



TEGO
Our strength. Your security.

Entity Medical Malpractice Product Disclosure Statement

TEGO-EMMI-8346-0324



Introduction

The policy is a contract between the **Insured** and the **Insurer**. It is arranged through Tego Insurance Pty Ltd on behalf of Certain Underwriters at Lloyd's.

The **Policy** consists of this document, the Policy Schedule and Endorsements, if any, all of which are a single document and are to be read as one contract. In the **Policy**, certain words or phrases are specially defined. In deciding to accept the **Policy** and in setting the terms and premium, the **Insurer** has relied on the information which the **Insured** has provided to the Insurer.

The Insurer will, in consideration of the payment of the premium, cover the **Insured**, subject to the terms and conditions of the **Policy** for the **Policy Period** described in the **Policy Schedule** or any subsequent period for which the Insurer agrees to accept payment of premium.

The **Insured** should keep the **Policy** in a safe place – the **Insured** may need to refer to it if they have to make a claim.

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Important Notices About This Insurance

YOUR DUTY OF DISCLOSURE

Before entering into an insurance contract with the **Insurer**, each **Insured** has a duty under the Insurance Contracts Act 1984 (Cth) to tell the **Insurer** anything that they know, or could reasonably be expected to know, that may affect the **Insurer's** decision to enter into the insurance contract and on what terms.

This duty continues until the contract of insurance is entered into.

Each **Insured** has the same duty before the insurance contract is renewed, extended, varied or reinstated.

The **Insured** does not need to tell the **Insurer** anything that:

- reduces the risk to be insured by the **Insurer**; or
- is common knowledge; or
- that the **Insurer** knew or in the ordinary course of business should know as an **Insurer**; or
- that the **Insurer** waives the **Insured's** duty to tell it about.

If the **Insured** does not tell the **Insurer** anything that the **Insured** is required to, the **Insurer** may cancel the contract or reduce the amount the **Insurer** will pay if the **Insured** makes a claim, or both.

If the **Insured's** failure to tell the **Insurer** is fraudulent, the **Insurer** may refuse to pay a claim and treat the contract as if it never existed.

SUBROGATION

Subrogation is the right of the **Insurer** to recover any amount that it has paid to the **Insured** pursuant to a **Claim** under the **Policy** from a third party(s) who caused the loss which forms the subject of the **Claim**. Under its right of subrogation the **Insurer** is entitled at law to pursue the third party(s) in the name of the **Insured**.

It is a condition of the **Policy** that the **Insured** will not enter into any arrangement or agreement, contractual or otherwise, limiting or restricting in anyway a right of subrogation that the **Insurer** may have against any third party(s).

CLAIMS MADE COVER

Cover under 'Section 1: Medical Malpractice' and 'Section 2: Errors and Omissions' of the **Policy** are provided on a "claims made" basis. This means that those Sections provide cover for **Claims** first made against an **Insured** and notified to the **Insurer** during the **Policy Period** as set out in the Scope of Cover in each Section of the **Policy**.

If an **Insured** gives notice in writing to the **Insurer** of any facts that might give rise to a **Claim** against the **Insured** as soon as reasonably practicable after the **Insured** become aware of those facts but before the expiry of the **Policy Period**, the **Insured** may have rights under Section 40(3) of the Insurance Contracts Act 1984 (Cth) to be indemnified in respect of any **Claim** subsequently made arising from those facts notwithstanding that the **Claim** is made after the expiry of the **Policy Period**. Any such rights arise under the Insurance Contracts Act 1984 (Cth) only.

PRIVACY NOTICE

Tego Insurance Pty Ltd and the **Insurer** handle your personal information with care and in accordance with the Privacy Act 1988 and the Australian Privacy Principles. Tego Insurance Pty Ltd and the **Insurer** collect personal information about you to provide you with insurance and insurance related services. We may disclose your personal information to third parties for the purposes described in our Privacy Policy, including related entities, insurers, reinsurers, agents and service providers.

By asking the **Insurer** to provide you with insurance and insurance related services, you consent to the collection, use and disclosure (including overseas disclosure) of your personal information for the purposes described in our Privacy Policy. Where you provide personal information about others, you represent to us that you have made them aware of that disclosure and of our Privacy Policy and that you have obtained their consent.

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

COMPLAINTS HANDLING

Any inquiry or complaint relating to this insurance should be referred to Tego Insurance Pty Ltd in the first instance:

Tego Insurance Pty Ltd
Suite 1, Level 11, 309 Kent Street
Sydney NSW 2000
Email: clientsupport@tego.com.au

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

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

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

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

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

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

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

GENERAL INSURANCE CODE OF PRACTICE

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

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

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

AUSTRALIAN TERRORISM INSURANCE ACT

The **Insurer** has treated this insurance (or part of it) as an insurance to which the Australian Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism Exclusion to which the **Policy** is subject shall not apply to any “eligible terrorism loss” as defined in ATIA.

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

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

Operative Clause

In consideration of the **Insured** having paid to the **Insurer** the premium in accordance with the Premium Payment Condition, and in reliance upon all statements made in the Proposal and any information provided to the **Insurer** by or on behalf of the **Insured**, the **Insurer** agrees, subject to all Terms, Conditions and Exclusions of the **Policy**, to provide insurance in the manner and to the extent stated hereinafter:

PROVIDED THAT:

1. the liability of the **Insurer** shall not exceed the applicable **Limit of Liability** as set out in the **Policy**, except where otherwise agreed by the **Insurer** in writing and incorporated into the **Policy**;
2. the liability of each **Insurer** shall be several and not joint, and shall be limited to the proportion set against the **Insurer’s** name in the Schedule of **Insurers**;
3. the liability of the **Insurer** for any loss, **Claim** or coverage shall be determined by reference to the most specific Section, clause, cover, extension or exclusion that may be applicable to such head of loss or element of the **Claim**. For the purpose of this clause, any extension shall be considered the more specific clause where held against cover under its Section’s general insuring clause; and
4. the **Insured** is liable to pay the **Deductible** specified in the Schedule.

Section 1: Medical Malpractice

This Section of the **Policy** operates on a claims-made basis and applies only to **Claims** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** in accordance with the relevant terms and conditions, unless stated otherwise.

INSURING CLAUSE

The **Insurer** agrees to pay those sums that the **Insured** becomes legally obligated to pay as a result of any **Claim** against the **Insured** for **Bodily Injury** arising out of an unintended error, mistake or malpractice, directly in connection with **Healthcare Services**.

The **Healthcare Services** must take place after the **Retroactive Date**, and the **Claim** must first be made against the **Insured** during the **Policy Period** and must be reported in writing to the **Insurer** within the **Policy Period**.

DEFENCE COSTS AND EXPENSES

With respect to such insurance as is afforded by this Section, the **Insurer** also agrees to pay **Defence Costs and Expenses**, on behalf of the **Insured**, incurred in the defence or settlement of any **Claim** against the **Insured**.

The payments above shall be made within and not in addition to the applicable **Limits of Liability** of the **Policy**, but only until such time as those **Limits of Liability** have been exhausted, after which the **Insurer's** obligations shall terminate in regard to each coverage, including **Defence Costs and Expenses**.

EXTENSIONS

The following Extensions of cover shall apply if specifically noted on the schedule as being covered, subject to the **Limits of Liability**, Terms and Conditions of this Section and the **Policy**. For the avoidance of doubt, the insurance provided under these Extensions shall be subject to the applicable **Sublimit of Liability** and **Deductible**, if any, as specified. Unless otherwise stated in the Schedule, all Extensions shall be inclusive within any **Limit of Liability** stated for this Section.

1. ABUSE LIABILITY

Notwithstanding General Exclusion 2, "Abuse", the **Insurer** will pay all amounts the **Insured** is legally obligated to pay as a result of any **Claim** made against the **Insured** and notified to the **Insurer** during the **Policy Period**, involving any act of **Abuse** arising out of or related to **Healthcare Services** rendered by the **Insured** or by someone for whose **Healthcare Services** the **Insured** is legally responsible, provided that the act of **Abuse** has not been determined to have occurred by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not.

This Extension of cover shall apply:

- (a) in the event that an act of **Abuse** is alleged, whether in a complaint, during discovery, at trial or otherwise, regardless of the legal or factual theory of recovery advanced, including but not limited to assertions of improper or negligent hiring or employment, or failure to investigate or supervise; and
- (b) to any and all such **Claims** arising out of the same or related acts or omissions.

On payment of the Abuse **Sublimit**, the **Insurer** shall not be under any further liability to pay any other amount and shall not be under any obligation to defend any **Abuse Claims**.

2. COURT ATTENDANCE COMPENSATION

If, at the request of the **Insurer**, any of the undermentioned persons attend court as a witness in connection with a **Claim** in respect of which the **Insured** is entitled to indemnity under this Section, the **Insurer** shall provide compensation to the **Insured** of up to \$250 per day for each day on which attendance of the witness is required:

- (a) any director, member or partner of the **Insured**; or
- (b) any **Employee**.

The maximum amount payable by the **Insurer** under this extension is \$7,500.

3. COMPLAINT AND INVESTIGATION COSTS

The **Insurer** agrees to pay **Investigation Costs** for a formal administrative, criminal, coronial or investigative inquiry or complaint into the affairs of the **Insured**, instituted and notified to the **Insurer** during the **Policy Period** by a regulatory, governmental, prosecuting or professional authority or private health insurer:

- (a) which the **Insured** is recommended or required to attend or respond to; and
- (b) which involves the conduct of the **Insured** in connection with **Healthcare Services**.

The maximum amount payable by the **Insurer** under this extension is the applicable **Sublimit of Liability** as stated in the Schedule.

4. MEDICARE AND PRIVATE HEALTH INSURER

The **Insurer** agrees to pay **Investigation Costs** for an inquiry or complaint which is commenced, commissioned or ordered in relation to a Private Health Insurer (registered under the Private Health Insurance Act 2007) or a Medicare compliance audit or review instituted and notified to the **Insurer** during the **Policy Period**,

- (a) which the **Insured** is recommended or required to attend or respond to; and
- (b) which involves the conduct of the **Insured** in connection with **Healthcare Services**.

The maximum amount payable by the **Insurer** under this extension is the applicable **Sublimit of Liability** as stated in the Schedule

5. CONTINUOUS COVER

Where the **Insured**:

- (a) first became aware of facts that might give rise to a **Claim**, prior to the **Policy Period**; and
- (b) had not notified the **Insurer** of such facts prior to the **Policy Period**, then General Exclusion 3, "Prior Claims" will not apply to any notification during the **Policy Period** of any **Claim** resulting from such facts, provided that:
 - (i) there is an absence of fraudulent non-compliance with the **Insured's** duty of disclosure and an absence of fraudulent misrepresentation by the **Insured** in respect of such facts; and
 - (ii) the **Named Insured** has been continuously insured, without interruption at the time of the notification of the **Claim** to the **Insurer**, under a Medical Malpractice policy issued by the **Insurer** and was insured by the **Insurer** at the time when the **Insured** first became aware of such facts; and
 - (iii) the **Insurer** may reduce its liability under the **Policy** to the extent of any prejudice the **Insurer** may suffer in connection with the **Insured's** failure to notify the facts giving rise to a **Claim** prior to the **Policy Period**.

6. GOOD SAMARITAN ACTS

The **Insurer** agrees to pay those sums that the **Insured** becomes legally obligated to pay as damages in respect of **Bodily Injury** arising out of **Good Samaritan Acts**.

7. TELEHEALTH

The **Insurer** agrees to pay those sums that the **Insured** becomes legally obligated to pay as damages in respect of **Bodily Injury** arising out of telehealth activities.

8. REPORTING A HEALTHCARE PRACTITIONER OR INCIDENT

The **Insurer** agrees to pay those sums that the **Insured** becomes legally obligated to pay as a result of any requirement to report an incident, healthcare professional, person or entity to a professional or statutory body or area health authority.

The maximum amount payable by the **Insurer** under this extension is the applicable **Sublimit of Liability** as stated in the Schedule.

9. VICARIOUS LIABILITY OF MEDICAL & DENTAL PRACTITIONERS AND LOCUMS

Notwithstanding General Exclusion 10 "Medical & Dental Practitioner", the **Insurer** agrees to pay those sums that the **Insured** becomes legally obligated to pay as damages in respect of **Bodily Injury** arising out of an unintended error, mistake or malpractice, directly in connection with **Healthcare Services** performed by a **Medical & Dental Practitioner** or locum.

The **Insurer** will not be liable for the **Medical & Dental Practitioner** or locum's own liability, nor will the **Insurer** be prevented from seeking recovery from any such party.

10. REINSTATEMENT

The **Insurer** will provide a single reinstatement of the **Limit of Liability** if the **Limit of Liability** is exhausted due to payment of amounts insured under the **Policy**, but the **Insurer** will only provide such reinstatement if the **Limit of Liability** available under any **Policy** or policies in excess of the **Policy** has or have been exhausted and provided always that the **Insurer** will pay no more than a single **Limit of Liability** in respect of each **Claim** and associated **Defence Costs and Expenses** and each claim for any other amounts insured under the **Policy**. The cover provided under this extension will not apply to any extensions or optional extensions to which **Sublimit of Liabilities** apply.

Section 2: Errors And Omissions

This Section of the **Policy** operates on a claims-made basis and applies only to **Claims** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** in accordance with the relevant terms and conditions, unless stated otherwise.

INSURING CLAUSE

The **Insurer** shall pay on behalf of the **Insured** any **Errors and Omissions Loss** that the **Insured** becomes legally obligated to pay as a result of **Claim** first made against the **Insured** during the **Policy Period** taking place on or after the **Retroactive Date** stated in the Schedule and notified to the **Insurer** within the **Policy Period** that arises out of the provision or failure to provide **Professional Services** including:

- (a) negligent misstatement or misrepresentation (including advice of goods);
- (b) libel, slander and/or defamation;
- (c) breach of or misuse of confidentiality or any right to privacy, or
- (d) infringement of intellectual property rights.

DEFENCE COSTS AND EXPENSES

With respect to such insurance as is afforded by this Section, the **Insurer** also agrees to pay **Defence Costs and Expenses**, on behalf of the **Insured**, incurred in the defence or settlement of any **Claim** against the **Insured**.

The payments above shall be made within and not in addition to the applicable **Limits of Liability** of the **Policy**, but only until such time as those **Limits** have been exhausted, after which the **Insurer's** obligations shall terminate in regard to each coverage, including **Defence Costs and Expenses**.

EXTENSIONS

The following Extensions of cover shall apply if specifically noted on the Schedule as being covered, subject to the **Limits of Liability**, Terms and Conditions of this Section and the **Policy**. For the avoidance of doubt, the insurance provided under these Extensions shall be subject to the applicable **Sublimit of Liability** and **Deductible**, if any, as specified. Unless otherwise stated in the Schedule, all Extensions shall be inclusive within any **Limit of Liability** stated for this Section.

1. NEW SUBSIDIARIES

If, after the **Policy** inception date, the **Named Insured** first merges with, acquires or creates a **Subsidiary**, then such **Subsidiary** will be covered under the **Policy** for no additional premium provided that:

- (a) Coverage will only be afforded to any associated or newly acquired **Subsidiary** operating in or from premises within the **Policy Territory** applicable to this Section, until the 60th day after it is acquired and/or formed or the end of the **Policy Period**, whichever shall be the earlier date; and
- (b) there shall be no coverage of any kind and in particular not for any **Claim** or any actual or alleged negligent act, error or omission, whether known of or not, in existence before the **Named Insured** acquired or formed the said associated or newly acquired **Subsidiary**; and
- (c) there is no other insurance or indemnity arrangement available to the associated or newly acquired **subsidiary**;

Unless otherwise agreed in writing and shown by endorsement to the **Policy**, the **Insurer** shall not be liable for any **Claims** arising out of any actual or alleged negligent act, error or omission occurring before the **Named Insured** first merged with, acquired or created the **Subsidiary**.

2. DISHONESTY OF EMPLOYEES

The **Policy** shall cover any **Errors and Omissions Loss** that the **Named Insured** becomes legally liable to pay in connection with any **Wrongful Act** arising out of any deliberate, dishonest, fraudulent or criminal acts by **Employees** committed without the prior knowledge or consent of any trustee, director or officer of the **Insured**, except as otherwise excluded under the **Policy**. However in the event of any payment made by the **Insurer** for such **Errors and Omissions Loss**, the **Insurer** will have full right of recourse against the **Employee**.

No cover is provided under this extension to any person, company or other entity who has committed or condoned the deliberate, dishonest, fraudulent or criminal acts.

3. COURT ATTENDANCE COMPENSATION

If, at the request of the **Insurer**, any of the undermentioned persons attend court as a witness in connection with a **Claim** in respect of which the **Insured** is entitled to indemnity under this Section, the **Insurer** shall provide compensation to the **Insured** of up to \$250 per day for each day on which attendance of the witness is required:

- (a) any director of the **Insured**; or
- (b) any **Employee**.

The maximum amount payable by the **Insurer** under this extension is \$7,500.

4. COMPLAINT AND INVESTIGATION COSTS

The **Insurer** agrees to pay **Investigation Costs** for a formal administrative, criminal, coronial or investigative inquiry or complaint into the affairs of the **Insured**, instituted and notified to the **Insurer** during the **Policy Period** by a regulatory, governmental, prosecuting or professional authority or private health insurer,

- (a) which the **Insured** is recommended or required to attend or respond to; and
- (b) which involves the conduct of the **Insured** in connection with **Healthcare Services**.

The maximum amount payable by the **Insurer** under this extension is the applicable **Sublimit of Liability** as stated in the Schedule.

5. LOSS OF DOCUMENTS

The **Insurer** will pay on behalf of the **Insured** any **Errors and Omissions Loss** that the **Insured** becomes legally liable to pay for the replacement or restoration of tangible **Documents** for which the **Insured** is legally responsible and that have been destroyed, damaged, lost or mislaid provided always that the **Documents** were in the **Insured's** custody or control or any other person to whom the **Insured** entrusted, lodged or deposited such **Documents** in the ordinary course of **Professional Services**.

The discovery of any **Errors and Omissions Loss** must occur during the **Policy Period** and be notified in writing to the **Insurer** within 28 days.

The **Insurer** will not be liable to make any payment arising out of wear, tear, gradual deterioration, moth or vermin.

Documents does not include any currency, negotiable instruments or records thereof.

The maximum amount payable by the **Insurer** under this extension is the applicable **Sublimit of Liability** as stated in the Schedule.

6. FORMER SUBSIDIARIES

This section covers the liability for **Professional Services** by any former **Subsidiary** of the **Insured** that is specified in the Schedule, provided that such indemnity shall only apply in respect of civil liability arising out of any act, error or omission occurring prior to the date such **Subsidiary** ceased to be a **Subsidiary** of the **Insured** but after the applicable **Retroactive Date**.

7. JOINT VENTURES

The **Insurer** will pay on behalf of the **Insured** any **Errors and Omissions Loss** that the **Insured** becomes legally liable to pay in the **Insured's** capacity as a joint venture partner, but only to the extent of the **Insured's** own liability, and the **Insurer** will not cover any liability of the **Insured** that arises under any joint venture agreement that would not otherwise apply, or be held against the **Insured** at law.

8. CONTINUOUS COVER

Where the **Insured**:

- (a) first became aware of facts that might give rise to a **Claim**, prior to the **Policy Period**; and
- (b) had not notified the **Insurer** of such facts prior to the **Policy Period**, then Exclusion 3, "Prior Claims" will not apply to any notification during the **Policy Period** of any **Claim** resulting from such facts, provided that:
 - (i) there is an absence of fraudulent non compliance with the **Insured's** duty of disclosure and an absence of fraudulent misrepresentation by the **Insured** in respect of such facts; and
 - (ii) the **Named Insured** has been continuously insured, without interruption at the time of the notification of the **Claim** to the **Insurer**, under a Medical Malpractice policy issued by the **Insurer** and was insured by the **Insurer** at the time when the **Insured** first became aware of such facts; and
 - (iii) the **Insurer** may reduce its liability under the **Policy** to the extent of any prejudice the **Insurer** may suffer in connection with the **Insured's** failure to notify the facts giving rise to a **Claim** prior to the **Policy Period**.

9. REINSTATEMENT

The **Insurer** will provide a single reinstatement of the **Limit of Liability** if the **Limit of Liability** is exhausted due to payment of amounts insured under the **Policy**, but the **Insurer** will only provide such reinstatement if the **Limit of Liability** available under any **Policy** or policies in excess of the **Policy** has or have been exhausted and provided always that the **Insurer** will pay no more than a single **Limit of Liability** in respect of each **Claim** and associated **Defence Costs and Expenses** and each claim for any other amounts insured under the **Policy**.

The cover provided under this extension will not apply to any extensions or optional extensions to which **Sublimit of Liabilities** apply.

10. MEDIA MANAGEMENT CRISIS COSTS

The **Insurer** will reimburse the **Insured** for **Media Management Costs** incurred with the prior written consent of the **Insurer** which result directly from a **Claim** covered under any Section of the **Policy**.

The **Insurer** will reimburse such **Media Management Costs** incurred within a period of twelve consecutive months after the insured event has been accepted by the **Insurer** as being indemnifiable under the **Policy**.

The **Insurer** shall not be liable under this Section in respect of **Media Management Costs** arising in whole or in part, either directly or indirectly out of or from on-line campaigns, including but not limited to social media trolls on social media sites.

The maximum amount payable by the **Insurer** under this extension is the applicable **Sublimit of Liability** as stated in the Schedule.

11. CONTAMINATION COSTS

The **Insurer** will pay on behalf of the **Insured** the reasonable and necessary costs and expenses with the **Insurer's** prior written consent to engage a third party to clean and/or disinfect the **Insured's** premises as a result of:

- (a) any outbreak due to nosocomial infections or infectious agent;
- (b) any infections associated with transfusions, biologics, or any contaminated medications, replacement fluids or commercial products; or
- (c) any increased or unexpected morbidity or mortality associated with medical devices, practices or procedures resulting in significant infections.

that requires reporting to any governmental or healthcare oversight agency or authority.

The maximum amount payable by the **Insurer** under this extension is the applicable **Sublimit of Liability** as stated in the Schedule.

12. STATUTORY LIABILITY

The **Insurer** agrees to reimburse the **Insured** for pecuniary penalties (including fines) where the **Insurer** is permitted at law to cover pecuniary penalties (including fines) and such payment is not regarded as being contrary to public policy, and **Legal Expenses**:

- (a) the pecuniary penalty is imposed pursuant to legislation enacted by the Commonwealth of Australia or an Australian State or Territory;
- (b) the relevant regulatory authority first takes action for the imposition of the pecuniary penalty during the **Policy Period** and such action is reported to the **Insurer** during the **Policy Period**;
- (c) the **Insured** has complied with any lawful notice or direction received from, or any enforcement action taken by, any appropriate regulatory authority under any statute within the time specified or, if no time is specified, within a reasonable time.

The **Insurer** will not pay for any pecuniary penalties in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost.

This coverage shall apply only if the proceeding is commenced within the **Policy Period** and if the proceeding is against the **Insured** in the performance of **Professional Services** as an **Insured**.

The maximum amount payable by the **Insurer** under this extension is the applicable **Sublimit of Liability** as stated in the Schedule.

OPTIONAL EXTENSIONS

The following Optional Extensions of cover shall apply if specifically noted on the Schedule as being covered, subject to the **Limits of Liability**, Terms and Conditions of this Section and the **Policy**. For the avoidance of doubt, the insurance provided under these Optional Extensions shall be subject to the applicable **Sublimit of Liability** and **Deductible**, if any, as specified. Unless otherwise stated in the Schedule, all Optional Extensions shall be inclusive within any **Limit** stated for this Section.

1. FIDELITY

The **Insurer** will indemnify the **Named Insured** for loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the **Named Insured** or for which the **Named Insured** is legally liable discovered by the **Named Insured** and notified to the **Insurer** during the **Policy Period** resulting directly from any dishonest, fraudulent or malicious act of any director or **Employee**, whether committed alone or in collusion with others provided that:

- (a) the **Insurer** will not be liable for any loss:
 - (i) sustained after the date that the dishonest, fraudulent or malicious act was discovered or reasonably should have been discovered;
 - (ii) sustained prior to the **Retroactive Date**;
 - (iii) resulting from any dishonest, fraudulent or malicious act of any director or **Employee** who prepares cheque requisitions and also has cheque signing authority;
 - (iv) resulting from any cheque that is not countersigned;
 - (v) resulting from the transfer of money not authorised by two or more directors or **Employees**;
 - (vi) resulting from any dishonest, fraudulent or malicious act of any director or **Employee** who is responsible for reconciliation of accounts and/or record keeping and who also authorises payments to a third party or handles bank deposits;
 - (vii) resulting from any dishonest, fraudulent or malicious act of the **Named Insured**;
- (b) the **Named Insured** must, if requested by the **Insurer**, take all reasonable steps to effect recovery from any person committing or condoning the dishonest, fraudulent or malicious act or their legal representative.

This extension is subject to a \$2,500 **Deductible** and the maximum amount payable by the **Insurer** under this extension is the applicable **Sublimit of Liability** as stated in the Schedule.

SECTION 1 & 2 EXCLUSIONS

The following Exclusions apply to 'Section 1: Medical Malpractice' and 'Section 2: Errors And Omissions' of the **Policy**, in addition to the General Policy Exclusions. There is no coverage for:

1. BODILY INJURY / PROPERTY DAMAGE

any actual or alleged **Bodily Injury** or **Property Damage**, however this exclusion shall not apply to:

- (a) **Bodily Injury** or **Property Damage** arising solely out of **Professional Services or Healthcare Services** which constitute the **Insured's** activities or the failure to carry out such **Professional Services or Healthcare Services** to the legally required standard of care, diligence or expertise;
- (b) any coverage otherwise provided under 'Section 2: Errors And Omissions', 'Extension 5: Loss of Documents'.

2. DELIBERATE ACTS

Claims arising out of any fraudulent, deliberate, dishonest or criminal acts including any intentional breach of any law or regulation committed by, or at the direction of the **Insured**.

This exclusion will only apply where it is established by an admission of the **Insured**, or by a judgment, award, finding or other adjudication of a court, tribunal, commission or arbitrator that such conduct did in fact occur.

3. EMPLOYEE INJURY

any loss based on, arising out of or in any way connected to **Bodily Injury** to any partner, director or **Employee** of an **Insured** or other such similar person under a contract of employment with the **Insured**, which arises out of and in the course of their employment or engagement by the **Insured**.

Section 3: Public Liability

This Section of the **Policy** applies only to an **Occurrence** during the **Policy Period** which is notified to the **Insurer** in accordance with the relevant Terms and Conditions, unless stated otherwise.

INSURING CLAUSE

The **Insurer** agrees:

1. BODILY INJURY

To pay those sums that the **Insured** becomes legally obligated to pay as damages because of **Bodily Injury** arising from an **Occurrence**. The **Bodily Injury** must occur within the **Policy Period** and must arise out of and in the course of the **Named Insured** conducting its **Business Activities**.

2. PROPERTY DAMAGE

To pay those sums that the **Insured** becomes legally obligated to pay as damages because of **Property Damage** arising from an **Occurrence**. The **Property Damage** must occur within the **Policy Period** and must arise out of the course of the **Named Insured** conducting its **Business Activities**.

3. ADVERTISING INJURY LIABILITY

To pay on behalf of the **Insured** all sums which the **Insured** shall become legally obligated to pay as damages because of **Advertising Injury**. The **Advertising Injury** must occur within the **Policy Period** and must arise out of and in the course of the **Named Insured's** conducting its **Business Activities**.

DEFENCE COSTS AND EXPENSES

With respect to such insurance as is afforded by this Section, the **Insurer** also agrees to pay **Defence Costs and Expenses**, on behalf of the **Insured**, incurred in the defence or settlement of any **Claim** against the **Insured**.

The payments above shall be made in addition to the applicable **Limit of Liability** of the **Policy**, but only until such time as those **Limits of Liability** have been exhausted, after which the **Insurer's** obligations shall terminate in regard to each coverage, including **Defence Costs and Expenses**.

EXTENSIONS

The following Extensions of cover shall apply if specifically noted on the Schedule as being covered, subject to the **Limits of Liability**, Terms and Conditions of this Section and the **Policy**. For the avoidance of doubt, the insurance provided under these Extensions shall be subject to the applicable **Sublimit of Liability** and **Deductible**, if any, as specified. Unless otherwise stated in the Schedule, all Extensions shall be inclusive within any **Limit of Liability** stated for this Section.

1. TENANTS' LEGAL LIABILITY

The **Insurer** shall pay those sums that the **Insured** becomes legally obligated to pay as damages because of damage to **Premises**, including building fixtures permanently attached thereto, rented to or occupied by the **Insured** as a tenant and caused by an **Occurrence**.

EXCLUSIONS

The following Exclusions apply to this Section only, in addition to the General **Policy** Exclusions.

1. ADVERTISING INJURY LIABILITY

Coverage under Insuring Clause 3. "Advertising Injury Liability", does not apply to **Advertising Injury**:

- (a) caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **Advertising Injury**;
- (b) arising out of oral or written publication of material, if done by or at the direction of the **Insured** with knowledge of its falsity;
- (c) arising out of oral or written publication of material whose first publication took place before the beginning of the **Policy Period**;
- (d) arising out of a criminal act committed by or at the direction of the **Insured**;
- (e) arising out of a breach of contract, except an implied contract to use another's advertising idea in the **Insureds Advertisement**;
- (f) arising out of the failure of goods, products or services to conform to any statement of quality or performance made in the **Insureds Advertisement**;
- (g) arising out of the wrong description of the price of goods, **Products** or services stated in the **Insureds Advertisement**;
- (h) committed by an **Insured** whose business is advertising, broadcasting, publishing or telecasting;

However, this exclusion does not apply to (a) and (b) in the definition of **Advertising Injury**.

For the purpose of this exclusion, the placing of frames, borders, links, or advertising, for the **Insured** or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing, or telecasting.

- (i) Arising out of an electronic chat room or bulletin board the **Insured** hosts, owns, or over which the **Insured** exercises control except as may be insured under the exception to the E-Commerce exclusion;
- (j) Arising out of the unauthorised use of another's name or product in the **Insured's** e-mail address, domain name or meta-tag, or any similar tactics to mislead another's potential customer; and
- (k) Arising from injury or damage where coverage is afforded elsewhere in the **Policy**.

2. EXCLUDED LIABILITIES

This Section shall not provide insurance against liability arising out of:

- (a) **Bodily Injury** to any **Employee** of the **Insured**;
- (b) **Bodily Injury** or **Property Damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **Bodily Injury** resulting from use of reasonable force to protect persons or property;
- (c) The ownership, use or operation by or on behalf of the **Insured** of any type of automobile, except that this Exclusion shall not apply to:
 - (i) any equipment that does not require licensing and which is used occasionally on a public highway where legally permitted; and
 - (ii) the use or operation of machinery or apparatus including its equipment mounted on or attached to an automobile while such machinery or apparatus is in actual use or operation for its functional use at the site of operations, and provided that the use or operation of such machinery or apparatus is not insured or required to be insured at the time of the loss under a motor vehicle liability **policy**; or
- (d) Arising from the use, ownership, maintenance or entrustment to others of any aircraft, air-cushioned vehicle, or watercraft owned or operated by or rented or loaned to any **Insured**.

This exclusion does not apply to any Watercraft owned by the **Insured** with a registered tonnage of ten (10) tons or less.

The term "use" in (c) and (d) above shall include, but not be limited to, operation of the aircraft, air-cushioned vehicle, or watercraft, loading and unloading.

This Section also shall not provide insurance:

- (e) For **Bodily Injury** arising out of the performance of a criminal act. This exclusion shall not apply to any **Insured** who did not have knowledge of and was not a party to the criminal act.

3. MEDICAL MALPRACTICE

Insuring Clause 1. "Bodily Injury" of this Section shall not provide insurance against liability for claims where coverage is available under Section 1: Medical Malpractice' of the **Policy**.

4. PROFESSIONAL SERVICES LIABILITY

This Section shall not provide insurance against liability for **Bodily Injury** or **Property Damage** due to the rendering or failure to render any **Professional Services** by or on behalf of the **Insured**.

5. SPECIFIED PROPERTY DAMAGE LIABILITY

This Section shall not provide insurance against liability for **Property Damage** to:

- (a) property the **Insured** owns, rents or occupies;
- (b) property on loan to the **Insured**;
- (c) other property in the care, custody, or control of the **Insured**, or that particular part of any property with respect to which the **Insured** for any purpose is exercising physical control, except with respect to:
 - (i) the personal property, tools and effects of any of the **Insured's** directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of the **Insured's** visitors;
 - (ii) **Premises** or part(s) of **Premises** (including their contents) leased or rented to, or temporarily occupied by, the **Insured** for the purpose of the **Business Activities**, but no cover is provided by the **Policy** if the **Insured** has assumed the responsibility to insure such **Premises**;
 - (iii) premises (and/or their contents) temporarily occupied by the **Insured** for the purpose of carrying out work in connection with the **Business Activities**, or
 - (iv) any vehicle (including its contents, spare parts and accessories while they are in or on such vehicle) not belonging to or used by the **Insured**, whilst any such vehicle is in a car park owned or operated by the **Insured**; provided that the **Insured** does not operate the car park for reward, as a principal part of the **Named Insured's Business Activities**.
- (d) that particular part of real property on which the **Insured** or any contractor or subcontractor working directly or indirectly on behalf of the **Insured** is performing **Business Activities**, if the **Property Damage** arises out of those **Business Activities**;
- (e) for that particular part of any property that must be restored, repaired, or replaced because the work performed by the **Insured** was incorrectly performed on it.

Exclusions (b), (c), (d), and (e) do not apply to liability assumed under a sidetrack agreement.

- (f) arising out of the **Insured's Products** and for damage arising out of it or any part of it;
- (g) arising out of **Impaired Property** or property that has not been physically injured due to:
 - (i) defect, deficiency, inadequacy, or dangerous condition in the **Insured's Products**; or
 - (ii) a delay or failure by the **Insured** or anyone acting on its behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden (in the sense that it occurs over a brief period of time) and accidental injury to the **Insured's Products** or work after it has been put to its intended use.

- (h) For any loss, cost or expenses incurred by the **Insured** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal, disposal of:
 - (i) the **Insured's Product**;
 - (ii) impaired property,

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organisation because of a known or suspected defect, deficiency, inadequacy, or dangerous condition in it.

Section 4: Products Liability

This Section of the **Policy** applies only to an **Occurrence** during the **Policy Period** which is notified to the **Insurer** in accordance with the relevant Terms and Conditions, unless stated otherwise.

INSURING CLAUSE

The **Insurer** agrees to pay those sums that the **Insured** becomes legally obligated to pay as damages because of **Bodily Injury** or **Property Damage** arising from an **Occurrence**. The **Bodily Injury** or **Property Damage** must occur within the **Policy Period** and must arise out of and in the course of the **Named Insured** conducting its **Business Activities**.

DEFENCE COSTS AND EXPENSES

With respect to such insurance as is afforded by this Section, the **Insurer** also agrees to pay **Defence Costs and Expenses**, on behalf of the **Insured**, incurred in the defence or settlement of any **Claim** against the **Insured**.

The payments above shall be made in addition to the applicable **Limit of Liability** of the **Policy**, but only until such time as those **Limits of Liability** have been exhausted, after which the **Insurer's** obligations shall terminate in regard to each coverage, including **Defence Costs and Expenses**.

EXCLUSIONS

The following Exclusions apply to this Section only, in addition to the General **Policy** Exclusions, but notwithstanding General Policy Exclusion '16. Products'. There is no coverage for:

1. BODILY INJURY, PROPERTY DAMAGE OR ADVERTISING INJURY

based on or arising out of any:

- (a) **Bodily Injury, Property Damage** or **Advertising Injury** arising from a public liability **Occurrence** in connection with the **Named Insured** conducting its **Business Activities**;
- (b) **Bodily Injury** to an **Employee** in the course of engagement by the **Insured**.

2. BODILY INJURY OR PROPERTY DAMAGE

any expected or intended **Bodily Injury** and/or **Property Damage** from the standpoint of the **Insured** except that this exclusion shall not apply to;

- (a) **Bodily Injury** or **Property Damage** resulting from the use of reasonable force to protect persons or property; or
- (b) **Bodily Injury** or **Property Damage** which is intended or can be expected to result from reasonable use of the **Product** in accordance with instructions for use.

3. SPECIFIC PRODUCTS

Bodily Injury or **Property Damage** based on or arising out of the importation, manufacture, distribution, sale, or promotion of any **Product**:

- (a) that does not have appropriate regulatory approval for the purpose for which it is being, or was, used;
- (b) that is not used, supplied or provided by the **Insured** in full accordance with any user instructions or manufacturer's recommendations;
- (c) which after supply, distribution, or sale by the **Insured**:
 - (i) has been re-labelled by any party other than the **Insured** and this includes the **Product** or any part of it being used as a container for any other thing or substance;
 - (ii) has been mixed and/or used as an ingredient or component part of any other thing or substance except insofar as legal liability would have arisen under any **Insured** Section of the **Policy** solely in relation to the **Product** in the absence of said mixing and/or said use of the **Product**.

- (d) where the **Insured** is deemed to be the manufacturer of the **Product** under the Australian Consumer Law (or any other Act, Regulation or at common law).
- (e) made of or containing the following:
 - (i) Dexfenfluramine;
 - (ii) Fenfluramine;
 - (iii) Phentermine;
 - (iv) Thalidomide;
 - (v) Silicone Gel used as an injection or as a part of an implantable device;
 - (vi) Accutane;
 - (vii) Birth Control devices and medications;
 - (viii) Diethylstilbestrol (DES);
 - (ix) Swine Flu vaccine;
 - (x) Phenylpropanolamine;
 - (xi) Metoclopramide;
 - (xii) any intra-articular pain pump or continuous infusion device to deliver any type of medication to the patient;
 - (xiii) implantable mesh products used in anterior or posterior pelvic floor repair;
 - (xiv) any Metal-on-Metal (use of femoral head articulating in conjunction with a metal liner or metal cup) hip replacement systems, including components thereof;
 - (xv) testosterone;
 - (xvi) Opioids.

4. DELAY OF PRODUCT

based on or arising out of performance delay and / or delivery delay of a **Product**.

5. PROTOTYPES

based on or arising out of any prototype of any **Product**.

6. CLINICAL TRIALS

based on or arising out of **Clinical Trials**, except for legal liability arising solely from actual or alleged **Bodily Injury** or **Property Damage** caused by through or in connection with any **Product Occurrence** as set out in Scope of this section.

7. PROFESSIONAL OR HEALTHCARE SERVICES

based on or arising out of any:

- (a) any act, error or omission in the rendering of **Professional Services**; or
- (b) any act, error or omission in the rendering of **Healthcare Services** or Good Samaritan Act.

8. USE OF INTRA-ARTICULAR PROCEDURE

based on or arising out of any intra-articular use of any pain pump or continuous infusion device to deliver any type of medication to the patient.

9. PRODUCT RECALL

based on or arising out of any loss, cost or expense incurred by the **Insured** for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of any **Product** or of any property of which they form a part, if such **Product** or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

General Policy Conditions

Unless stated to the contrary in any Section, the Terms and Conditions set out below apply to each Section of the **Policy**.

LIMITS OF LIABILITY

(a) Per Occurrence Limit

The per **Occurrence Limit of Liability** stated in the Schedule for the **Policy** as being applicable to each coverage is the limit of the **Insurer's** liability for all damages payable as a result of any one **Occurrence** insured under that coverage. Any **Sublimit of Liability** within any coverage similarly constitutes the limit of the **Insurer's** liability with respect to the subject-matter of that **Sublimit**.

The **Insurer** shall be liable only for the amount of any **Occurrence** or **Claim** which exceeds the applicable **Deductible** as specified the Schedule. The **Deductible** shall be uninsured and the **Insurer** shall have no liability for all or any portion of such **Deductible**. The **Limits** stated in the Schedule shall be in addition to the **Deductible**.

(b) Per Claim Limit

The per **Claim Limit of Liability** stated in the Schedule for the **Policy** as being applicable to each coverage is the limit of the **Insurer's** liability for all damages payable as a result of any one **claim** insured under that coverage. Any **Sublimit of Liability** within any coverage similarly constitutes the limit of the **Insurer's** liability with respect to the subject-matter of that **Sublimit**.

(c) Aggregate Limit

The **Aggregate Limit of Liability** for 'Section 1: Medical Malpractice' and 'Section 2: Errors And Omissions' of the **Policy** shall be no more than the **Limit of Liability** applicable to 'Section 1: Medical Malpractice' of the **Policy**.

(d) Multiple Responding Sections

If any amounts insured under the **Policy** are covered under one or more section, then the maximum amount payable by the **Insurer** will be the highest of the applicable **Limit of Liability** or **Sublimit of Liability** and the **Deductible** will be the applicable **Deductible** for the Insuring Clause or Extension to which that **Limit of Liability** or **Sublimit of Liability** applies.

NOTICE OF CLAIMS OR OCCURENCES

1. NOTICE OF CLAIMS

The **Insured** shall give written notice to the **Insurer** of any **Claim** of which it first becomes aware during the **Policy Period**, as soon as reasonably practicable after the **Insured** first becomes aware of such **Claim**.

Notice of any **Claim** will be provided in writing to:

The Claims Manager
Tego Insurance Pty Ltd
Suite 1, Level 11, 309 Kent Street
Sydney NSW 2000
Email: claims@tego.com.au

2. SERVICE OF SUIT

Any summons notice or process to be served upon the **Insurer** may be served upon:

Lloyd's General Representative at Lloyd's Australia
Suite 1603 Level 16
1 Macquarie Place, Sydney NSW 2000
Telephone: (02) 8298 0783
Facsimile Number: (02) 8298 0788

who has authority to accept service and to enter an appearance on the **Insurer's** behalf.

If a suit is instituted against the **Insurer**, the **Insurers** participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

3. INTERRELATED CLAIMS

If **Interrelated Claims** are subsequently made against the **Insured** and reported to the **Insurer**, all such **Interrelated Claims**, whenever made, shall be considered a single **Claim** first made and reported to the **Insurer** within the **Policy Period** in which the earliest of the **Interrelated Claims** was first made and reported to the **Insurer**.

The **Insured** shall give written notice to the **Insurer** under the **Policy**. If posted, the date of posting such notice shall constitute the date such notice was given.

4. NOTICE OF OCCURRENCES APPLICABLE TO OCCURRENCE COVERS

The **Insured** shall, as a condition to the obligations of the **Insurer** under the **Policy**, give written notice to the **Insurer** of any **Occurrence** which may give rise to any liability of the **Insurer** under the **Policy** as soon as reasonably practicable after the **Insured** first becomes aware of such **Occurrence**.

Notice of any **Occurrence** will be provided in writing to:

The Claims Manager

Tego Insurance Pty Ltd

Suite 1, Level 11, 309 Kent Street

Sydney, NSW, 2000

Email: claims@tego.com.au

5. PROVISION OF INFORMATION

The **Insured** must, as soon as reasonably practicable, provide:

- (a) to the **Insurer**, at the **Insured's** own expense, all information relating to the **Claim** or **Occurrence** reasonably requested by the **Insurer**. Every writ, claim form or summons must be forwarded to the **Insurer** immediately on receipt;
- (b) details of any other insurance relating to the **Claim** or **Occurrence**;
- (c) all such business books, documents, proofs, information, explanation and other evidence as may be reasonably required, all of which information and details may be produced by the **Insured's** professional accountants or **Auditors**, provided they regularly act as such, and said report shall be prima facie evidence of such information and details; and
- (d) if demanded by the **Insurer**, a statutory schedule of the truth of the **Claim** or **Occurrence** and of any matter connected with it.

6. SETTLEMENT / ADMISSION OF LIABILITY

The **Insured** shall not admit or assume any liability, consent to any judgment, agree to any settlement or make any settlement offer without the **Insurer's** prior written consent.

7. DEFENCE OF CLAIMS

The **Insurer** shall have the right at any time but not the obligation to defend the **Insured** against any **Claim** under the **Policy**. However, the **Insurer** will have no obligation to defend the **Insured** against all **Claims** or **Occurrences** to which this insurance does not apply. The **Insurer** may, at its discretion, investigate all **Claims** or **Occurrences** and settle any **Claim** that may result. The **Insurer's** obligation to defend ends when the **Insured** has used up the applicable limit of insurance in the payment of **Defence Costs and Expenses**, judgments or settlements under any Section of the **Policy**.

The **Insured** shall co-operate fully with the **Insurer** in respect of all **Claims** or **Occurrences**. The **Insured** shall, at all times, afford such information to, and co-operate with, the **Insurer** and their appointed agents to enable the **Insurer** to comply with any applicable Pre-Action Protocols, Practice Directions or other stipulations that may, from time to time, be handed down by the relevant authorities; and

In the event that a dispute arises between the **Insurer** and the **Insured** regarding whether or not to contest any legal proceedings, neither the **Insurer** nor the **Insured** shall be required to contest any legal proceedings unless a senior litigation lawyer that is agreed by the **Insured** and the **Insurer**, or in default of such agreement appointed by court order, shall advise whether the proceedings should be contested. The **Insurer** and the **Insured** shall bear the costs of the senior litigation lawyer equally. In the interim, the **Insured** shall take such action as may reasonably be necessary to avoid default judgment being entered against it.

8. CONDITIONS FOR PAYMENT OF DEFENCE COSTS AND EXPENSES

Where applicable, the **Insurer**, on behalf of the **Insured**, shall pay **Defence Costs and Expenses**, no later than 60 (sixty) days after the receipt by the **Insurer** of itemised invoices for **Defence Costs and Expenses**. The **Insurer** shall not be liable for any **Defence Costs and Expenses** to which it has not consented in writing.

Payment of **Defence Costs and Expenses** shall be subject to the following Conditions:

- (a) if the **Insured** and the **Insurer** agree on an allocation of insured and uninsured **Defence Costs and Expenses**, the **Insurer** shall pay the amount of insured **Defence Costs and Expenses**; or
- (b) if the **Insured** and the **Insurer** cannot, after exerting their best efforts, agree on an allocation of insured and uninsured **Defence Costs and Expenses**, the **Insurer** then shall pay the percentage of **Defence Costs and Expenses** which the **Insurer** states to be fair and proper, until a different allocation is agreed upon or determined pursuant to the provisions of the **Policy** and applicable law; and
- (c) each party agrees to repay to the other any **Defence Costs and Expenses** finally established not to be the responsibility of the initially paying party ; and
- (d) any allocation or advancement of **Defence Costs and Expenses** shall not apply to, or create, any presumption with respect to the allocation of other liabilities of the **Insurer** under the **Policy**;
- (e) The **Deductible** stated in the Schedule shall apply to **Defence Costs and Expenses**.

9. ALLOCATION OF LOSS

If any **Claim** includes both insured and uninsured loss, the **Insured** agrees that there must be an allocation between insured and uninsured loss.

The **Insured** and the **Insurer** shall exert their best efforts to agree upon a fair and proper allocation between insured and uninsured loss.

10. DISCHARGE OF LIABILITY

The **Insurer** may, at its sole discretion, pay to the **Insured** in connection with any claim against the **Insured**, the applicable Sum Insured or **Limit of Liability** (after deducting any sums already paid), or any lesser amount for which such claim can be settled, and shall thereupon relinquish the conduct and control of the **Claim** and incur no further liability in connection therewith except for the amount of any **Defence Costs and Expenses** incurred prior to the date of payment.

ADDITIONAL GENERAL CONDITIONS APPLICABLE TO ALL SECTIONS UNDER THE POLICY

1. ACTION AGAINST THE INSURER

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of the **Policy**, nor until 90 (ninety) days after the required proofs of loss have been filed with the **Insurer**, nor at all unless commenced within 1 (one) year from the date when the **Insured** discovers the loss. If any limitation of time for notice of loss or any legal proceeding herein contained is shorter than that permitted to be fixed by agreement under any statute controlling the construction of the **Policy**, the shortest permissible statutory limitation of time shall govern and shall supersede the time limitation herein stated.

2. ASSIGNMENT

No assignment of interest under the **Policy** shall bind the **Insurer** until the consent of the **Insurer** shall be endorsed hereon.

3. ASSISTANCE AND CO-OPERATION OF THE INSURED

The **Insured** shall co-operate with the **Insurer**, and upon the **Insurer's** request shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence and obtaining the attendance of witnesses and the conduct of suits. The **Insured** shall not, except at its own expense, voluntarily make any payment, nor shall it assume any obligation or incur any expense other than for such immediate medical aid to others as shall be imperative at the time of the accident or **Occurrence**.

4. BANKRUPTCY OR INSOLVENCY

Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the **Insurer** of any of its obligations hereunder. If the death, insolvency or bankruptcy of the **Insured** shall occur during the **Policy Period**, the **Policy**, during the unexpired portion of such period, shall cover the legal representative of the **Insured**.

5. CANCELLATION

The **Insured** may cancel the **Policy** at any time in writing to the **Insurer**. Upon receipt of such request, the **Insurer** will retain a short period premium calculated at the pro rata proportion of the Full Annual Premium for the time it has been on risk plus ten percent and the **Insured** will receive a refund of any balance of the premium actually paid, unless there have been any notifications or **Claims** during the **Policy Period**, in which case no refund shall be given.

The **Insurer** may cancel the **Policy** in accordance with the Insurance Contracts Act 1984 (Cth).

6. CERTIFICATES OF INSURANCE

All parties to whom a certificate of insurance has been issued stating that the parties are additional **Insureds** shall be automatically added as additional **Insureds** to the **Policy** in accordance with the terms and conditions of said certificates, but only with respect to liability arising out of the **Business Activities** of the **Insured**. No endorsement to the **Policy** is necessary. Copies of all certificates issued under the **Policy** will be filed with the **Insurer**.

7. CHANGES

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of the **Policy** or stop the **Insurer** from asserting any right under the terms of the **Policy**, nor shall the terms of the **Policy** be waived or changed except by endorsement issued to form part of the **Policy**.

8. CROSS-LIABILITY AND SEVERABILITY OF INTERESTS

The inclusion of more than one corporation, person, organisation, firm or entity as **Insured** under the **Policy** shall not in any way affect the rights of such corporations, persons, organisation, firm or entity either as respects any claim, demand, suit or judgment made, brought or recovered by or in favour of any other **Insured**, or by or in favour of any **Employee** of such other **Insured**. The **Policy** shall protect such corporation, person, organisation firm, or entity in the same manner as though a separate **Policy** had been issued to each; but nothing herein shall operate to increase the **Insurer's Limit of Liability** as set forth elsewhere in the **Policy** beyond the amount or amounts for which the **Insurer** would have been liable if only one person or interests had been named as **Insured**.

9. DEDUCTIBLE

The **Insured** shall be solely liable and responsible for the amount stated in the Schedule as the **Deductible** with regard to each Section, and the **Insurer** shall be liable only in excess of the amount of the **Deductible**.

10. INSPECTION AND AUDIT

The **Insured** shall permit the **Insurer** to inspect the **Insured's Premises**, operations and elevators and to examine and audit the **Insured's** books and records at any time during the **Policy Period** (and any extension thereof) and within one year after the termination of the **Policy**, as far as they relate to the premium basis or the subject matter of any coverage in the **Policy**.

11. INTERESTS INSURED

As stated in the Individual Schedule.

12. MEDICAL AND DENTAL PRACTITIONERS

No cover is provided under the **Policy** unless the **Insured** ensures during the **Policy Period**, that all **Medical and Dental Practitioners** hold the requisite qualifications, registration, authorisations and licences and maintain current professional indemnity insurance to cover the types of healthcare they provide.

13. NUMBER AND GENDER AND CASE

Any term, whether in the singular or plural and whether in upper or lower case, shall have the same meaning, and any personal pronoun that is used to refer to the **Insured** shall apply regardless of the gender or nature of the **Insured**.

14. OTHER INSURANCE

If at any time there is any other insurance in force covering the same liability as under the **Policy** the **Insured** shall promptly give to the **Insurer** full details of such other insurance, including the identity of the insurer, policy number, policy documentation including the policy schedule, and such further information as the **Insurer** may reasonably require.

15. POLICY LAW AND JURISDICTION

The **Policy** will be governed by and interpreted in accordance with the law of the state, territory or country in which the **Policy** is issued and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country.

Any dispute or difference arising out of or in connection with the **Policy** must first be referred to mediation in accordance with the mediation rules in force at the time of the referral in which the **Policy** is issued. The **Insured** and **Insurers** agree to participate in the mediation in good faith and to be bound by the terms of any settlement reached as a result of the mediation.

If the mediation is abandoned by the mediator, or otherwise ends without the dispute or difference being resolved, the dispute or difference must be referred to, and resolved by and in accordance with the arbitration rules the country in which the **Policy** is issued in force at the time of the referral. The language of the arbitration will be English.

16. POLICY TERRITORY

The **Policy** applies to injuries and damage occurring in the territories to which cover is limited as stated in the **Policy Territory** in the Schedule and applicable to each operative section of cover.

17. RUN OFF COVER

If, during the **Policy Period** the Insured:

(a) consolidates with, merges into, or sells a majority of, or all of its assets; and/or

(b) has a receiver, controller, administrator or liquidator appointed,

then the **Policy** will remain in force until the expiry of the **Policy Period**, but only in respect of a **Claim** resulting from any act, error or omission occurring or committed prior to the events described in parts (a) and/or (b) above.

18. RETROACTIVE COVERAGE

The insurance provided under Sections 1: Medical Malpractice' and 'Section 2: Errors and Omissions', of the **Policy** shall not apply to any loss or events giving rise to loss prior to the inception date of the **Policy** unless a **Retroactive Date** is specified in the Schedule of the relevant Schedule, and then only to any actual or alleged loss which occurs on or after the **Retroactive Date**.

19. SUBROGATION

The **Insurer** shall be subrogated to all rights of recovery which the **Insured** may have against others to the extent of any payment made by the **Insurer** under the **Policy**, and the **Insured** shall provide the **Insurer** with all reasonable assistance and co-operation including the execution of all papers necessary to secure to the **Insurer** such rights. Where both the **Insurer** and the **Insured** have claims against a wrongdoer, the right of carriage and control of the action against the wrongdoer will belong to the party with the claim having the larger real value.

20. ECONOMIC AND POLITICAL SANCTIONS

The **Policy** shall not apply to any trade or activity which is subject to any applicable economic, political or trade sanction, prohibition or restriction. The **Insurer** shall not be deemed to provide cover, be liable to pay any damage or provide any benefit hereunder to the extent that the provision of such cover, payment of such damage or provision of such benefit would expose that the **Insurers** or any member of the **Insurer's** group to any applicable economic, political or trade sanction, prohibition or restriction. The **Insurer** is obligated to comply with all applicable United Nations, European Union and US (including those imposed by the Office of Foreign Asset Control) financial restrictions, measures and sanctions, which shall all form part of this clause.

21. FRAUD

If any benefit is obtained or attempted to be obtained under the **Policy** by way of any fraudulent means or devices by the **Insured**, or anyone acting on the **Insured's** behalf, the **Insurer** shall not be liable to pay the **Claim** and may terminate the **Policy** in accordance with the Insurance Contracts Act 1984 (Cth).

However, treating a contract as having been terminated does not affect the rights and obligations of the **Insured** or the **Insurer** with respect to a relevant event (for example, the occurrence of a loss, the making of a claim, or the notification of a potential claim) occurring before the time of the fraudulent act.

22. PREMIUM PAYMENT CONDITION

The Insured must pay the premium specified for the Policy Period to the Insurer by the due date. The due date is on or before forty-five days after the inception date of the Policy Period or such other time that the Insurer agrees in writing. If the Insured fails to pay the premium by the due date, the Insurer is entitled to cancel the Policy in accordance with the Insurance Contracts Act 1984.

General Policy Exclusions

ADDITIONAL EXCLUSIONS APPLICABLE TO ALL SECTIONS UNDER THE POLICY

The **Insurer** shall not be liable under any Section of the **Policy** in respect of the following:

1. ABSOLUTE ASBESTOS LIABILITY EXCLUSION

Any loss related to or arising from any actual or alleged liability or any legal remedy of any kind whatsoever (including but not limited to damages, interest, mandatory or other injunctive relief, statutory orders or penalties, legal or other costs, or expenses of any kind) in respect of actual or threatened loss, damage, cost or expense directly or indirectly caused by, resulting from, in consequence of or in any way involving, asbestos or any materials containing asbestos in whatever form or quantity.

This exclusion applies whether or not there are one or more other causes (whether covered or not) that contribute concurrently or in any sequence to the occasioning of loss, damage, cost or expense.

2. ABUSE

Except as insured under 'Section 1: Medical Malpractice', 'Extension 1: Abuse Liability' of the Policy, any loss, liability or **Defence Costs and Expenses** relating directly or indirectly to a:

- (a) **Claim** or suit arising directly or indirectly from **Abuse** committed or alleged to have been committed by an **Insured**, including the transmission of disease arising out of any act of **Abuse**;
- (b) **Claim** or suit based on the **Insured's** practices of employee hiring, acceptance of volunteer workers or supervision or retention of any person alleged to have committed **Abuse**.
- (c) **Claim** or suit alleging knowledge by an **Insured** of, or failure to report, the alleged **Abuse** to the appropriate authority(ies).

3. PRIOR CLAIMS

Any loss related to or arising from any actual or alleged liability, or any claim for a legal remedy of any kind whatsoever (including but not limited to damages, interest, mandatory or other injunctive relief, statutory orders or penalties, legal or other costs, or expenses of any kind) that:

- (a) is made pursuant to any verbal or written demand or legal proceedings made, threatened, intimated against or involving the **Insured** prior to or pending at the inception of the **Policy**;
- (b) arises out of, or is based upon or attributable to any facts or circumstances which a reasonable person in the position of the **Insured** would have been aware (or ought reasonably have been aware) might give rise to a claim being made against the **Insured**, or which was or could have been reported to an insurer under any other insurance policy entered into by or on behalf of the **Insured** prior to the inception of the **Policy**; or
- (c) derived from the same or essentially the same facts as alleged in any claim made against the **Insured** prior to or pending at the inception of the **Policy**.

4. CONTRACT

Claims arising out of, based upon or attributable to any liability of the **Insured** for breach of any verbal or written contract or agreement. This exclusion shall not apply to any liability of the **Insured** that would have applied or which the **Insured** would have been held to at law in the absence of such contract or agreement.

5. CLINICAL TRIALS

Any participation in a **Clinical Trial**.

6. E-COMMERCE EXCLUSION

Except as insured under 'Section 2: Errors and Omissions', this insurance shall not apply to:

- (a) Liability for:
 - (i) erasure, disruption, corruption, misappropriation, misinterpretation of **Electronic Data**;
 - (ii) erroneously creating, amending, entering, deleting or using **Electronic Data**; including any loss of use arising therefrom.
- (b) **Advertising Liability** arising out of the distribution, or display of **Electronic Data**, by means of an Internet Website, the Internet, an Intranet, or Extranet, or similar device or system designed or intended for electronic communication of **Electronic Data**.

7. DATA PROTECTION ACT AND GDPR

The General Data Protection Regulation 2016/679 or any amendments thereto.

8. EXCLUDED TERRITORIES

Any liability to pay **Claims** or benefit hereunder in relation to any entity or individual domiciled in, or any **Claim** or activity involving any entity or person domiciled in or involving the territory of:

- (a) Cuba;
- (b) Iran;
- (c) North Korea;
- (d) Syria;
- (e) the Crimea Region of Ukraine.

Notwithstanding the **Policy Territory** stated in the **Schedule**, all such territories stated above are excluded from the **Policy** and no cover whatsoever shall be deemed given under the **Policy** and no business activity being undertaken in that territory or the provision of any service to or shipment of any goods to, from or within that territory will be covered by the **Policy**.

9. FINES AND PENALTIES

Any

- (a) Civil or criminal fines or penalties;
- (b) Non-compensatory damages including punitive, exemplary or aggravated additional damages;
- (c) Costs of compliance with any regulatory, administrative, court or tribunal directives or with any injunctive or non-compensatory relief.

10. MALICIOUS OR RECKLESS ACT

Any fraudulent, dishonest, criminal, illegal, malicious or reckless act or omission by the **Insured** whether acting alone or in collusion with other persons, however this shall not affect the **Named Insured's** cover under the **Policy** for liability arising from such acts, provided the **Named Insured** had no knowledge and did not condone any such fraudulent, dishonest, criminal, illegal, malicious or reckless act or omission.

11. MEDICAL & DENTAL PRACTITIONER

Any loss arising directly or indirectly in respect of the liability of any **Insured** who is a natural person where such liability arises directly from that person's activities as, or acting in their capacity as a **Medical & Dental Practitioner**.

12. NUCLEAR ENERGY LIABILITY EXCLUSION

Any:

- (a) Liability imposed by or arising from any nuclear liability act, law or statute;
- (b) **Bodily Injury** or **Property Damage** resulting directly or indirectly from **Nuclear Energy Hazards** arising from:
 - (i) the ownership, maintenance, operation or use of a **Nuclear Facility** by or on behalf of an **Insured**;
 - (ii) the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **Nuclear Facility**; and
 - (iii) the possession, consumption, use, handling, disposal or transportation of **Fissionable Substances**, or of other **Radioactive Material** (except radioactive isotopes, away from a nuclear facility, and when used exclusively for the provision of **Healthcare Services**).

13. OBLIGATIONS TO EMPLOYEES

Anyone's employment with or work for the **Insured**, or any breach of any obligation owed by the **Insured** as an employer to any **Employee** or prospective **Employee**, including but not limited to any employment related libel, slander, humiliation, harassment, discrimination or similar, bullying, defamation, wrongful, unfair or constructive dismissal, repudiation, breach, termination or amendment of any contract of employment.

14. OTHER INSURANCE

Any indemnity to which any **Insured** is entitled under any other insurance and/or indemnity arrangement for any **Claim** except that:

- (a) the relevant Insurance Section under the **Policy** shall contribute that proportion which any indemnity due for such **Claim** or **Occurrence** as applicable under the relevant Insurance Section bears to the indemnity provided under any other insurance and/or indemnity arrangement; Unless
- (b) at the time the **Claim** is made or **Occurrence** happens there is or would be but for the existence of the **Policy** any other more specific insurance and/or other indemnity arrangement covering the same **Claim** or **Occurrence** or any part thereof, in which circumstances the relevant Insurance Section under the **Policy** shall only contribute in excess of such other insurance and/or indemnity arrangement.

15. POLLUTION LIABILITY

Any:

- (a) **Bodily Injury** or **Property Damage** arising out of the actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **Pollutants**:
 - (i) at or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any **Insured**;
 - (ii) at or from premises, site or location, which is or was at any time used by or for any **Insured** or others for the handling, storage disposal, processing or treatment of **Waste**;
 - (iii) which are or were at any time transported, handled, stored, treated, disposed of, or processed as **Waste** by or for any **Insured** or any person or organisation for whom an **Insured** may be legally responsible; or
 - (iv) at or from any premises, site or location on which any **Insured** or any contractors or subcontractors working directly or indirectly on any **Insured's** behalf:
 - (I) if the **Pollutants** are brought on or to the premises, site or location by such **Insured**, contractor or subcontractor; or
 - (II) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilise, remediate, or neutralise, or in any way respond to or assess the effect of **Pollutants**.
- (b) Any loss, cost, or expense arising out of any request, demand or order that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilise, remediate or neutralise or in any way respond to or assess the effects of **Pollutants**, unless such loss, cost or expense is consequent upon **Bodily Injury** or **Property Damage** covered by the **Policy**.

Except when an unexpected and unintended discharge, dispersal, release, migration or escape of any **Pollutants** on, at, under, or from an **Insured** location that is both sudden, in the sense that it occurs over a brief period time, and accidental.

16. PRODUCTS

Except as insured under 'Section 4: Products Liability', any loss, damage, cost or expenses based on or arising out of any **Products**.

17. CLAIMS BY OTHER INSURED, RELATED PARTIES OR OWNED ENTITIES

Claims made by or on behalf of:

- (a) any **Insured**; or
- (b) any person or entity having any financial, executive or controlling interest in the **Insured**. However, this exclusion shall not apply to a claim by an **Insured** in their capacity as a patient.

18. TERRORISM EXCLUSION

Any loss or damage caused directly or indirectly, in whole or in part, by **Terrorism**, or by any activity or decision of a Government Agency or other entity to prevent, respond to, or terminate **Terrorism**. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage, provided that this exclusion shall not apply to the provision of **Healthcare Services** for any bodily injury, illness or disease caused by an act of **Terrorism**.

19. SANCTIONS

Any trade or activity which is subject to any applicable economic, political or trade sanction, prohibition or restriction. No **Insurer** shall be deemed to provide cover, be liable to pay any damage or provide any benefit hereunder to the extent that the provision of such cover, payment of such damage or provision of such benefit would expose that the **Insurers** or any member of the **Insurer's** group to any applicable economic, political or trade sanction, prohibition or restriction. The **Insurer** is obligated to comply with all applicable United Nations, European Union and US (including those imposed by the Office of Foreign Asset Control) financial restrictions, measures and sanctions, which shall all form part of this clause.

20. WAR RISKS

Any loss due to war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.

21. CYBER & DATA

Notwithstanding Extension 3. "Complaint and Investigation Costs" of Section 1 Medical Malpractice, Extension 4. "Complaint and Investigation Costs" and Extension 12. "Statutory Liability" Of Section 2 Errors and Omissions, and Insuring Clause (c) "Breach of Misuse of Confidentiality or any Right to Privacy" of Section 2 Errors and Omissions, this Policy does not cover any loss related to or arising from any actual or alleged:

- (a) **Cyber Act** or **Cyber Incident**, including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**; or
- (b) **Data Breach**, including notification costs, crisis consultancy costs, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses or legal advice and services.

However, any otherwise covered **Bodily Injury** caused by, contributed to by, resulting from, arising out of or in connection with any **Cyber Act**, **Cyber Incident** or **Data Breach** will be payable subject to the terms, conditions, limitations and exclusions of the **Policy**.

General Policy Definitions

Except for headings and unless expressed to the contrary, words, terms and phrases that are printed in bold shall have the meanings set out below.

Abuse

means any act or threat involving sexual misconduct, corporal punishment or any other form of physical, sexual or mental abuse.

Action

means a civil proceeding in which damages are claimed. **Action** includes any arbitration proceeding to which the **Insured** must submit or submits with the **Insurer's** prior consent and in which damages are claimed.

Advertisement

means a notice that is broadcast or published to the general public or specific market segments about the **Insured's** goods, **Products**, or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- (a) Notices that are published include material placed on the internet or on similar electronic means of communications; and
- (b) Only that part of a web site that is about the **Insured's** goods, **Products** or services for the purpose of attracting customers or supporters is considered an **Advertisement**.

Advertising Injury

means injury, including consequential **Bodily Injury** arising out of one or more of the following offences:

- (a) oral or written publication of material that violates a person's right of privacy;
- (b) wrongful eviction or wrongful entry;
- (c) misappropriation of advertising ideas or style of doing business;
- (d) infringement of copyright, trade dress, or slogan in the **Insured's** advertisements; and
- (e) oral or written publication, in any manner, of material that defames a person or organisation or disparages a person's organisation, products, or service.

Auditors

means qualified accountants who inspect the accounting records and practices of a company or business.

Bio Science Product

means any virus, therapeutic serum, toxin, anti-toxin or analogous product that is recognised in the National Formulary, the official Pharmacopoeia the official Homeopathic Pharmacopoeia or any supplement to these documents or the equivalent in any other jurisdiction;

- (a) intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury, sickness or disease in humans and which affects the structure or functioning of the human body; or
- (b) as a component of any **Products** described above;

but shall not include any **Pharmaceutical Drug**, **Medical Device** or food.

Bodily Injury

means physical bodily injury, mental anguish, mental injury, shock, disease, sickness or disability, including death at any time resulting therefrom.

Business Activities

means the business activities of the **Insured** as specified in the Schedule.

Claim

means any:

- (a) written notice alleging that the **Insured** is liable for damages, that is given by the **Insured** to the **Insurer** in accordance with the relevant Insuring Clause and Policy Condition regarding Notice of **Occurrence** or **Claim** or suit.
- (b) civil, statutory, administrative or regulatory proceeding including arbitration, mediation, conciliation or other alternative dispute resolution process, or counterclaim.

Clinical Trial

means research investigations in which people volunteer to test new treatments, interventions or tests as a means to prevent, detect, treat or manage various diseases or medical conditions.

Computer System

means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

Cyber Act

means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

Cyber Incident

means any

- (a) error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
- (b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

Data Breach

means any

- (a) the theft, loss, access to, acquisition of, or unauthorised or unlawful use or disclosure of any person's or Insured's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit or payment card information, health information, biometric data or any other type of nonpublic information involving access to, processing of, use of or operation of any Computer System; or
- (b) the violation of any statute, regulation, common-law, or any other law regulating or protecting access to collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of Electronic Data.

Deductible

means the first amount to be borne by the **Insured** in respect of each and every **Claim** or any one **Occurrence** (as stated in the **Schedule**), **Defence Costs and Expenses**, potential claim or potential occurrence as ascertained after the application of all other terms and conditions of this insurance. The deductible forms part of the **Limit of Liability** or any **Sublimit** as applicable.

The **Deductible** will apply to **Defence costs and Expenses**.

Defence Costs and Expenses

means the reasonable or necessary legal expenses (including appeal costs incurred) with the prior written consent of the **Insurer**, which will not be unreasonably withheld, for the defence or settlement of a **Claim** or **Action**.

Defence Costs and Expenses shall not include fees (including the repayment or reimbursement to Medicare or any private health fund), salaries, or business expenses of the **Insured** or its **Employees**.

Documents

means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and **Electronic Data** material.

Electronic Data

means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

Employee

means any natural person while in the regular service of the **Insured** in the ordinary course of the **Insured's** business under a written contract of employment, including directors, Officers, and Trustees.

Employment Dispute

means a dispute between the **Insured** and an **Employee**, ex-**Employee**, prospective **Employee** or trade union acting on their behalf, arising from a breach or an alleged breach of a contract of service with the **Insured** or statutory rights under employment legislation.

Errors and Omission Loss

means all sums which the **Insured** is legally liable to pay because of a **Wrongful Act**, including but not limited to:

- (a) damages, settlements, judgments (including the award of pre-judgment and post-judgment interest and the award of claimant's costs) resulting from a **Claim**;
- (b) **Defence Costs and Expenses**; and

However **Errors and Omissions Loss** shall not include:

- (i) any restitution, return or off-set of fees, costs and expenses paid or incurred or charged by the **Insured**;
- (ii) damages which are uninsurable.

Fissionable Substance

means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.

Fungi

means, but is not limited to, any form or type of mould, yeast, mushroom or mildew whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any **Fungi** or **Spores** or resultant mycotoxins, allergens, or pathogens.

Forensic Investigation Costs

means reasonable and necessary fees charges, costs and expenses, consented to in advance by the **Insurer** (such consent not to be unreasonably withheld) and incurred by the **Insured**, or on the **Insured's** behalf for a third party forensic audit or information technology consultant to investigate. The term shall not, however, include regular or over-time salaries, wages, fees, overhead or benefit expenses associated with the **Insured**, other than where incurred with the prior written consent of the **Insurer**.

Good Samaritan Act

means the voluntary rendering or administering of medical, surgical, dental, psychiatric, nursing, or similar treatment, either necessary or perceived to be necessary, to any member of the general public who is not a patient of the **Insured**, nor a person for whom the **Insured** is under obligation to perform such service.

Healthcare Services

means:

- (a) the rendering or administering of or failing to render medical, surgical, dental, psychiatric or nursing or other healthcare treatment, including the furnishing of food or beverages;
- (b) the furnishing, dispensing or administering of drugs or medical, dental, surgical or other healthcare supplies or appliances;
- (c) the handling of deceased bodies, or the performing of autopsies thereon; and
- (d) any care, treatment, advice or service provided in respect of the physical or mental health of a person, in connection with the **Business Activities**.

Impaired Property

means tangible property other than the **Insured's Product** that cannot be used or is less useful because:

- (a) it incorporates the **Insured's Products** which is known or thought to be defective, deficient, inadequate, or dangerous; or
- (b) the **Insured** has failed to fulfil the terms of a contract or agreement,

provided that such property can be restored to use by:

- (i) the repair, replacement, adjustment, or removal of the **Insured's product**; or
- (ii) the **Insured's** fulfilling the terms of the contract or agreement.

Insured

means the **Named Insured** and also includes the following persons as additional **Insureds**, but only in respect of liability arising from or in connection with the **Business Activities** of the **Named Insured** and only to the extent that they are not engaged in the provision of **Healthcare Services** in their capacity as a **Medical & Dental Practitioner**:

- (a) directors or officers of the **Insured**;
- (b) persons, firms, or corporations financially controlling or controlled by the **Insured**;
- (c) spouse, legal domestic partner, and minor children of an **Insured**;
- (d) boards and committees of the **Insured** and members of such boards and committees;
- (e) **Employees** of the **Insured** while acting in the course and scope of their employment;
- (f) volunteer workers and assistants while acting for the purposes of and under the direction of the **Insured**;
- (g) persons working under a bursary while acting for the purposes of and under the direction of the **Insured**;
- (h) any hospital, nursing, and retirement home auxiliary or foundation, and the members thereof, operated by the **Insured** and while acting for the purposes of the **Insured**;
- (i) members and guests of any social or recreational club or association formed for the benefit of the **Insured's Employees** while acting for the purposes of and under the direction and approval of the **Insured**;
- (j) medical or other students and their instructors while engaged in **Business Activities** for the **Insured**;
- (k) medical personnel and technicians while engaged in research work for the **Insured** regardless of their source of remuneration.

Insured Location

means the location(s) of the **Insured** as disclosed and known to the **Insurer**.

Insured's Network

means any information technology system (but excluding phone and voice transmission systems) owned or operated by the **Named Insured** or by a third party service provider to whom the **Named Insured** has outsourced the operation of such system.

Insurer

means the **Insurer(s)** named in the Schedule.

Interrelated Claims

means any one **Claim** or series of **Claims** or multiple **Claims** arising out of one or more **Occurrences** which are consequent upon or directly or indirectly attributable to one source or to one or more common underlying causes, whether or not the **Occurrences** occur at the same time or location.

Investigation Costs

means reasonable and necessary fees, costs and expenses incurred, with the **Insurer's** prior written consent, by or on behalf of the **Insured** for representation at any official examination, coronial enquiry, disciplinary investigation, criminal or other proceeding into the **Insured's** affairs ordered or commissioned by a body empowered to do so.

Legal Expense

means all legal expense incurred with the prior written consent of the **Insurer**, which will not be unreasonably withheld, for defence purposes for a proceeding, including disbursements.

Limit of Liability or Limit

means the amount specified in the Schedule as the limit of the **Insurer's** liability for indemnity for the particular coverage, either per **Occurrence** or in the aggregate for the **Policy Period**. "**Sublimit**" shall have a corresponding meaning.

Medical Device

means:

- (a) an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, component, part or accessory; and
- (b) which is subject to regulatory approval within the **Territorial Limits** applicable to the relevant Insurance Section; and
- (c) intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury, sickness or disease in humans and which affects the structure or functioning of the human body,

but shall not include any **Pharmaceutical Drug** or **Bio Science Product**.

Medical & Dental Practitioner

means a registered or licensed medical or dental practitioner in accordance with the laws of the Commonwealth, or relevant State or Territory Laws of Australia that provide for the registering or licensing of medical or dental practitioners.

Media Management Costs

means costs incurred by the **Insured** following a crisis event to co-ordinate communications with the public media for the purpose of preserving the **Insured's** brand and reputation and to restore public trust and confidence in the **Insured**.

Money

means currency, coins, bank notes and bullion, traveller's cheques, register cheques, and money orders.

Named Insured

means the person or Organisation named in the Schedule for the **Policy**.

Nuclear Energy Hazard

means the radioactive, toxic, explosive or other hazardous properties of **Radioactive Material**.

Nuclear Facility

means:

- (a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
- (b) any equipment or device designed or used for:
 - (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them;
 - (ii) processing or utilising spent fuel, or
 - (iii) handling, processing or packaging waste;
- (c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the **Insured** at the premises where such equipment or device is located consists of or contained more than 25 (twenty five) grams of plutonium or uranium 233 or any combination thereof, or more than 250 (two hundred and fifty) grams of uranium 235; and
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste **Radioactive Material**;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all **Premises** used for such operations.

Occurrence

means an accident, including continuous or repeated exposure to a condition or conditions causing injury to or destruction of tangible property. All such exposure to substantially the same general conditions existing at or emanating from each premises, location or operation away from the **Premises** shall be deemed one **Occurrence**.

Pharmaceutical Drug

means a synthetic or natural chemical recognised in any national Formulary, the official Pharmacopoeia, the official Homeopathic Pharmacopoeia or any supplement to these documents or the equivalent in any other jurisdiction:

- (a) intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury, sickness or disease in humans and which affects the structure or functioning of the human body; and / or
- (b) as a component of any **Product**.

Policy

means:

- (a) all Terms and Conditions, Exclusions, Extensions indicated as operative in the Schedule;
- (b) all Endorsements and variations issued from time to time;
- (c) all Schedule, appendices, notices, subjectivity notices and other documents agreed by the **Insurer** and the **Insured**, attaching from time to time; and
- (d) the Proposal (if any);

all of which shall be read together and constitute the contract of insurance.

Policy Period

means the time period during which the **Policy** is effective as set out in the Schedule for the **Policy**.

Pollutants

means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, odour, vapour, soot, fumes, acids, alkalis, chemicals, and **Wastes**.

Pollution Incident

means an unexpected and unintended discharge, dispersal, release, migration or escape of any **Pollutants** on, at, under, or from an **Insured Location** that is both sudden, in the sense that it occurs over a brief period time, and accidental.

Premises

means the interior of that portion of any building which is occupied by the **Insured** in conducting its business.

Products

means any tangible property after it has left the custody or control of the **Insured** and which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **Insured**.

Property Damage

means:

- (a) physical injury to or destruction of tangible property, including any loss of use resulting therefrom, and
- (b) loss of use of tangible property which has not been physically injured or destroyed.

Professional Services

means services of the type provided by a person who is generally regarded to be engaged in a profession being:

- (a) working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession;
- (b) services as a member of a formal accreditation, credentialing or standards review or similar professional board or committee; and
- (c) formal clinical teaching activities;

in connection with the **Business Activities**.

Radioactive Material

means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the relevant authority may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.

Retroactive Date

means the date stated as such in the Schedule, and where a **Retroactive Date** is specified in the Schedule, then coverage under the **Policy** shall only be in respect of acts, errors or omissions (and where applicable **Bodily Injury** or **Property Damage**) first committed or alleged to have been first committed after the **Retroactive Date**. Where there is Retroactive coverage but no **Retroactive Date** is expressly specified, the date shall be deemed to be the original inception date of the first consecutive **Policy Period** with the **Insurer**.

Securities

means all negotiable and non-negotiable instruments or contracts representing either **Money** or other property and includes revenue and other stamps in current use, tokens and tickets, but does not include **Money**.

Spores

means, but is not limited to, any reproductive particle or microscopic fragments produced by, emitted from or arising out of any **Fungi**.

Subsidiary

means a corporate or other entity or Organisation that is controlled, whether directly or indirectly, by the **Insured**.

Terrorism

means an ideologically-motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any person, group, or Government, for the purpose of influencing and/or instilling fear in the public or a section of the public.

Unauthorised Access

means any accessing of the **Insured's Network** or information stored on the **Insured's Network** by an unauthorised person, or by an authorised person in an unauthorised manner, including theft of any information storage device used to store, retrieve or transport information, but this shall not include any unauthorised access to any voice-mail or telephone system.

Waste

means materials to be recycled, reconditioned or reclaimed.

Wrongful Act

means any actual or alleged wrongful act or omission, error, misstatement, misleading statement, neglect or breach of duty, including any series of continuous, repeated, related or interrelated acts, errors or omissions.

Contact us

📞 Call **1300 834 683**

✉ Email clientsupport@tego.com.au

🌐 Visit tego.com.au

