



AUSTRALIS GROUP (UNDERWRITING) PTY LTD (ABN 80 082 459 372, AFSL 238170)

Level 3, 117 Clarence St Sydney NSW 2000, Australia
GPO Box 247 Sydney NSW 2001, Australia
Suite 14, 333 Canterbury Road Canterbury VIC 3126, Australia
PO Box 79 Balwyn VIC 3103, Australia

E-Mail: australis_underwriters@ausuw.com

Website: www.ausuw.com

Telephone: (02) 9200 4000

Facsimile: (02) 9200 4099

Telephone: (03) 8629 8800

Facsimile: (03) 8629 8829

AUSTRALIS CHILDCARE PROVIDERS COMBINED LIABILITY INSURANCE POLICY

LLOYD'S OF LONDON

This is to certify that in accordance with the authorisation granted to Australis Group (Underwriting) Pty Ltd (ABN 80 082 459 372) by Insurers on the Contract, which bears the Seal of Lloyd's Policy Signing Office, and in consideration of the premium specified herein, are bound severally and not jointly, each for his own part and not one for another, to insure in accordance with the Policy. The definitive numbers and proportions underwritten by them, will be supplied on application and can be ascertained by reference to the said Contract.

CONTENTS

1. Our Agreement
2. Definitions
3. Public and Products Liability Cover
4. Professional Indemnity Cover
5. Policy Extensions
6. Optional Extensions
7. Exclusions
8. Conditions

1. OUR AGREEMENT

As **You** have paid or agreed to pay the premium for this policy, **We** agree to provide **You** the Insurance Cover described in this Policy.

LIMIT OF LIABILITY

Our liability to pay a claim is limited to the lesser of:

The **Limit of Liability**, as listed in the current Schedule or any sub-limit less any **Excess** or any other limit less any **Excess** set out in the policy.

Excess

We will not pay the **Excess** which applies to any claim. The **Excesses** are set out in the current Schedule and the Policy. If more than one **Excess** applies to any one claim or series of claims under this policy, then only the single highest **Excess** will apply.

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. A reference to Schedule in this Policy is a reference to the schedule to the Policy.

Privacy

We are committed to protecting **Your** privacy. **We** only use the personal information **You** provide to **Us** to quote on and insure **Your** risks. **We** only provide personal information to **Our** Insurers (and their representatives) and those **We** appoint to assist **Us** with claims under **Your** policy. We will not trade, rent or sell the personal information we obtain from **You**.

Your information.

If **You** don't provide **Us** with complete information, **We** cannot properly quote for **Your** insurance and **We** cannot insure **You**. **You** can check the personal information **We** hold about **You** at any time.

If **You** provide **Us** with personal information about anyone else, **We** rely on **You** to have told them that **You** will provide their information to **Us**, to whom **We** may provide it, the purposes for which we will use it and that they can access it. If the information is sensitive, **We** rely on **You** to have obtained their consent on these matters.

For more information about **Our** Privacy Policy please see **Our** website – www.ausuw.com

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 **Named Insured and Subsidiaries** has the same duty.

2. DEFINITIONS

- 2.1 Act of Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) 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.
- 2.2 Advertising Injury** means Injury arising out of:
- 2.2.1** libel, slander or defamation, or
 - 2.2.2** any infringement of copyright or passing off of title or slogan; or
 - 2.2.3** unfair competition, piracy, idea misappropriation contrary to an implied contract; or
 - 2.2.4** invasion of privacy;
- committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of **Your** advertising activities.
- 2.3 Aircraft** means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 2.4 Asbestos** means that group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite or that group of man made mineral fibres that comprise mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres and includes **Asbestos** Products and Products containing **Asbestos**.
- 2.5 Australiscare** is a division of Australis Group (Underwriting) Pty Ltd ABN 80 082 459 372 AFSL 238170 of 117 Clarence Street, Sydney NSW 2000

- 2.6 Business** means the business shown in the Schedule and includes the ownership and/or tenancy of premises used for the business and includes repair and maintenance of those premises, the provision and management of canteens, social, sports and welfare organisations and includes first aid and safety services.
- 2.7 Childcare** means the rendering of supervision, education and related care services to children who have been placed under **Your** supervision
- 2.8 Childcare Regulation(s)** means the Laws, Acts or Regulations pertaining to the provision of **Childcare**.
- 2.9 Crisis** means **You** lose **Your** ability to operate to optimum capacity and/or suffer bad publicity which is out of **Your** control and where **You** can demonstrate it has the real potential of reducing **Your** consolidated annual revenue by more than 30% if left unmanaged;
- 2.10 Crisis Loss** means the reasonable and necessary fees, costs and expenses paid by **You** 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 **Your** consolidated annual revenue.
- 2.11 Excess** means the amount which **You** must pay towards any claim under this Policy which will be deducted before any amount is paid to **You** or paid on **Your** behalf.
- 2.12 Hovercraft** means any vessel or craft or thing made or intended to float on or in or travel on or through the atmosphere or water, on a cushion of air provided by a downward blast.
- 2.13 Investigation Costs and Expenses** means legal costs and other expenses incurred by or on **Your** behalf or by Australiscare arising out of any legally compellable attendance by **You** at any official investigation, examination or enquiry in relation to the conduct of **Your** 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 provided the costs and other expenses are incurred with our consent.
- 2.14 Limit of Liability** means the amounts shown in the Schedule for which **You** have chosen to insure.
- 2.15 Named Insured and Subsidiaries** means:
- 2.15.1** the persons, corporations and entities specified in the Schedule, and
- 2.15.2** all subsidiary companies of the persons, corporations and entities specified in the Schedule whose places of incorporation are within Australia and New Zealand (including their Mandated Territories and Protectorates);
- 2.16 Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** or **Advertising Injury** neither expected nor intended from **Your** standpoint. All **Personal Injury** or **Property Damage** or **Advertising Injury** arising out of continuous or repeated exposure to substantially the same general conditions, shall be construed to arise out of one **Occurrence**.
- 2.17 Occupational Health and Safety Regulations Legislation** means the laws and regulations of Australia and each State and Territory of Australia that govern occupational, health and safety
- 2.18 Period of Insurance** means the period of insurance shown in the current Schedule.
- 2.19 Personal Injury** means
- 2.19.1** death, bodily injury, sickness or disease to any person, disability, shock, mental anguish or mental injury,
- 2.19.2** false arrest, wrongful detention, false imprisonment or malicious prosecution, wrongful entry or eviction or other invasion of the right of privacy,
- 2.19.3** libel, slander, defamation of character or invasion of the right of privacy, unless arising out of **Advertising Injury**;
- 2.19.4** assault and battery committed by **You** or at **Your** direction provided the assault or battery is committed for the purpose of preventing or eliminating danger to persons or property.

- 2.20 Product** means anything (after it has ceased to be in **Your** possession or under **Your** control) manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, altered, serviced, repaired, sold, treated, handled, supplied or distributed by **You** or by others trading under **Your** name, including any container thereof (other than a **Vehicle**) in the course of the **Business**.
- 2.21 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.
- 2.22 Property Damage** means physical damage to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical injury that caused it. Damage also means loss of use of tangible property that is not physically damaged, provided such loss of use is caused by physical damage to some other tangible property which first happens during the **Period of Insurance**.
- 2.23 Vehicle** means any type of machine on wheels or on self-laid tracks made or intended to be propelled other than by manual or animal power, including attachments designed to be drawn by any such machine.
- 2.24 Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through water.
- 2.25 You/Your** means each of the following to the extent set forth below:
- 2.25.1** the **Named Insured and Subsidiaries**;
- 2.25.2** any director, executive officer, employee, partner or shareholder of the **Business** or the **Named Insured and Subsidiaries** but only while acting within the scope of their duties in such capacity;
- 2.25.3** any principal in respect of the liability of such principal arising out of the performance by **Named Insured and Subsidiaries** of any contract or agreement for the performance of work for such principal but subject always to the terms, conditions, exclusions and **Limit of Liability** provided in this Policy. For the purpose of this definition principal shall mean anyone for whom the Named Insured and Subsidiaries perform work whether voluntary or otherwise;
- 2.25.4** the officers, committee and members of the **Named Insured and Subsidiaries** canteen, social, sports, first aid/medical, fire fighting and welfare organisations formed with **the** consent of the **Named Insured and Subsidiaries** in respect of claims arising from duties connected with activities of any such club or organisation;
- 2.25.5** any work experience persons, volunteer worker, social worker, counsellor or any Parents and Citizens Association, Parents and Friends Association, advisory board member, committee or ancillary member of a board or committee if formed for the benefit of and consent of the **Named Insured and Subsidiaries** but only whilst acting within the scope of their duties in such capacity whilst engaged in activities for the **Named Insured and Subsidiaries**;
- 2.25.6** the legal personal representative of any person entitled to indemnity under definition 2.25 in circumstances giving rise to indemnity under this Policy;
- 2.25.7** any joint venture, co venture or joint lease in which the **Named Insured and Subsidiaries** are involved but only if the joint venture, co-venture or joint lease is notified to Australiscare within 60 days of formation and has been included in the Schedule;
- 2.25.8** any company which is created, formed or acquired during the **Period of Insurance** but only if the **Business** activity of the new company is similar to the business shown in the Schedule and then only if:
- 2.25.8.1** that business has a fair value of less than 50% of the **Named Insured and Subsidiaries** current **Childcare Business** prior to the creation, formation or acquisition of the new business and

2.25.8.2 the new business is notified to Australiscare within 60 days from being created, formed or acquired. – A pro-rata premium will apply.

2.26 **We/Us/Our** means certain Underwriters at Lloyd's.

3. PUBLIC AND PRODUCTS LIABILITY COVER

We will pay to **You** or on **Your** behalf all amounts which **You** shall become legally liable to pay for compensation in respect of **Personal Injury** or **Property Damage** or **Advertising Liability** happening during the **Period of Insurance** caused by an **Occurrence** in connection with the **Business**.

We will not pay more than the **Limit of Liability** stated in the current Schedule for any one claim or series of claims arising from one **Occurrence**.

Our total aggregate liability for any one **Period of Insurance** for all claims arising from **Your Product(s)** shall not exceed the **Limit of Liability** in the Schedule.

Costs and Expenses

In addition to the stated **Limit of Liability**, **We** will:

- a) defend any suit against **You** claiming compensation for **Personal Injury** or **Property Damage** or **Advertising Liability** and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; **We** may investigate, negotiate and settle any claim or suit as **We** deem expedient; **We** shall not be obliged to pay any claim or judgement or to defend any suit after **Our Limit of Liability** has been exhausted by payment of judgements or settlements;
- b) pay all expenses incurred by **Us**, all **Your** legal costs incurred with **Our** consent and all interest accruing after any such judgement as does not exceed **Our Limit of Liability** thereon;
- c) reimburse **You** for all reasonable expenses, other than loss of earnings, incurred with **Our** consent;
- d) pay expenses incurred by **You** for first aid to others at the time of any **Personal Injury** for which **You** are liable.

If a payment exceeding **Our Limit of Liability** has to be made to dispose of a claim, **Our** 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.

Our maximum liability to pay Costs and Expenses under this Policy is \$5,000,000 or the amount equal to the Limit of Liability whichever is the lesser.

Excess

Where an **Excess** is specified in the Schedule, **You** shall bear this amount of each and every claim (for the purpose of this clause the term claim includes Costs and Expenses.)

4. PROFESSIONAL INDEMNITY COVER

We will pay to **You** or on **Your** behalf all amounts which **You** shall become legally liable to pay for compensation in respect of **Personal Injury** or **Property Damage** happening during the **Period of Insurance** caused by an **Occurrence** and arising from **Childcare** in the conduct of **Your** profession.

We will not pay more than the **Limit of Liability** stated in the current Schedule for Professional Indemnity for any one claim or series of claims arising from one **Occurrence**.

Costs and Expenses

In addition to the stated **Limit of Liability**, **We** will:

- a) defend any suit against **You** claiming compensation for **Personal Injury** or **Property Damage** and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; **We** may investigate, negotiate and settle any claim or suit as **We** deem expedient; **We** shall not be obliged to pay

any claim or judgement or to defend any suit after **Our Limit of Liability** has been exhausted by payment of judgements or settlements;

- b) pay all expenses incurred by **Us**, all **Your** legal costs incurred with **Our** consent and all interest accruing after any such judgement as does not exceed **Our Limit of Liability** thereon;
- c) reimburse **You** for all reasonable expenses, other than loss of earnings, incurred with **Our** consent;
- d) pay expenses incurred by **You** for first aid to others at the time of any **Personal Injury** for which **You** are entitled to compensation.

If a payment exceeding **Our Limit of Liability** has to be made to dispose of a claim, **Our** 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.

Our maximum liability to pay Costs and Expenses under this Policy is \$5,000,000 or the amount equal to the Limit of Liability whichever is the lesser.

Excess

Where an **Excess** is specified in the Schedule, **You** shall bear this amount of each and every claim (for the purpose of this clause the term claim includes Costs and Expenses.)

5. POLICY EXTENSIONS

We will cover **You** (if **You** are a person, corporation or entity specified in 2.25.1, 2.25.2) for each Policy Extension listed below subject to the Conditions, Definitions, Exclusions and **Excess** and any other term of this Policy (unless otherwise stated);

The inclusion of any Policy Extension shall not increase the **Limit of Liability**.

Coronial Enquiries & Official Investigations

If an **Occurrence** which is or would be covered by either the Public and Products Liability cover or the Professional Indemnity cover causes **You** to incur **Investigation Costs and Expenses** in connection with an official investigation, examination or enquiry **We** will to pay such **Investigation Costs and Expenses**.

PROVIDED ALWAYS THAT:

- a) **We** shall be entitled, at **Our** discretion, to appoint legal representation to represent **You** in the investigation, examination or enquiry;
- b) the investigation, examination or enquiry, or notice of intended investigation, examination or enquiry is notified to **Us** within 14 days of **You** becoming aware of such notice or intended investigation;
- c) in the event that a claim for payment of **Investigation Costs and Expenses** is withdrawn or indemnity under this Policy is subsequently withdrawn or denied, **We** shall cease to advance **Investigation Costs and Expenses** and **You** must refund any **Investigation Costs and Expenses** advanced by **Us** to the extent that **We** are satisfied that **You** were not entitled to such **Investigation Costs and Expenses**, unless **We** agree in writing to waive recovery of such **Investigation Costs and Expenses**; and
- d) **Our** total liability in respect of **Investigation Costs and Expenses** for all claims made under this Policy Extension shall not exceed \$150,000.

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 **You** are a member.

Emergency First Aid/ Good Samaritan Act

The Professional Indemnity cover is extended to include the rendering of emergency first aid assistance by any of **Your** first aid attendants, provided that **We** will not be liable where the **Employee** was acting at the time under a contract of employment with any employer other than **You** as defined in 2.25.1 and 2.25.2 (for

the purpose of this extension emergency first aid assistance shall mean assisting at the scene of a medical emergency, accident or disaster by **Your 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 premises where **You** provide **Childcare**.

Events and Fund Raising

The Policy is extended to include events and fundraising, where the daily attendance to such events and/or fundraising does not exceed 500.

Excursions,

The Policy is extended to include excursions, organised and supervised by **You**, provided that the excursion is limited to no more than eight hours duration in any twenty four hour period and not requiring an overnight stay.

6. OPTIONAL EXTENSIONS

Subject to the Schedule of Insurance indicating cover has been included, **We** will cover **You** subject to the Conditions, Definitions, Exclusions and **Excess** and any other term of this Policy (unless otherwise stated) for:

Retroactive cover:

We will extend this Policy to indemnify **You** under coverage afforded under Public and Products Liability cover and Professional Indemnity cover for any **Occurrence** happening during the retroactive period specified in the Schedule.

This additional cover will not increase the **Limit of Liability** and coverage by this Policy shall be no broader than the claims made policy of insurance immediately prior to this policy and will also be subject to the terms, conditions and exclusions of this Policy;

For the purpose of this optional extension we will not be liable for claims directly or indirectly based upon attributable to or in consequence of:

- a) **Personal Injury or Property Damage** arising out of or in connection with any actual or alleged sexual assault, sexual abuse or molestation of any person;
- b) any notice given under a previous policy of insurance of any incidents, facts or circumstances which may give rise to a claim.
- c) any incidents, facts or circumstances which were known or ought reasonably to have been known by **You** prior to the **Period of Insurance** and had the potential to give rise to a claim under this optional extension.

Crisis Cover

We will pay **You** for any **Crisis Loss** which **You** (specified in paragraphs 2.25.1, 2.25.2) incur by reason of a **Crisis** and the **Occurrence** is or would be covered by either the Public and Products Liability cover or the Professional Indemnity cover causes the **Crisis**;

Our total liability for all claims under this extension shall not exceed \$100,000 in the aggregate;

The inclusion of this Optional Policy Extension shall not increase the **Limit of Liability**.

Statutory Liability Fines and Penalties

If an **Occurrence** which is or would be covered by either the Public and Products cover or Professional Indemnity cover causes **You** (specified in paragraphs 2.25.1, 2.25.2) to incur a Fine or Penalty which would otherwise be excluded by reason of Exclusion 7.16 'Fines and Penalties' as a result of an actual or alleged breach of any **Occupational Health and Safety Legislation** or any **Childcare Regulation** then:

- a) **We** agree to pay **You** or on **Your** behalf such Fine or Penalty and;

- b) any costs and expenses incurred with **Our** written consent in the defence or settlement of any Fine or Penalty covered by this Extension.

PROVIDED ALWAYS THAT:

- a) **You** notify **Us** within 14 days of **You** becoming aware that **You** have breached or it has been alleged that you have breached, such **Occupational Health and Safety Legislation** or **Childcare Regulation**
- b) the act, error or omission giving rise to the Fine or Penalty did not arise from gross negligence or an intentional, wilful, reckless, or deliberate act, error, or omission; and
- c) **Our** total liability in respect of all claims made under this Optional Policy Extension shall not exceed \$150,000.

The inclusion of this Optional Policy Extension shall not increase the **Limit of Liability**.

7. EXCLUSIONS

EXCLUSIONS APPLYING TO PUBLIC AND PRODUCTS LIABILITY COVER

We shall not be liable for claims:

7.1 Advertising Injury

arising out of or in connection with **Advertising Injury**:

- 7.1.1 resulting from statements made at **Your** direction with knowledge that such statements are false.
- 7.1.2 resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract.
- 7.1.3 resulting from any incorrect description of **Product(s)** or services.
- 7.1.4 resulting from any mistake in advertised price of **Product(s)** or services.
- 7.1.5 failure of **Your Products** or services to conform with advertised performance, quality, fitness or durability.
- 7.1.6 incurred by **You** if **Your** principal occupation or business is advertising, broadcasting, publishing or telecasting.

7.2 Contractual Liability

arising out of or in connection with liability assumed by **You** under any contract or agreement except to the extent that such liability would have been implied by law.

This Exclusion shall not apply to:

- 7.2.1 the written contracts designated in the current Schedule
- 7.2.2 liability assumed by **You** under a warranty of fitness or quality as regards **Your Product(s)**.
- 7.2.3 liability assumed by the **You** under any lease of real or personal property other than a provision which obliges **You** to effect insurance or provide indemnities in respect of the subject matter of that contract.
- 7.2.4 Any written contract made or entered into with any public authority for the supply of water, gas, electricity or telephone services, except a contract made or entered into with such authority for work done or to be done for such authority;

7.3 Employees

arising out of or in connection with liability imposed

7.3.1 by any workers' compensation law,

7.3.2 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.

Provided that if **You** are:

7.3.3 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

7.3.4 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 **Your** liability would not be covered under such fund, scheme, policy of insurance or self insurance arrangement had **You** complied with **Your** obligations pursuant to such law.

7.4 Erection and Alteration to Buildings

arising out of or in connection with the erection, demolition of and/or alteration or addition to buildings or structures by **You** or on **Your** behalf except where the completion value of such work does not exceed \$250,000.

7.5 Property Damage

for **Property Damage** to:

7.5.1 Property owned by or leased or rented to **You**; or

7.5.2 Property in **Your** physical or legal control.

Exclusion **7.5** shall not apply to liability for **Property Damage** to:

- a) Property in **Your** physical or legal control 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 **We** shall not be liable for **Property Damage** to that part of any property upon which **You** are or have been working where such **Property Damage** arises from such work.
- b) Premises which are leased or rented to **You** for the **Business**.
- c) property belonging to employees of the Named Insured and Subsidiaries.
- d) Vehicle(s) (not belonging to or used by or on **Your** behalf) in **Your** physical or legal control where such **Property Damage** occurs whilst any such **Vehicle** is in a car park owned or operated by **You**, provided that **You** do not own or operate a car park for reward as part of **Your Business**.

Provided that where cover is not excluded **You** shall bear an **Excess** of \$1,000 in respect of such **Property Damage** or such other amount as is specified in the Schedule.

7.6 Cover afforded under Professional Indemnity

arising out of or in connection with **Personal Injury** or **Property Damage** if indemnity is or would otherwise be afforded under the Professional Indemnity cover section by this Policy.

7.7 Professional Indemnity

arising out of or in connection with the rendering of or failure to render professional advice or service by **You** or Medical Persons or any error or omission connected therewith. For the purpose of this exclusion Medical Persons means qualified medical practitioners, dentists, nurses and other health care professionals and personnel trained in health care.

EXCLUSIONS APPLYING TO PROFESSIONAL INDEMNITY

We shall not be liable for claims:

7.8 Contractual Liability

arising out of or in connection with liability assumed by **You** under any contract or agreement except to the extent that such liability would have been implied by law.

7.9 Medical Persons

arising out of or in connection with the rendering of or failure to render professional advice or service by any Medical Persons or any error or omission connected therewith. For the purpose of this exclusion Medical Persons means qualified medical practitioners, dentists, nurses and other health care professionals and personnel trained in health care other than first aid attendants.

7.10 Cover afforded under General and Product(s) Liability Cover

arising out of **Personal Injury** or **Property Damage** if indemnity is or would otherwise be afforded under the Public and Products Liability cover section of this Policy

EXCLUSIONS APPLYING TO PUBLIC AND PRODUCTS AND PROFESSIONAL INDEMNITY

We shall not be liable for claims:

7.11 Aircraft, Hovercraft and Watercraft

in respect of liability arising out of or caused by, through or in connection with:

- 7.11.1 the ownership, maintenance operation or use by **You** or the use on **Your** behalf of any **Aircraft** or **Hovercraft**;
- 7.11.2 the selling or manufacturing of **Aircraft** or the manufacture, assembly and or supply of any products that are used with **Your** knowledge in **Aircraft** or aerial device;
- 7.11.3 the repair, service or maintenance of **Aircraft** or **Aircraft** products or the installation of any products into **Aircraft**;
- 7.11.4 the ownership, maintenance, operation or use by **You** or on **Your** behalf of any **Watercraft**, exceeding 10 metres in length except where such **Watercraft** are owned or operated by others and used by **You** for **Business** entertainment;
- 7.11.5 any **Watercraft** operating in excess of 3 nautical miles offshore.

7.12 Amusement Rides and Hazardous Activities

arising out of or in connection with :

- 7.12.1 any person participating in trailer rides, pony rides, equestrian events or the like, motor bike rides, tractor rides, activities which involve air filled jumping castles and slides, demountable climbing walls or rock climbing or rope courses, activities at adventure parks and other activities generally regarded as adventure activities;
- 7.12.2 the use or ownership of mechanical amusement devices. However this exclusion 7.12.2 shall not apply to **Your** vicarious liability arising from the hire or loan of such devices from other parties provided such other party are in control of and operate such device and furthermore that **You** have obtained a certificates of currency confirming such party holds valid and collectable liability insurance for a minimum of \$5,000,000 any one **Occurrence**.

7.13 Asbestos

arising out of or in connection with any loss, or alleged loss, damage, cost, liability, expense, fine or penalty of any kind or nature whatsoever incurred by **You**, directly or indirectly, resulting from, in consequence of, or with respect to illness or sickness or death in any way relating to direct or indirect exposure to **Asbestos** or materials containing **Asbestos**.

7.14 Assault and Battery

arising out of or in connection with **Personal Injury** or **Property Damage** caused by or arising from assault and battery committed by **You** or at **Your** direction, unless reasonably necessary for the protection of persons or property.

7.15 E-Commerce

for **Personal Injury** or **Property Damage** and/or **Advertising Liability** arising directly or indirectly out of, or in any way involving **Your** internet operations or for **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:

- 7.15.1 the use of any computer hardware or software
- 7.15.2 the provision of computer or telecommunications services by **You** or on **Your** behalf
- 7.15.3 the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus

But this exclusion does not apply to:

- a) **Personal Injury** or **Property Damage** or **Advertising Liability** arising out of any material which is already in print in support of its product, including but not limited to product use and safety
- b) instructions or warnings and which is also reproduced on its site or
- c) liability which arises irrespective of the involvement of **Your** internet operations.

Nothing in this exclusion will be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion.

7.16 Fines and Penalties

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

7.17 Libel and Slander

for libel and slander:

- 7.17.1 resulting from statements made prior to the commencement of the **Period of Insurance**.
- 7.17.2 resulting from statements made at **Your** direction with knowledge that such statements are false.
- 7.17.3 related to advertising, broadcasting, publishing or telecasting activities conducted by **You** or on **Your** behalf

7.18 Loss of Use

for loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- 7.18.1 a delay in or lack of performance by or on **Your** behalf of any contract or agreement; or
- 7.18.2 the failure of **Your Product(s)** to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by **You**, but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or loss or destruction of **Your Product(s)** after such **Product(s)** have been put to use by any person or organisation other than **You**.

7.19 Nuclear Fuel/Weapons

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

7.19.1 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.

7.19.2 nuclear weapons material.

7.20 Pollution

for **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. **We** shall also not be liable to pay any costs and expenses incurred in the prevention, removal, or clean-up of such **Pollutants**.

Exclusion 7.20 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**.

However, notwithstanding Exclusion 7.20 cover does not apply in respect of Pollution that causes:

7.20.1 Property Damage to premises presently or at any time previously owned or tenanted by **You**

7.20.2 Property Damage to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by **You** or otherwise in **Your** care custody or control.

7.21 Territorial Limits

for **Personal Injury** or **Property Damage** or **Advertising Liability**:

7.21.1 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 undertaking manual work or a supervision of any kind in United States of America or Canada. However the **Limits of Liability** for such claims are inclusive of all costs and expenses;

7.21.2 caused by or arising out of **Your Product(s)** knowingly exported by **You** or **Your** agents to the United States of America or Canada;

7.21.3 where claims are made upon **You** outside Australia or New Zealand in any country where **You** are represented by a branch or company or firm or individual holding **Your** power of attorney;

7.21.4 where such claims arise out of any contract entered into by **You** under the terms of which, work is to be performed outside Australia or New Zealand.

7.22 Terrorism

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

For the purpose of this exclusion an act of terrorism means an act including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed to political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

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

If **We** allege that by reason of this exclusion, any loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon **You**.

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

7.23 Tobacco

for any injury caused directly or indirectly by the inhalation or ingestion of or exposure to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco;

7.24 Vehicles

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

7.24.1 which is registered; or

7.24.2 in respect of which insurance is required by virtue of any legislation.

Exclusion 7.24 shall not apply to **Personal Injury** or **Property Damage** arising from:

- a) 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.
- b) the loading or unloading of any **Vehicle**.

7.25 War

for **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.

8. CONDITIONS

8.1 Adjustment of Premium

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

8.2 Cancellation

8.2.1 **You** may cancel this Policy at anytime by forwarding a written request to **Us**. We will refund 90% of the pro-rata premium calculated for the unexpired **Period of Insurance**.

8.2.2 **We** may cancel this Policy in any of the circumstances detailed in the Insurance Contracts Act 1984. **We** will refund the pro-rata premium calculated for the unexpired **Period of Insurance**.

8.3 Cancellation by Premium Finance Company

The Premium Finance Company may cancel the Policy by advising **Us** within fourteen (14) days of a premium instalment date passing without payment. Under these circumstances, as long as there are no losses outstanding or paid on the Policy, We will refund the Premium Finance Company the appropriate proportion of premium.

8.4 Claims

8.4.1 When an event occurs which could give rise to a claim **You** must:

- a) As soon as possible notify **Us** of the **Occurrence**;
- b) Within 30 days of notifying **Us**, give **Us** a statement in writing with as much detail as **You** can about the cause, description and amount of the Loss or Damage;

- c) Forward details and documentation of any claim or legal proceedings including any prosecutions by any party brought against **You** to **Us** as soon as possible after receipt;
- d) Preserve any property which may be needed as evidence in any claim against **You** and make it available for inspection by **Us** and **Our** representatives.

8.4.2 **You** shall not without **Our** consent make any admission, offer promise or payment in connection with any **Occurrence** or claim.

8.4.3 **We** shall be entitled to prosecute in **Your** name at **Our** expense and for **Our** benefit any claim that **You** have against a third party for indemnity or damages or otherwise that arises out of or in connection with an **Occurrence**.

8.4.4 **You** shall give all information and assistance as **We** may require in the prosecution defence or settlement of any claim, or in any recovery actions.

8.4.5 **We** may at any time pay **You** in respect of all claims against **You**, 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 **We** 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:

8.4.5.1 recoverable from **You** in respect of the period prior to the date of such payment;

8.4.5.2 incurred by **Us**;

8.4.5.3 incurred by **You** with **Our** consent prior to the date of such payment.

8.5 Goods and Services Tax

The amount of premium payable to **You** for the Policy includes an amount on account of the GST on the premium.

When **We** pay a claim, **Your** GST status will determine the amount **We** pay.

When **You** are:

- a) not registered for GST, the amount **We** pay is the sum insured/limit of indemnity or the other limits of insurance cover including GST.
- b) registered for GST, **We** 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) **We** will pay for the GST amount.

We will reduce the GST amount **We** 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 **Us** 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, **We** 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, **We** will only pay the GST relating to **Our** settlement of the claim.

We 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.

8.6 Change of Facts or Circumstances

Notice in writing shall be given to **Us** as soon as possible of every change materially varying any of the facts or circumstances existing at the commencement of this Policy that **You** become aware of.

8.7 Cross Liability

Where **You/Your** (if **You** are specified in paragraphs 2.25.1 or 2.25.5) is comprised of more than one party, each of the parties shall be considered as a separate legal entity and the word **You/Your** shall apply to each party as if a separate policy had been issued to each party but nothing contained in this Condition 8.6 shall result in an increase in the **Limit of Liability** in respect of any **Occurrence** or in the aggregate.

8.8 Agreements

You must not enter into an agreement with another party which excludes or reduces **Your** rights to make a claim against that party or where **You** agree to indemnify that party without **Our** written consent. If **You** do, **We** may reduce the amount of any claim **You** make under this Policy by the extent to which **Your** agreement prevents **Us** making a claim against that party under **Our** rights of subrogation.

8.9 Inspection of Property

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

8.10 Jurisdiction

All disputes arising out of or under this Policy will be subject to determination by any Court of competent jurisdiction within Australia

8.11 Other Insurance

You must tell **Us** in writing and supply copies to **Us** as soon as possible about any other insurance which covers the risks insured by this Policy.

The insurance afforded by this Policy is excess over and reduced by any other valid and collectable insurance available to **You**. Valid and collectable insurance includes any self insurance plan which would be applicable to the loss.

8.12 Reasonable Precautions

You shall take all reasonable precautions to:

- 8.12.1 comply with all legislation and regulations, including **Occupational Health and Safety Legislation** and **Childcare Regulation(s)**
- 8.12.2 prevent **Personal Injury** and **Property Damage** or **Advertising Liability**;
- 8.12.3 prevent manufacture, sale or supply of defective **Product(s)**;
- 8.12.4 comply and ensure that **Your Employee(s)**, 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;
- 8.12.5 at **Your** own expense, trace or recall or modify any of **Your Product(s)** containing any defect or deficiency of which **You** have knowledge or have reason to suspect.

8.13 Subrogation

- 8.13.1 **We** are entitled to pursue any claim to recover any amount paid to **You** or on **Your** behalf under this Policy in **Your** name at **Our** expense and for **Our** benefit.
- 8.13.2 **You** must give **Us** all the reasonable assistance and information that **We** require in pursuing any such claim.

8.13.3 Should **You** incur any liability that is not covered by this policy due to an **Excess** or where a judgement or settlement exceeds the **Limit of Liability**, You will be entitled to make a call on the proceeds of any recovery on the following basis:

8.13.3.1 The recovery will be applied first against **Our** costs and expenses in realising the recovery and then against Your uninsured loss. Once your uninsured loss has been compensated We shall be entitled to retain for Our benefit the balance of the proceeds. If any component of the recovery relates to interest payable on a claim, judgement or settlement **We** shall be entitled to retain the interest for Our benefit provided Your uninsured loss exclusive of any claim for interest has been compensated.

8.14 Dispute Resolution

The Underwriters hereon agree that:

8.14.1 In the event of a dispute arising under this Insurance, the Underwriters at the request of the Assured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

8.14.2 Any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia,
Suite 2, Level 21
123 Pitt Street
Sydney NSW 2000
Telephone Number: (02) 9223 1433

who has authority to accept service and to enter an appearance on the Underwriters' behalf, and who is directed at the request of the Assured to give a written undertaking to the Assured that he will enter an appearance on the Underwriters' behalf.)

8.14.3 If a suit is instituted against any one of the Underwriters, all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.