuclear

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

### 5.12 Pollutants

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

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

### 5.13 Prior or Pending

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

### 5.14 Products

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

For the purposes of this Exclusion, where Optional Extension 4.2 and 4.3 (Outside Directorships) have been included, then the definition of Corporation shall be deemed to include any Outside Entity.

### 5.15 Property Damage

directly or indirectly based upon, attributable to or in consequence of physical loss of, damage to or destruction of any tangible property (other than any Document), including loss of use thereof or any consequential loss.

### 5.16 Statutory Payments Liability

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

### 5.17 Substantial Shareholders

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

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

For the purposes of this Exclusion:

- (a) Substantial Shareholder shall mean any person, body corporate or other entity who or which is entitled to fifteen percent (15%) or more of the voting shares in the Corporation.
- (b) A person, body corporate or other entity shall be taken to be entitled to a voting share if that person, body corporate or other entity has any direct or indirect, legal or beneficial interest in the share or any direct or indirect power to vote the share or to dispose of the share and whether or not the interest or power is held through any interposed body corporate or other entities or held jointly with others.
- (c) Where Optional Extension 4.2 and 4.3 (Outside Directorships) have been included, then the definition of Corporation shall be deemed to include any Outside Entity.

**5.18 Territorial Limits**

directly or indirectly based upon, attributable to or in consequence of any conduct or Wrongful Act occurring within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

**5.19 Terrorism**

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

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

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

**5.20 War**

directly or indirectly based upon, attributable to or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition

of or damage to property by or under the order of any government, public or local authority.

**5.21 Asbestos**

arising directly or indirectly from or in consequence of exposure to asbestos or materials containing asbestos.

**Section 6: Insuring Clause D Additional Exclusions (Employment Practices Liability) .**

**6.0 Preamble**

The Exclusions within this section apply to Insuring Clause D (Employment Practices Liability) only. They are in addition to the Exclusions in Section 5 of this Policy.

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

**6.1 Criminal Proceedings**

criminal, administrative or other disciplinary proceeding against any Insured.

**6.2 Benefits**

actual or alleged obligation of any Insured:

- (a) pursuant to any workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, superannuation, retirement benefits, social security benefits, or similar law.
- (b) for or in respect of employment entitlements such as but not limited to employee share or equity plans, bonuses or incentives of any kind, leave or similar entitlements, severance or redundancy, superannuation contributions and similar alleged entitlements or amounts.

**6.3 Unfair Contract**

actual or alleged unfair contract of employment, including but not limited to any claim or proceeding brought under Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) 1999 or similar legislation in any other state, territory, or jurisdiction.

**6.4 Building Modifications**

costs incurred by the Insured to modify any building or property in order to make such building or property more accessible or accommodating to any disabled person. This Exclusion does not apply to Defence Costs.

**6.5 Continuity of Employment Benefits**

employment-related benefits (other than back pay) to which the claimant would have been entitled as an employee had the Insured provided the claimant with a continuance, reinstatement or commencement of employment. This Exclusion does not apply to Defence Costs.

## 6.6 Non-Pecuniary Relief

cost of compliance with any order for, grant of, or agreement to provide injunctive or non pecuniary relief. This Exclusion does not apply to Defence Costs.

# Section 7: Claims Conditions

## 7.0 Allocation

(a) If both Loss covered by this Policy and loss not covered by this Policy are incurred, either because:

- (i) a Claim against an Insured includes both covered and uncovered matters; or
- (ii) a Claim against an Insured Person is made against an Insured and there are others who are party to the proceedings or demand to which the Claim relates but are not insured under the Policy (including the Corporation),

then the Insured and QBE shall use their best efforts to agree upon a fair and proper allocation of such amount between covered Loss and uncovered loss, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties. QBE is only liable under this Policy for amounts attributable to covered matters and parties, and its liability for Loss, including Defence Costs, otherwise payable by it shall be reduced to reflect such fair and proper allocation.

- (b) If the Insured and QBE cannot agree on an allocation of Defence Costs then QBE shall advance Defence Costs which QBE believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially or otherwise determined.
- (c) QBE, if requested by the Insured, shall submit the dispute to a Senior Counsel to be mutually agreed or, in default of agreement to be appointed by the President of the Bar Association in the relevant State or Territory, on the basis that the Senior Counsel shall determine the allocation of Loss according to his view of the fair and proper allocation, but having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties, and the overriding intention in (a) above.
- (d) Any negotiated, arbitrated or judicially or otherwise determined allocation of Defence Costs on account of a Claim shall be applied retrospectively to all Defence Costs on account of such Claim.

## 7.1 Mitigation and Co-Operation

- (a) If the Insured, either prior to or during the Period of Cover, becomes aware of a situation which could, if not rectified, lead to a Loss or Claim or increase the quantum of a loss or Claim, the Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.

- (b) The Insured shall frankly and honestly disclose to QBE all relevant information and, in addition, shall provide assistance to QBE as it may require to enable it to investigate and to defend any Claim under this Policy and/or to enable QBE to determine its liability under this Policy.

- (c) Compliance with this Condition shall be at the Insured's own cost, unless otherwise agreed in writing by QBE.

## 7.2 Defence and Settlement

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

- (b) QBE shall be entitled if it so desires, to take over and conduct, in the name of the Insured, the defence or settlement of any Claim at any time. In the event that this occurs, QBE will then have sole control of the Claim.

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

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

- (e) The lawyers retained by QBE to conduct the investigation, defence or settlement of any Claim may provide advice to QBE on any issue regarding QBE's liability to indemnify the Insured and, whilst doing so, may continue to act in the investigation, defence or settlement of the Claim on behalf of both QBE and the Insured.

- (f) The Insured agrees that all communications between QBE and lawyers retained by QBE to act in the conduct of the investigation, defence or settlement of any Claim or loss which relate to

the Insured's entitlement to indemnity from QBE are privileged as between QBE and the lawyers and the Insured agrees that it is not entitled, under any circumstances, to access or obtain any such communications.

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

**7.3 Insured's Right to Contest**

In the event that QBE recommends a settlement in respect of any Claim and the Insured does not agree that such Claim should be settled, then the Insured may elect to contest such Claim. PROVIDED ALWAYS THAT QBE's liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Defence Costs incurred with QBE's written consent up to the date of such election, less the Deductible.

**7.4 Official Investigations and Inquiries – Costs & Expenses**

In relation to any cover afforded under Insuring Clause E – (Official Investigations and Inquiries), the following provisions apply:

- (a) QBE shall be entitled, at its discretion, to appoint legal representation to represent the Insured in the Official Investigation or Inquiry; and
- (b) in the event that a claim for payment of Investigation Costs & Expenses is subsequently withdrawn or denied, QBE shall cease to advance Investigation Costs & Expenses and the Insured (for their respective rights and interests) shall refund any Investigation Costs & Expenses advanced by QBE, unless QBE agrees in writing to waive recovery of such Investigation Costs & Expenses; and
- (c) the Deductible shall apply to each and every Official Investigation or Inquiry.

**7.5 Reporting and Notice**

- (a) The Insured shall give to QBE written notice as soon as practicable of any Claim made against an Insured or loss PROVIDED ALWAYS THAT such written notice is given to QBE during the Period of Cover in which the Claim is made or the loss discovered.
- (b) Notice of any Claim or loss shall be given in writing to QBE, and delivered to:

The Claims Manager Professional Liability Claims QBE Insurance (Australia) Ltd 85 Harrington St Sydney NSW 2000	OR The Claims Manager Australis Group (Underwriting) Pty Ltd Suite 14, 333 Canterbury Road, Canterbury Victoria 3126
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**7.6 Senior Counsel Clause**

- (a) QBE shall not require the Insured to contest any Claim unless a Senior Counsel (to be mutually agreed upon by the Insured and QBE) shall advise that such Claim should be contested.
- (b) In formulating such advice, Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Defence Costs and the prospects of the Insured successfully defending the Claim.
- (c) The cost of such Senior Counsel's opinion shall be regarded as part of the Defence Costs.

**7.7 Subrogation**

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

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

**Section 8: General Conditions**

**8.0 Alteration to Risk**

The Insured shall give to QBE written notice as soon as practicable of any material alteration to the risk during the Period of Cover including but not limited to:

- (a) an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings; or
- (b) any material change in the nature of the business services offered by an Insured.

Where such notice is given and/or where there is any material alteration to the risk QBE shall be entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984.

**8.1 Assignment of Interest**

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

## 8.2 Authorisation

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

## 8.3 Cancellation

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

## 8.4 Confidentiality

In respect of all Insuring Clauses, the Insured shall not disclose the existence of this Policy, the nature of the liability indemnified, the Limit of Indemnity or the amount of the premium paid, to any third party, except to the extent that:

- (a) they are required by law to do so; or
- (b) QBE consents, in writing, to such disclosure.

## 8.5 Deductible

- (a) In respect of each Claim made against the Insured (or each claim by the Insured under Insuring Clause E (Official Investigations and Enquiries – Costs & Expenses), the amount of the Deductible shall be borne by the Insured at their own risk and QBE shall only be liable to indemnify the Insured for that part of any Claim (or any loss or claim) which is in excess of the Deductible.
- (b) In the event of a claim by the Insured under this Policy, the Insured shall, if directed by QBE, pay to QBE (or as is directed by QBE) the Deductible within seven (7) working days. Any delay, failure or refusal by the Insured to pay the Deductible will entitle QBE to deduct such amount from any amount(s) required to settle any Claim or judgement, order, or any other payment to be made by QBE under this Policy. In the event that a failure or refusal to grant access to monies for any Deductible results in a failure of a settlement or an increase in Defence Costs, QBE's liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Defence Costs incurred with QBE's written consent up to the date of such failure or refusal, less the Deductible.

- (c) Where QBE has elected to pay all or part of the Deductible in respect of any Claim (or any loss or claim), the Insured shall, within seven (7) working days from the date of such payment, reimburse QBE for such payment.
- (d) Where the amount of the Claim is less than the amount of the Deductible, the Insured shall bear all Defence Costs associated therewith unless QBE shall have agreed to meet such Defence Costs.
- (e) Any costs and expenses incurred by QBE to determine whether QBE has a liability to indemnify the Insured under this Policy shall not be subject to the Deductible but shall be borne by QBE.

## 8.6 GST

Where the Insured pays an amount for any acquisition relevant to a Claim covered under this insurance which includes GST, or where the Insured would pay such an amount were the Insured to make a relevant acquisition, QBE will indemnify the Insured for that GST less any input tax credit the Insured is or would be able to claim for it (the "GST amount").

QBE will pay the GST amount in addition to the Limit of Indemnity shown in the Schedule.

QBE will only provide indemnity to the Insured for the GST amount that relates to QBE's proportion of the Insured's claim. This means that in the event that the Limit of Indemnity is not sufficient to cover the total amount of the Claim, QBE will only provide indemnity to the Insured for the GST that relates to the amount of the payment under the Policy.

QBE will not indemnify the Insured for any GST liability that arises due to the Insured's failure to notify QBE of the Insured's entitlement or correct entitlement to an input tax credit on the Premium.

"GST", "input tax credit" and "acquisition" have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999

## 8.7 Limit of Indemnity

- (a) Where there is no Aggregate Limit of Indemnity specified in the Schedule, QBE's total liability under this Policy for any one Claim, claim or loss, including Defence Costs, and in the aggregate in respect of all Claims, claims or losses, including Defence Costs, shall not exceed the Limit of Indemnity specified in the Schedule.
- (b) Where QBE has agreed to provide an Aggregate Limit of Indemnity in accordance with Optional Extension 4.1 then QBE's total liability under this Policy for any one Claim, claim or loss, including Defence Costs, shall not exceed the Limit of Indemnity specified in the Schedule, and QBE's total liability in the aggregate in respect of all Claims, claims or losses, including Defence Costs, shall not exceed the Aggregate Limit of Indemnity specified in the Schedule.
- (c) This clause does not increase any sub-limit in the Policy.

**8.8 Multiple Claims**

- (a) In respect of each Insuring Clause, all causally connected or interrelated Wrongful Acts shall jointly constitute a single Wrongful Act under this Policy.
- (b) Where a single Wrongful Act gives rise to more than one Claim, all such Claims shall jointly constitute one Claim under this Policy, and only one Deductible shall be applicable in respect of such Claim.

**8.9 Policy Construction and Interpretation**

- (a) The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the law of the state, territory or country in which this Policy is issued, being the Place of Issue specified in the Schedule, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country. If no Place of Issue is shown in the Schedule it is agreed that the Place of Issue is Sydney, New South Wales, Australia.
- (b) The marginal notes and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- (c) Under this Policy, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.

**8.10 Takeover or Acquisition**

If the Corporation, during the Period of Cover, is acquired by, merged into, or becomes a subsidiary of any other entity then the cover provided by this Policy shall only apply in respect of any conduct or Wrongful Act occurring prior to the effective date on which the Corporation was acquired by, merged into, or became a subsidiary of such other entity, unless otherwise agreed in writing by QBE.

**Section 9: Definitions**

**9.0 Aggregate Limit of Indemnity**

“Aggregate Limit of Indemnity” shall mean the amount shown as the Aggregate Limit of Indemnity in the Schedule and is inclusive of all Loss, loss and Defence Costs. If no amount is shown, the Aggregate Limit of Indemnity in respect of all Claims, Loss, loss and Defence Costs is no greater than the Limit of Indemnity.

**9.1 Board Members**

“Board Members” shall mean the controlling board or committee of management of the Corporation.

**9.2 Bodily Injury**

“Bodily Injury” shall mean physical injury, sickness, disease, or death of any person but shall not include mental injury, mental anguish, nervous shock, or emotional distress not associated with Bodily Injury.

**9.3 Claim**

“Claim” shall mean:

- (a) a written allegation communicated to any Insured of a Wrongful Act;
- (b) a civil proceeding commenced by the service of a complaint, summons, statement of claim, third party notice, cross claim or similar pleading alleging any Wrongful Act;
- (c) for Insuring Clauses A (Directors & Officers and Trustees Liability) and B (Corporate Entity and Trust Reimbursement) a criminal proceeding commenced by a summons or charge alleging any Wrongful Act;
- (d) for the purposes of Policy Extension 3.7 (Penalties) any written notice received by an Insured which alleges a Wrongful Breach and alleges that an Insured is liable to pay a Penalty.

For the purposes of Insuring Clauses C (Corporate Entity) and Extensions 3.5 (Intellectual Property) and 3.6 (Defamation), (a) and (b) above are limited to an assertion by a third party of a right to compensation as a result of the Wrongful Act.

**9.4 Computer Equipment**

“Computer Equipment” shall mean computer equipment and shall include but not be limited to any, or any combination or part of data, computer hardware, operating system, application, software, and computer chip including microprocessor chip or embedded control logic, and irrespective of by whom it is owned or operated.

**9.5 Corporation**

“Corporation” shall mean the entity specified in the Schedule and shall be deemed to include any Subsidiary.

**9.6 Deductible**

“Deductible” shall mean the amount shown as the Deductible in the Schedule.

**9.7 Defence Costs**

“Defence Costs” shall mean:

- (a) reasonable costs, charges, and expenses (other than regular or overtime wages, salaries or fees of any Insured Person) incurred by QBE or by the Insured with the prior written consent of QBE (such consent not to be unreasonably withheld) in defending, investigating or monitoring any Claim, or proceedings and appeals there-from, together with costs of the proceedings and appeal. Where the Corporation is not indemnified under this Policy, only those costs, charges and expenses incurred solely and exclusively for the benefit, and on behalf, of the Insured Person/Trustee shall constitute Defence Costs.
- (b) Investigation Costs & Expenses.

Defence Costs are part of, and not in addition to, the Limit of Indemnity (or if applicable the Aggregate Limit of Indemnity), and payment by QBE of Defence Costs reduces such Limit of Indemnity (or if applicable the Aggregate Limit

of Indemnity) by the amount of such payment. The sub-limit in Insuring Clause E applies to Investigation Costs & Expenses, not the Limit of Liability, and any payment by QBE of Investigation Costs & Expenses reduces the sub-limit by the amount of such payment.

#### 9.8 Employee

“Employee” shall mean any person employed under a contract of service or apprenticeship during or prior to commencement of the Period of Cover.

#### 9.9 Environmental Legislation

“Environmental Legislation” shall mean any Commonwealth, State or Territory statute, regulation, by-law or local law prohibiting, controlling or regulating the discharge, release, escape or disposal of Pollutants into or upon land, the atmosphere or any watercourse or body of water.

#### 9.10 Insured

“Insured” shall mean:

- (a) the Corporation; or
- (b) any person who is an Insured Person of the Corporation

#### 9.11 Insured Person

“Insured Person” shall mean any past, present, or future director, secretary, officer, office bearer, committee member or Employee of the Corporation, resident’s association member or resident’s committee member, or any natural person who by virtue of any applicable legislation or law is deemed to be a director, officer, office bearer, or committee member of the Corporation.

Insured Person shall however not include:

- (a) a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made between the Corporation and any other person or persons; or
- (b) any company, organisation or other body corporate; or
- (c) a person acting in the capacity as a Trustee.

#### 9.12 Investigation Costs & Expenses

“Investigation Costs & Expenses” shall mean reasonable legal costs and other expenses incurred by or on behalf of the Insured with QBE’s consent, or by QBE, resulting from any legally compellable attendance by an Insured at any Official Investigation or Inquiry.

“Investigation Costs & Expenses” does not include any fine, penalty or order for the payment of monetary compensation. Payment by QBE of Investigation Costs & Expenses reduces the sub-limit in Insuring Clause E. That sub-limit is part of and not in addition to the Limit of Indemnity.

#### 9.13 Joint Venture

“Joint Venture” shall mean any enterprise undertaken jointly by the Corporation with a third party or parties.

#### 9.14 Joint Venture Partner

“Joint Venture Partner” shall mean any non Insured who jointly participates with the Corporation in any Joint Venture.

#### 9.15 Limit of Indemnity

“Limit of Indemnity” shall mean the total limit of QBE’s liability under this Policy, inclusive of Defence Costs, as specified in the Schedule.

#### 9.16 Loss

“Loss” shall mean the total amount which an Insured becomes legally obligated to pay in respect of a Claim made against such Insured and shall include damages, judgements, settlements, legal costs and expenses awarded against an Insured to any claimant and Defence Costs.

#### 9.17 Minor Interest

“Minor Interest” shall mean a direct or indirect control or ownership of less than 10% of the issued share capital and/or options of a public company or less than 10% of the value of any other company, entity or enterprise.

#### 9.18 Official Investigation or Inquiry

“Official Investigation or Inquiry” shall mean an official investigation, examination or inquiry in relation to the affairs of the Corporation or the conduct of the Insured’s Professional Services where such Official Investigation or Inquiry may lead to a recommendation in respect of civil or criminal liability, or civil or criminal proceedings, and which would be the subject of a Claim or Defence Costs covered by this Policy, including such an investigation, examination or inquiry by way of Royal Commission or Coronial Inquiry or conducted by a regulatory authority such as the Australian Securities and Investments Commission or Workcover.

However, Official Investigation or Inquiry does not include any investigation, examination or inquiry conducted by a parliament, or any committee of a parliament, or any disciplinary committee of any association or professional body of which the Insured is a member.

#### 9.19 Original Expiry Date

“Original Expiry Date” shall mean the expiry date in force immediately prior to any effecting of Extension 4.4 (Extended Reporting Period).

#### 9.20 Outside Directorship

“Outside Directorship” shall mean the position of director, secretary, officer, office bearer, or committee member held by an Insured Person in an Outside Entity, which position is held:

- (a) with the knowledge and consent of the Corporation; and
- (b) for the purpose of representing the Corporation.

#### 9.21 Outside Entity

“Outside Entity” shall mean any entity which is not a Subsidiary, and in which an Outside Directorship is held.

**9.22 Penalty**

“Penalty” shall mean any monetary sum payable by the Insured to any Regulatory Authority pursuant to a Wrongful Breach by the Insured but excluding:

- (a) any amounts payable as compensation;
- (b) any compliance, remedial, reparation or restitution costs;
- (c) any damages, including but not limited to any exemplary or punitive damages;
- (d) any consequential economic loss;
- (e) any amounts uninsurable under the law pursuant to which this Policy is construed;
- (f) any legal costs and associated expenses of the Regulatory Authority.

**9.23 Period of Cover**

“Period of Cover” shall mean the period specified in the Schedule.

**9.24 Policy**

“Policy” shall mean:

- (a) the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein; and
- (b) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Cover; and
- (c) the Proposal.

**9.25 Pollutants**

“Pollutants” shall mean:

- (a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals; or
- (b) any waste materials including materials recycled, reconditioned or reclaimed; or
- (c) any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.

**9.26 Premium**

“Premium” shall mean the premium specified in the Schedule or in any endorsement to the Schedule.

**9.27 Proposal**

“Proposal” shall mean the written proposal made by the Insured to QBE containing particulars and statements which, together with other information provided by the Insured, are the basis of this Policy and are considered as incorporated herein.

**9.28 QBE**

“QBE” shall mean QBE Insurance (Australia) Limited (ABN 78 003 191 035).

**9.29 Regulatory Authority**

“Regulatory Authority” means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

**9.30 Schedule**

“Schedule” shall mean the schedule to this Policy.

**9.31 Senior Counsel**

“Senior Counsel” shall mean a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

**9.32 Subsidiary**

“Subsidiary” shall mean:

- (a) any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the Corporation specified in the Schedule; or
- (b) any entity over which the Corporation is in a position to exercise effective direction or control.

**9.33 Terrorism**

“Terrorism” shall mean an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear.

**9.34 Wrongful Act**

“Wrongful Act” shall mean:

- (a) for the purposes of Insuring Clauses A and B, in respect of Insured Persons, any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement or other act committed or allegedly committed or attempted by any Insured Person in the course of their duties to the Corporation. It does not include conduct as a Trustee. For the purpose only of Extensions 4.2 and 4.3 (Outside Directorship Covers), it also includes such actual or alleged conduct in the course of their duties to the Outside Entity.
- (b) for the purposes of Insuring Clauses A and B in respect of Trustees, any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or allegedly committed or attempted by any Trustee, in the course of executing any of the functions of the Trust.
- (c) for the purposes of Insuring Clause C in respect of the Corporation, any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act

committed or allegedly committed or attempted by any Insured in the course of undertaking the business of the Corporation. It does not include conduct as a Trustee.

- (d) For the purposes of Insuring Clause D , any of the following actual or alleged conduct by an Insured Person in the course of their duties to the Corporation, or by the Corporation:
- (1) (i) discharge or termination, either actual or constructive, of an employment relationship;
  - (ii) breach of any oral or written, express or implied, employment contract or quasi-employment contract;
  - (iii) misleading representation or advertising relating to employment.
  - (2) (i) failure to employ or promote;
  - (ii) unfair deprivation of a career opportunity;
  - (iii) unfair discipline;
  - (iv) failure to grant tenure;
  - (v) negligent employee evaluation.
  - (3) workplace harassment of any kind (whether sexual or otherwise), including the alleged creation or permission of a harassing workplace environment.
  - (4) employment-related:
    - (i) denial of natural justice;
    - (ii) invasion of privacy;
    - (iii) defamation;
    - (iv) infliction of emotional distress;
    - (v) discrimination on any legally prohibited basis;
    - (vi) unfair contract of employment.
- (e) For the purposes of Extension 3.5 (Intellectual Property), any unintentional infringement of copyright, trademarks, registered designs or patents, or any plagiarism or breach of confidentiality.
- (f) For the purposes of Extension 3.6 (Defamation), any actual or alleged conduct referred to therein.

### 9.35 Wrongful Breach

“Wrongful Breach” shall mean any conduct by an Insured which results in a contravention of:

- (a) any occupational, health, or safety legislation enacted by the Commonwealth of Australia or any state or territory of Australia; or
- (b) the Corporations Act 2001.