



Berkshire Hathaway  
Specialty Insurance

**BERKSHIRE HATHAWAY SPECIALITY INSURANCE COMPANY**

(Hereinafter referred to as BHSIC)

**Medical Malpractice**

Policy Form

This policy is issued by Berkshire Hathaway Specialty Insurance Company (ABN 84 600 643 034, AFS Licence 466713), which is authorised by the Australian Prudential Regulation Authority to carry on general insurance business in Australia, and which holds a financial strength rating of A++ from AM Best and AA+ from Standard & Poor's.

## **Notices**

### **Duty of disclosure**

Under the *Insurance Contracts Act 1984* (Cth), before you enter into a contract of insurance you have a duty to disclose to us, every matter you know (or you could reasonably be expected to know), to be a matter that is relevant to our decision whether to accept your risk and, if so, on what terms.

The duty of disclosure applies to every person to be covered under the insurance. It applies before you enter into a contract of insurance and before you renew, extend, vary or reinstate a contract of insurance.

The duty of disclosure does not however require you to tell us about a matter that diminishes the risk, that is of common knowledge, that we know (or ought to know) or in respect of which we have waived the duty of disclosure.

If you fail to comply with the duty of disclosure, or if you misrepresent the risk to be insured, we may be entitled to reduce our liability for a claim, we may cancel the policy or if your non-disclosure or misrepresentation was fraudulent, we may be able to treat the policy as though it never existed.

### **Privacy**

We are committed to safeguarding your privacy and the confidentiality of your personal information. We, and entities acting on our behalf, only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including managing and administering any claim made by you. Without your personal information, we may not be able to issue insurance cover, administer your insurance or process your claim.

We will only use your personal information in accordance with the *Privacy Act 1988* (Cth) and for the purposes outlined above.

We may disclose your personal information to third party service providers for the purposes outlined above or where disclosure is permitted by law. These entities may be located in Australia or overseas, including in India, Singapore, Hong Kong, the United Kingdom, New Zealand and the United States of America. Where such disclosure is made, we make all reasonable efforts to ensure that the arrangements we have in place with overseas parties impose appropriate privacy and confidentiality obligations on those parties to ensure that imparted personal information is kept secure and that such information is only used for the purposes noted above.

If you wish to obtain details of the personal information we hold about you (including contacting us to correct or update the personal information we hold about you), or if you have a complaint about a breach of your privacy, please refer to our privacy policy available at <http://www.bhspecialty.com/privacy-policy.html>, or contact our Chief Risk Officer by email to

[australasia.privacy.compliance@bhspecialty.com](mailto:australasia.privacy.compliance@bhspecialty.com).

We reserve the right to refuse access under the grounds permitted by the *Privacy Act 1988* (Cth) and if you are seeking information on another person's behalf, we will require written authorisation from that individual.

### **Complaints**

If you have a complaint or concern about our insurance products or services we provide, please contact your intermediary or your usual BHSI contact.

If you are not satisfied with our response, you may escalate your complaint by contacting [complaints.australia@bhspecialty.com](mailto:complaints.australia@bhspecialty.com). Our internal dispute resolution process is free of charge and we will aim to respond to your escalated complaint within fifteen (15) business days.

**General Insurance Code Of Practice**

We are a signatory to the General Insurance Code of Practice.

You can find further information about and download a copy of the Code from <http://codeofpractice.com.au>.

**Electronic Delivery Of Policy Documents**

We will send your policy documents by email. If however you wish to receive your policy documents in hard copy, please tell us.

In consideration of payment of the **Premium** and in reliance on the written proposal, declaration and any other underwriting information provided and subject to the provisions of this **Policy**, the **Insurer** will indemnify the **Insured** as follows.

## 1 **Cover**

All cover under this **Policy** is afforded solely with respect to **Claims** first made against an **Insured** during the **Period of Insurance** and reported to the **Insurer** as required by this **Policy**.

### 1.1 **Civil Liability**

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** for any civil liability of the **Insured**.

### 1.2 **Misleading or Deceptive Conduct**

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** for misleading and deceptive conduct at law or under the *Competition and Consumer Act 2010 (Cth)*, *Corporations Act 2001 (Cth)*, *Australian Securities and Investments Commission Act 2001 (Cth)* or similar provisions in the State's Fair Trading Acts.

### 1.3 **Fraud and Dishonesty**

The **Insurer** will pay on behalf of any **Insured** all **Damages** resulting from any **Claim** brought about or contributed to by any fraudulent or dishonest conduct of an **Employee**, provided that such indemnity shall not be provided to any person committing or condoning, expressly or implicitly, such fraudulent or dishonest conduct.

### 1.4 **Defamation**

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** for defamation committed by the **Insured**.

### 1.5 **Joint Venture Liability**

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** arising from the **Insured's** involvement in any joint venture or partnership. No cover is provided to any other joint venture party or partner of the **Insured**.

### 1.6 **Intellectual Property**

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** for any infringement of any intellectual property rights, other than patents and **Trade Secrets**.

### 1.7 **Vicarious Liability**

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from **Claims** against both the **Insured** and contractors and/or consultants providing **Healthcare Services** on behalf of the **Insured**. Cover will not extend to the contractor and/or consultant who committed the **Wrongful Act**, except to the extent provided for in Cover 1.22 Contractors / Consultants.

## 1.8 Continuous Cover

Notwithstanding the Prior Claims Exclusion 3.10, in the event of a **Claim**, or a circumstance that may reasonably have been expected by any **Insured** to give rise to a **Claim**, which should have been notified to the **Insurer** under any earlier policy, the **Insurer** will treat such **Claim** or circumstance as though it had been properly notified to the **Insurer** during the **Period of Insurance** provided always that:

- (i) the **Insured** first became aware of the **Claim** or circumstances that might give rise to the **Claim** after the **Continuity Date**; and
- (ii) the cover provided by this clause will be subject to the terms of the policy in force when the **Insured** first became aware of such circumstances.

## 1.9 Automatic Reinstatement

If a **Claim** or **Claims** erode the **Limit of Indemnity** under this **Policy**, the **Insurer** agrees to reinstate the **Limit of Indemnity** to the extent of the eroded amount, provided always that the **Insurer's** total amount payable under this **Policy** shall not exceed:

- (i) the **Limit of Indemnity** in respect of any one **Claim**, or related **Claims**; and
- (ii) twice the **Limit of Indemnity** in respect of all **Claims** during the **Period of Insurance**.

## 1.10 Defence Costs

The **Insurer** will pay on behalf of the **Insured** **Defence Costs** incurred in the defence and/or settlement of any **Claim**.

Cover is extended to provide **Defence Costs** in addition to the **Limit of Indemnity** in the event of the exhaustion of the **Limit of Indemnity** specified in the Policy Schedule by the total amount of compensation and/or claimants costs required to dispose of the **Claim**. The **Insurer's** liability for **Defence Costs** under this Cover shall only be that proportion that the **Limit of Indemnity** bears to the **Claim** and claimants costs required to dispose of the **Claim**

## 1.11 Business Crisis Costs Reimbursement

The **Insurer** will reimburse the **Insured** for:

- (i) **business crisis event costs** which must arise out of a **business crisis event**;
- (ii) **reputation protection costs** which must arise out of an **adverse public relations event**:

A **business crisis event** or an **adverse public relations event** first commences when the **Insured** first becomes aware of the **business crisis event** or **adverse public relations event** and will end when the **Insurer** determines that any one of the necessary elements listed in the definition of a **business crisis event** or **adverse public relations event** no longer exists.

Any payment of **business crisis event costs** or **reputation protection costs** that the **Insurer** makes will not:

- (i) be a determination of any other rights or obligations under this **Policy**; or
- (ii) create any duty to defend any **Claim** under any other part of this **Policy**; or

- (iii) operate as a waiver of any right or defence the **Insurer** has with respect to the Cover under the **Policy**.

Payment of **business crisis event costs** or **reputation protection costs** will not be applied to or erode any other **Limit of Indemnity** or aggregate **Limit of Indemnity** of the **Policy**.

This Cover is subject to an aggregate **Sub-Limit of Indemnity** as specified in the Schedule.

#### 1.12 **Second Opinion Costs**

The **Insurer** will pay on behalf of the **Insured** necessary and reasonable fees, costs and expenses incurred by the **Insured** as a result of action taken by the **Insured** to mitigate an actual or potential **Claim**, provided always that:

- (i) such necessary and reasonable fees, costs and expenses arise as a result of an actual or potential **Claim** against the **Insured** during the **Period of Insurance**; and
- (ii) the **Insurer** has given its prior written consent to the incurring of such fees, costs and expenses, which shall not be unreasonably withheld or delayed; and
- (iii) no admission of liability is made by the **Insured**.

This Cover is subject to an aggregate **Sub-Limit of Indemnity** as specified in the Schedule.

#### 1.13 **Complaint and Investigation Costs**

The **Insurer** will pay on behalf of the **Insured** necessary and reasonable fees, costs and expenses incurred by the **Insured** in responding to or defending:

- (i) an inquiry, inquest, investigation or **Complaint**; or
- (ii) a criminal inquiry, investigation or proceeding; or
- (iii) a coronial inquiry or inquest; or
- (iv) a Royal Commission,

Brought by or before an entity including a registration board, tribunal or complaints unit which has jurisdiction to investigate and determine an outcome for the **Complaint**; or investigation.

The **Insurer** will pay on behalf of the **Insured**:

- (i) all amounts payable by the **Insured** under orders or determinations of compensation made by the body; and
- (ii) any **Defence Costs** in respect of the complaint or investigation.

This Cover is subject to an aggregate **Sub-Limit of Indemnity** as specified in the Schedule.

#### 1.14 **Court Attendance Costs**

The **Insurer** will pay the **Insured** for the cost of attendance for any person described in (i) and (ii) below who attends court as a witness in connection with a **Claim** notified to the **Insurer** and which the **Insurer** has confirmed is covered under this **Policy**:

- (i) for any principal, partner or director of the **Policyholder** or a **Subsidiary** \$500 per day

(ii) for any **Employee** \$250 per day

Any payment made under this clause shall be deemed to be a payment of **Defence Costs**.

No **Retention** shall apply to this clause.

#### 1.15 **Lost Documents**

The **Insurer** will pay on behalf of the **Insured** reasonable fees, costs and expenses incurred by the **Insured** in replacing or restoring **Documents** for which an **Insured** is legally responsible and that have been destroyed, damaged, lost or mislaid provided always that:

(i) the **Documents** were in the physical custody or control of the **Insured** or any other person to whom the **Insured** entrusted, lodged or deposited such **Documents** in the ordinary course of **Healthcare Services**; and

(ii) the **Insurer** shall not be liable to make any payment arising out of wear, tear, gradual deterioration, moth or vermin.

No **Retention** shall apply to this clause.

#### 1.16 **Extended Reporting Period**

If the **Insurer** cancels or does not renew this **Policy**, other than for non-payment of **Premium**, the **Policyholder** shall have the right to a period of 60 days following the date of cancellation or expiry in which to give notice of any **Claim** first made against the **Insured** during the **Period of Insurance**. This extended reporting period shall not apply if this **Policy** has been replaced by substantially similar cover.

#### 1.17 **Good Samaritan act**

The **Insurer** will indemnify the **Policyholder** in respect of **Claims** first made against the **Insured** and notified to the **Insurer** in the **Period of Insurance** in relation to a **Good Samaritan act**, error or omission by the **Insured** wherever the **Good Samaritan act** occurred, provided that the **Insured** was not acting in a professional capacity for any employer, entity or practice at the time of the act, error or omission.

#### 1.18 **Breaches of Privacy**

The **Insurer** will indemnify the **Insured** in respect of **Claims** made against the **Insured** in the **Period of Insurance** in relation to actual or alleged breaches of confidentiality or privacy legislation, provided the act, error or omission by the **Insured** is unintentional.

#### 1.19 **Breach of Contract**

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** alleging breach of contract in relation to contractual liability directly in connection with the provision of **Healthcare Services**. This Cover does not operate to indemnify any liability assumed by contract, waiver, guarantee or warranty, unless liability would have attached in the absence of such contract, waiver, guarantee or warranty.

#### 1.20 Fidelity

The **Insurer** will pay the **Insured** for **Direct Financial Loss** due to the dishonest or fraudulent acts of an **Employee** (acting alone or in collusion with others) with the principal intent to cause the **Insured** to sustain a **Direct Financial Loss** and that results in the **Employee** making an improper financial gain for themselves or for any other individual or entity intended by the **Employee** to receive such gain, provided always that:

- (i) the dishonest or fraudulent acts of an **Employee** are committed after the **Continuity Date**; and
- (ii) which are **Discovered** during the **Period of Insurance** and are reported to the **Insurer** as required by this **Policy**.

This Cover is subject to an aggregate **Sub-Limit of Indemnity** as specified in the Schedule.

#### 1.21 Partners' / Principals' Previous Business

To the extent that any principal, partner or director of the **Policyholder** has a personal liability for professional services rendered prior to becoming a principal, partner or director of the **Policyholder** which are the same as those specified in this **Policy**, **Healthcare Services** shall also mean those previously rendered professional services of such principal, partner or director.

#### 1.22 Contractors / Consultants

The **Insurer** will indemnify any natural person who is a past or present contractor or consultant of the **Insured** against civil liability for compensation and costs and expenses in respect of any written demand or civil or administrative proceeding first made against such contractor or consultant and notified to the **Insurer** during the **Period of Insurance** resulting from the professional services provided by the contractor or consultant on behalf of the **Policyholder** which are the same as those specified in this **Policy**. Provided that at the time of any alleged wrongdoing by such contractor or consultant giving rise to the demand or proceeding, such contractor or consultant:

- (i) had entered into a contract for services with the **Insured**; and
- (ii) was under the direct control and supervision of the **Insured**.

Cover for such contractor or consultant shall be subject to all the terms of the **Policy** as if the contractor or consultant were an **Insured**.

#### 1.23 Run-off cover

If in the **Period of Insurance** the **Insured** entity ceases to exist, operate or is merged or acquired by another entity this **Policy** shall continue to exist until the end of the **Period of Insurance**. This clause does not operate to indemnify any **Wrongful Act** which occurred after the date that the entity ceased to exist, operate or date the entity was merged or acquired.

1.24 **Newly created or acquired subsidiary**

If the **Insured** creates or acquires a subsidiary in the **Period of Insurance** this **Policy** will extend to cover any act, error or omission of the new subsidiary which occurred after the date of creation or acquisition. This clause does not operate if the **Healthcare Services** of the subsidiary are different to those listed in the Policy Schedule and if the subsidiary has had any paid **Healthcare Services** claims in the last 5 years. This Cover is subject to the **Insured** complying with Exclusion 3.4.

1.25 **Sexual misconduct Defence Costs**

The **Insurer** will pay on behalf of the **Insured** all **Defence Costs** resulting from any **Claim** for any liability of the **Insured** in relation to actual or alleged molestation of, physical abuse of a person by an **Employee** of the **Insured**. This Cover does not operate to indemnify any **Insured** who allegedly committed or condoned the act, error or omission.

1.26 **Medicare and Private Health Insurer**

The **Insurer** will pay on behalf of the **Insured** reasonable fees, costs and expenses incurred by the **Insured** as a result of a **Complaint** which is commenced, commissioned or ordered and notified to the **Insurer** in the **Period of Insurance** in relation to a Private Health Insurer (registered under the Private Health Insurance Act 2007) or a Medicare compliance audit or review or a Professional Services Review including any alleged dishonest, fraudulent or criminal act, error or omission.

1.27 **Reporting a healthcare professional or incident**

The **Insurer** will pay on behalf of the **Insured** reasonable fees, costs and expenses incurred by the **Insured** as a result of a **Complaint** which is commenced, commissioned or ordered and notified to the **Insurer** in the **Period of Insurance** that arises from the **Insured** reporting an incident, healthcare professional, person or entity to a professional or statutory body or area health authority where the **Insured** was required to do so as result of an obligation imposed by law or in the public interest.

1.28 **Advancement of Costs and Expenses**

The **Insurer** shall advance **Defence Costs, Complaint and Investigation Costs, Reputation Protection Costs** on a current basis but no later than thirty (30) days after the **Insurer** receives itemised invoices for the same, and until such time that it is finally established that the **Insured** is not entitled to coverage under the terms and conditions of this **Policy**; provided that to the extent it is finally established that any such amounts are not covered under this **Policy**, the **Insureds**, severally and according to their respective interests, shall repay any previously advanced amounts to the **Insurer**.

1.29 **Statutory Liability Defence Costs**

The **Insurer** will pay on behalf of the **Insured** to the extent permitted by law:

- (i) a penalty payable by the **Insured** as a result of a criminal or civil proceeding in respect of an offence under an **Act** which proceeding:
  - a) is served upon the **Insured** while this **Policy** is in force; and
  - b) the **Insurer** is told about in writing as soon as reasonably practicable while this **Policy** is in force; and

- c) arises from an act, error or omission on or after the **Retroactive Date** specified in the Schedule which occurred in the provision of **Healthcare Services**.
- (ii) Statutory Liability **Defence Costs** incurred in connection with proceedings specified in paragraph (i) above.
- (iii) The **Insurer** does not cover penalties, (or losses or liabilities) or any costs associated with any action or proceeding arising out of the alleged failure of the **Insured** to comply with any lawful consent, demand, determination, memorandum, notice, order, schedule or the like issued under an **Act**.

The **Insurer** reserves the right to recover any Statutory Liability **Defence Costs** paid under this Cover 1.29 from the **Insured** on whose behalf or for whose benefit Statutory Liability **Defence Costs** were paid in the event and to the extent that the **Insured** makes an admission in writing of any fraudulent, dishonest, malicious or intentional conduct, or it is subsequently established, directly or indirectly, by judgment or other final adjudication, that the **Insured** was not entitled to cover under this **Policy**. The **Retention** applicable to this Cover 1.29 is \$5,000 for each and every **Penalty** inclusive of Statutory Liability **Defence Costs**.

This Cover is subject to an aggregate **Sub-Limit of Indemnity** as specified in the Schedule.

#### 1.30 **Clinical Trials**

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** for any liability of the **Insured** in relation to clinical trials that satisfy all of the following:

- (i) the trial sponsor is an unrelated entity to any **Insured**;
- (ii) the trial is conducted in accordance with a formal clinical trial protocol
- (iii) the **Insured** has a written indemnity from the trial sponsor(s) for all legal liability arising from the trial;
- (iv) the **Insured's** Human Research Ethics Committee has formally reviewed and approved the trial prior to the commencement date of the trial;
- (v) the trial involves no more than one hundred participant research subjects under the direct supervision of the **Insured**.
- (vi) each participating research subject signs an informed consent form prior to the commencement of the trial.

#### 1.31 **Fund Raising and Charitable Activities**

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** for any liability of the **Insured** in relation to any officially recognised individuals, auxiliaries, associations, foundations, trusts or fund raising committees which are attached to or represent the **Insured** in relation to charitable and fund raising activities carried out for the benefit of and on behalf of the **Insured**.

## 2 Definitions

2.1 **Act** means any of the following legislation:

1. Competition and Consumer Act 2010;
2. The Privacy Act 1988;
3. The Corporations Act 2001;
4. The Associations Incorporation Acts of the States and Territories of Australia;
5. The Occupational Health & Safety legislation of any State or Territory of Australia or the Commonwealth of Australia, including any amendment to, replacement or re-enactment of, the statutes, any regulation or other subordinate legislation made under any of these statutes, and in respect of 1. to 3. above, any equivalent legislation of a State or Territory of Australia

2.2 **Adverse media coverage** means:

national or regional news exposure in television, radio, print or internet media that is reasonably likely to have a negative impact on the **Insured** with respect to its income, reputation, community relations, public confidence or good will.

2.3 **Adverse public relations event** means:

an event that, in the good faith opinion of the **Insured**, has resulted in or is reasonably likely to result in a need for **public relations management services** due to **adverse media coverage**, including such an event arising out of one of the following:

1. **business crisis event**;
2. allegations of fraud or improper billing; or
3. a **security and privacy breach**.

2.4 **Business crisis event** means:

any event that, in the good faith opinion of the **Insured**, has resulted in or is reasonably likely to result in bodily injury or **Property damage**, including such an event arising out of one of the following:

- (i) an **evacuation event**;
- (ii) a **disinfection event**;
- (iii) workplace violence; or
- (iv) any **Claim** arising out of sexual intimacy, sexual molestation, sexual harassment, sexual exploitation, sexual abuse, or sexual assault of any kind.

2.5 **Business crisis event costs** means:

the following reasonable and necessary fees and expenses incurred during a **business crisis event** and directly caused by the **business crisis event**;

- (i) **evacuation cost**;
- (ii) **disinfection cost**;
- (iii) fees and expenses to secure the scene of a **business crisis event**; and

- (iv) expenses for psychological counselling; travel expenses; temporary living expenses or other necessary response costs incurred by or paid to third parties directly harmed by the **business crisis event**.

**Business crisis event costs** do not include any defence costs or any salaries, overhead, fees, loss of earnings or benefit expenses incurred by the **Insured**.

2.6 **Claim** means:

- (i) any written demand; or
- (ii) civil or administrative proceeding;

that seeks **Damages** as a result of a **Wrongful Act**.

2.7 **Complaint** means:

an allegation of unlawful or actionable conduct, misconduct, unsatisfactory conduct or inappropriate practice.

2.13 **Complaint and Investigation Costs** means:

the necessary and reasonable legal costs and expenses incurred by the **Insured** with the **Insurer's** prior written consent in the investigation, defence or settlement of any **Complaint** or investigation. These **Complaint and Investigation Costs** do not include regular or overtime wages, salary, fees, profit or any amounts payable as compensation or third party legal costs or expenses.

2.9 **Continuity Date** means:

the date specified as such in the Schedule.

2.10 **Damages** means:

any amount that an **Insured** shall be legally liable to pay in respect of judgments against an **Insured**, or settlements which conform with the consent requirements set out in Section 4 of the **Policy**.

**Damages** does not include account for profits or return of sums you are deemed not legally entitled to.

2.11 **Defence Costs** means:

reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Insurer's** prior approval, in the investigation, defence, adjustment, settlement or appeal of any **Claim**.

**Defence Costs** shall not mean any salaries, wages, internal or overhead expenses of any **Insured** or the cost of any **Insured's** time, except as provided for under the Court Attendance Costs Cover 1.14.

2.12 **Direct Financial Loss** means:

direct financial loss caused by the loss of **Money** or **Securities** owned by the **Policyholder** or any **Subsidiary**.

**Direct Financial Loss** does not include:

- (i) wages, salaries or other remuneration benefits paid by the **Policyholder** or any **Subsidiary** to its **Employees**, partners, principals or directors;

- (ii) complete or partial non-payment or default under any credit arrangement; or
- (iii) any costs, fees or other expenses incurred by the **Insured** in prosecuting or defending any demand, claim or legal proceeding resulting from a **Direct Financial Loss** which is covered under this **Policy**.

2.13 **Discovered** means:

when any of the **Policyholder's** or a **Subsidiary's** partners, principals, directors, officers, departmental seniors, senior managers or equivalent (who are not in collusion with an **Employee** who has or is attempting to commit a fraudulent or dishonest act) first becomes aware of any facts which would cause a reasonable person to assume that a **Direct Financial Loss** which may be covered under this **Policy** has been or is likely to be incurred, even though the exact amount or details of the **Direct Financial Loss** are not known at the time the person first became aware of such facts. The first **Discovery** constitutes **Discovery** by each and every **Insured**.

2.14 **Disinfection cost** means:

any reasonable and necessary fees and expenses incurred by the **Insured** to engage a third party to clean and/or disinfect the **Insured's** facility as a result of a **disinfection event**.

2.15 **Disinfection event** means:

- (i) any outbreak or increased incidence of disease due to any infectious agent;
- (ii) any infections associated with transfusions, biologics, or any contaminated medications, replacement fluids or commercial products;
- (iii) any increased or unexpected morbidity or mortality associated with medical devices, practices or procedures resulting in significant infections; or
- (iv) any other case or outbreak of nosocomial infections;

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

2.16 **Documents** means:

all documents of any nature whatsoever including medical records, computer records and electronic or digitised data, but does not include any currency, negotiable instruments or records thereof.

2.17 **Employee** means any:

- (i) natural person who is or has been expressly engaged as an employee under a contract of employment with the **Insured**; or
- (ii) person under a contract of service or apprenticeship with the **Insured**; or
- (iii) student or person undertaking work for the **Insured** under a work experience or similar scheme; or
- (iv) any voluntary helper.

**Employee** shall not mean any:

- (i) principal, partner or director; or
- (ii) temporary contract labour, self-employed person or labour only sub-contractor.

2.18 **Evacuation Cost** means:

any reasonable and necessary fees and expenses incurred by you as a result of an **evacuation event**, including travel expenses and temporary living expenses for your patients.

2.19 **Evacuation Event** means:

- (i) the evacuation of patients from your premises as a result of any actual or imminent natural or man-made emergency situation that, in the good faith opinion of the **Insured**, has caused or is likely to cause harm to patients; and
- (ii) the return of patients to your premises once such premises are deemed safe.

2.20 **Family Member** means:

- (i) any spouse, domestic partner or companion; or
  - (ii) any parent or parent of the spouse; or
  - (iii) any sibling or child;
- of the **Insured**.

2.21 **Foreign Jurisdiction** means:

any jurisdiction, other than the Commonwealth of Australia and New Zealand.

2.22 **Foreign Policy** means:

the standard medical malpractice insurance policy (including all mandatory endorsements, if any) approved by the **Insurer** for use within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this **Policy**.

2.23 **Healthcare Services** means:

The advice and services of the **Policyholder** or any **Subsidiary** as specified in the Schedule.

2.24 **Insured** means:

- (i) the **Policyholder** or any **Subsidiary**;
- (ii) any natural person, who is or has been a principal, partner or director of the **Policyholder** or any **Subsidiary**;
- (iii) any **Employee**; and
- (iv) any temporary contract labour, self-employed person or labour-only sub-contractors, solely under contract with, and under the direction and direct supervision of the **Policyholder** or any **Subsidiary**;

but only when providing **Healthcare Services** in the foregoing capacities.

This **Policy** also covers any **Claim** made against the:

- (i) estates, heirs, legal representatives or assigns of a natural person **Insured** who is deceased; or
- (ii) the legal representatives or assigns of a natural person **Insured** who is incompetent, insolvent or bankrupt.

Such coverage is afforded only to the extent such **Claim**, if made against such **Insured**, would have been covered by this **Policy** in the absence of such **Insured's** death, incompetency, insolvency or bankruptcy.

- 2.25 **Insurer** means:  
the entity specified in the Schedule.
- 2.26 **Limit of Indemnity** means:  
the amount specified in the Schedule.
- 2.27 **Medical Practitioner** means:  
an eligible individual meeting the mandatory registration requirements of The Medical Council of New Zealand and The Medical Board of Australia and the National Law which all States and Territories have enacted, as being responsible for regulating medical practitioners practicing in Australia.
- 2.28 **Money** means:  
local or foreign currency, coins, bank notes, cheques, traveller's cheques, registered cheques, postal orders, money orders and bullion.
- 2.29 **Penalty** means:  
a monetary fine or penalty prescribed under an **Act** but excludes any amounts payable or calculated by reference to compensation; compliance, remedial, reparation or restitution costs, exemplary or punitive damages; or any consequential economic loss.
- 2.30 **Policy** means:  
this policy wording, the Schedule, the proposal and any endorsement attaching to and forming part of the policy either at commencement or at any time during the **Period of Insurance**.
- 2.31 **Period of Insurance** means:  
the period of time specified in the Schedule unless the **Policy** is cancelled in which event the **Period of Insurance** will end on the effective date of cancellation.
- 2.32 **Policyholder** means:  
the entity or natural person specified as such in the Schedule.
- 2.33 **Pollutants** means but is not limited to:  
any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, asbestos fibres or derivatives of asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. "Waste" includes, but is not limited to, material to be recycled, reconditioned or reclaimed.
- 2.34 **Premium** means:  
the amounts specified as such in the Schedule and any premium adjustment amount reflected in any endorsement to this **Policy**.
- 2.35 **Property Damage** means:  
damage to or loss of or destruction of tangible property or loss of use thereof.

- 2.36 **Public relations management firm** means:  
any firm hired by the **Insured** or the **Insurer** to perform **public relations management services** in connection with an **adverse public relations event**.
- 2.37 **Public relations management services** means:  
those services performed by a **public relations management firm** in advising the **Insured** on minimizing potential harm to the reputation of the **Insured** from a covered **adverse public relations event** by managing **adverse media coverage** and maintaining and restoring public confidence in the **Insured**.
- 2.38 **Reputation protection costs** means:  
the following reasonable and necessary fees and expenses incurred as a result of an **adverse public relations event**:
- (i) Fees charged by a **public relations management firm** for the performance of **public relations management services** for the **Insured**;
  - (ii) Expenses incurred by a **public relations management firm** in the performance of **public relations management services** for the **Insured**; and
  - (iii) Fees and expenses for:
    - a) printing, advertising, mailing of materials; and
    - b) travel by directors, officers, employees or agents of the **Insured** or the **public relations management firm**;
- which are incurred at the direction of a **public relations management firm**.
- Reputation Protection Costs** do not include any defence costs or any salaries, overhead, fees, loss of earnings or benefit expenses incurred by the **Insured**.
- 2.39 **Retention** means:  
the amount specified in the Schedule.
- 2.40 **Retroactive Date** means:  
the date specified in the Schedule.
- 2.41 **Securities** means:  
any negotiable or non-negotiable instruments or contracts representing **Money** or other property including but not limited to shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.
- 2.42 **Security and privacy breach** means:  
any unauthorized or improper access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information, whether or not it is associated with any electronic data breach, including, but not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information.
- 2.43 **Sub-Limit of Indemnity** means:  
the amount specified in the Schedule.

2.44 **Subsidiary** means:

companies in which the **Policyholder**, either directly or indirectly:

- (i) controls the composition of the Board of Directors;
- (ii) controls more than half of the voting power; or
- (iii) holds more than half of their issued share capital.

For any **Subsidiary**, cover under this **Policy** shall only apply while such entity is or was a **Subsidiary** of the **Policyholder**.

2.45 **Trade Secrets** means:

any information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.

2.46 **Wrongful Act** means:

- (i) a breach of duty, act, error, omission, misstatement or breach of confidentiality;
- (ii) any misleading or deceptive conduct;
- (iii) any infringement of intellectual property rights;
- (iv) libel or slander;
- (v) any destruction, damage to, loss, erasure or mislaying of **Documents**; or
- (vi) any fraudulent or dishonest conduct;

committed solely in the performance of or failure to perform **Healthcare Services**.

### 3 Exclusions

The **Insurer** shall not be liable to make any payment in respect to any **Claim**:

3.1 **Anti-competitive conduct**

arising out of, based upon or attributable to any actual or alleged restrictive trade practices, restraint of trade or unfair competition;

3.2 **Bodily Injury/Property Damage**

arising out of, based upon or attributable to physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury or **Property Damage** unless arising out of an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing **Healthcare Services**;

3.3 **Fines & Penalties**

arising out of, based upon or attributable to any taxes, fines or penalties, or liquidated, aggravated, multiple, punitive or exemplary damages;

This Exclusion shall not apply to the cover provided under the **Complaints and Investigations Costs**.

#### 3.4 **Fraud & Dishonesty**

arising out of, based upon or attributable to any act which a court, tribunal or arbitrator finds, or which an **Insured** admits, to be a criminal, dishonest or fraudulent act; and in such event, the **Insured** shall reimburse the **Insurer** for all sums paid in connection with such **Claim** and any other **Claims** based upon, arising from or in consequence of the same **Wrongful Act** or series of **Wrongful Acts**;

This Exclusion shall not apply to 1.3 Fraud and Dishonesty Cover or 1.20 Fidelity Cover.

#### 3.5 **Intentional Acts**

arising out of, based upon or attributable to any deliberate or reckless **Wrongful Act**;

#### 3.6 **Medical Practitioners**

arising directly or indirectly in respect of the liability of:

- (i) 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 Practitioner**; or
- (ii) any individual claiming to be a **Medical Practitioner** when at the time of the act, error or omission giving rise to the **Claim** that individual was:
  - a) not a **Medical Practitioner**; or
  - b) banned or deregistered from practicing as a medical practitioner as a result of professional misconduct by a recognised and lawfully established authority in any country.

#### 3.7 **Patents – Trade Secrets**

arising out of, based upon or attributable to the actual or alleged infringement of, or misappropriation of patents or **Trade Secrets**;

#### 3.8 **Pollution**

arising out of, based upon or attributable to:

- (i) the actual, alleged or threatened presence, discharge, disburse or, release, migration or escape of **Pollutants**; or
- (ii) any direction, request or effort to:
  - a) test for, monitor, clean up, remove, contain, treat detoxify or neutralise **Pollutants**; or
  - b) respond to or assess the effects of **Pollutants**.

#### 3.9 **Prior Claims**

- (i) made prior to or pending at the inception of this **Policy**; or
- (ii) arising out of, based upon or attributable to any circumstance which may reasonably be expected by any **Insured** to give rise to a **Claim**, that is known to the **Insured** prior to inception of the **Policy**; or
- (iii) derived from the same or essentially the same facts as alleged in any **Claim** made prior to or pending at the inception of the **Policy**.

### 3.10 **Product Liability**

arising from or in connection with the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the **Insured**, or the failure of such goods to perform in any way.

Provided that this Exclusion 3.10 Product Liability shall not apply to **Claims** arising from the provision of the **Healthcare Services**.

### 3.11 **Related Entities**

brought or maintained by or on behalf of:

- (i) any **Insured**, or any associated entity (whether incorporated or not) of the **Insured**;  
or
- (ii) any person who, at the time of the **Wrongful Act** giving rise to the **Claim**, is a **Family Member**; or
- (iii) any person, firm, company or entity:
  - a) operated or controlled by any **Insured**; or
  - b) operated or controlled by any **Employee**, partner, nominee or trustee of any **Insured**; or
  - c) in which any **Insured** has a direct or indirect financial interest (a shareholding of less than 5% in a publically listed company shall not constitute a financial interest); or
  - d) advised or induced by the **Insured** to invest in or lend money to any person, firm, company or entity referred to in any of a), b) or c) above or to the **Insured**;

For the purpose of this Exclusion, the term **Insured** shall include both the **Insured** and any **Family Member**.

### 3.12 **Trade Debts**

arising out of, based upon or attributable to any trading debt incurred by an **Insured**;

### 3.13 **USA/Canada**

made or pending within; or to enforce a judgment obtained in, the United States of America, Canada, or any of their territories or possessions;

### 3.14 **War/Terrorism**

arising out of, based upon or attributable to any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any political or terrorist organisation.

Provided that this Exclusion 3.14 War/Terrorism shall not apply to **Claims** arising from the provision of the **Healthcare Services**.

**For the Fidelity Cover 1.20 only, this Policy shall not cover:**

**3.15 Confidential Information**

any **Direct Financial Loss** arising out of, based upon, attributable to or in any way connected with the accessing and dissemination of, any confidential information including, but not limited to, **Trade Secrets**, computer programs, customer information, patents, trademarks, copyrights or processing methods;

**3.16 Consequential Loss**

any indirect or consequential loss of any nature, including but not limited to any loss of income such as interest and dividends not realised by the **Policyholder** or any **Subsidiary** or any other person or organisation, resulting from a **Direct Financial Loss** which is covered under this **Policy**;

**3.17 Director / Principal / Partner Dishonesty**

any **Direct Financial Loss** arising out of, based upon, attributable to or in any way connected with any fraudulent or dishonest activities involving collusion with or complicity of a partner, principal or director of the **Policyholder** or any **Subsidiary**;

**3.18 Dual Controls**

any **Direct Financial Loss** in connection with any dishonest or fraudulent acts arising out of, based upon or attributable to the **Insured's** failing to ensure that at least one principal, partner or director and one authorised signatory sign any cheques or funds transfer instructions;

**3.19 Extortion or Kidnap and Ransom**

any **Direct Financial Loss** arising out of, based upon, attributable to or in any way connected with any extortion or kidnap and ransom;

**3.20 Territorial Limits**

any **Direct Financial Loss** arising out of, based upon, attributable to or in any way connected with any fraudulent or dishonest acts outside the Commonwealth of Australia or New Zealand;

**3.21 Loss Establishment Costs**

any fees, costs or other expenses incurred by the **Insured** in establishing the existence or amount of any **Direct Financial Loss** covered under this **Policy**;

**3.22 Loss Sustained After Knowledge**

any **Direct Financial Loss** arising out of, based upon, attributable to or in any way connected with any **Employee** from the time the **Policyholder's**, or a **Subsidiary's** partners, principals, directors, officers, departmental seniors, senior managers or equivalent (who are not in collusion with such **Employee** for the purpose of committing a fraudulent or dishonest act) had actual knowledge that the **Employee** had committed or was suspected of having committed a fraudulent or dishonest act.

**For the Clinical Trial Cover 1.30 only, this Policy shall not cover:**

**3.23 Criminal Offence**

any act or omission which constitutes a criminal offence.

3.24 **Informed Consent**

any Clinical Trial performed without the informed written consent of each **Research Subject** obtained prior to the participation of such person in such Clinical Trial.

3.25 **Retroactive Cover**

any act, error, omission, event, Clinical Trial happening prior to the **Retroactive Date**.

3.26 **Circumstances**

any circumstances which the **Insured** was, or ought to have been, aware might give rise to a **Claim** prior to the inception of this **Policy**.

3.27 **Protocol**

any act, error or omission which constitutes or involves a breach of, or failure to comply with, the terms of the protocol governing the Clinical Trial.

3.28 **Professional Services**

any advice, design, specification or professional services provided for a fee (or provided in circumstances where a fee would normally be charged).

4 **Claims Conditions**

4.1 **Co-operation**

The **Insured** will at its own cost:

- (i) render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim** and the assertion and exercise of any indemnification and/or contribution rights; and
- (ii) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss under this **Policy**; and
- (iii) give such information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any loss or determine the **Insurer's** liability under this **Policy**.

4.2 **Defence/Settlement/Allocation**

- (i) The **Insured** shall not incur **Defence Costs, Complaint and Investigation Costs, Reputation Protection Costs** or any other fees, costs or expenses incurred in connection with any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld or delayed. The **Insurer** shall not be liable under this **Policy** for any such amounts incurred without such consent.
- (ii) The **Insured** shall defend any **Claim** brought against the **Insured**; however the **Insurer** shall have the right but not the duty to take over the investigation, defence and settlement of any **Claim**, and the **Insurer** shall have full discretion in the handling and resolution thereof (notwithstanding that a dispute may have arisen between the **Insured** and the **Insurer**).

- (iii) The **Insured** shall not be required by the **Insurer** to contest any legal proceedings against the **Insured** unless a Senior Counsel (to be mutually agreed upon by the **Insurer** and the **Insured** and in the absence of such agreement to be determined by the President of the relevant State Law Society), advises that such proceedings can be contested with a reasonable prospect of success. The costs of such advice shall be borne by the **Insurer**.
- (iv) If the **Insured** does not agree with the decision by the **Insurers** to settle a **Claim**, the **Insured** can elect to contest the **Claim** at its own expense but the liability of the **Insurer** will not exceed the amount for which the **Claim** could have been settled in the opinion of a Senior Counsel (to be mutually agreed upon by the **Insured** and the **Insurer** and in the absence of such agreement to be determined by the President of the relevant State Law Society). The costs of such advice shall be borne by the **Insurer**.

The **Insurer** shall pay all **Defence Costs** incurred up to the date the **Insured** notifies the **Insurer** in writing of its election under this clause of the **Policy**, and shall pay the **Insured** (subject to the **Retention**) the amount for which the **Claim** could have been so settled. The **Insured** expressly agrees that the **Insurer's** liability in respect of the **Claim** shall then be at an end and the **Insurer** will not be obliged to pay for any other or further amounts in respect of the **Claim** under the **Policy**.

- (v) In the event of a **Claim** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of **Damages** and **Defence Costs** covered under this **Policy**, taking into account the relative legal and financial exposures.

#### 4.3 **Fraudulent Claims**

If any **Insured** claims cover for any payment under this **Policy** knowing such claim to be false or fraudulent as regards the amounts or otherwise, such claim shall be entirely excluded under the **Policy**, and the **Insurer** shall have the right to cancel the **Policy** in accordance with the *Insurance Contracts Act 1984 (Cth)*.

#### 4.4 **Notification of Claims**

The **Insured** shall give written notice to the **Insurer** as soon as practicable, but no later than the end of the **Period of Insurance**:

- (i) of any **Claim** first made against the **Insured** or of a **Direct Financial Loss**; and
- (ii) of the receipt of notice from any person of an intention to make a **Claim** against any **Insured**; and
- (iii) of any circumstance which may reasonably be expected by any **Insured** to give rise to a **Claim**.

If the **Insured** notifies a **Direct Financial Loss** to the **Insurer**, the **Insured** must also, as soon as practicable, provide the **Insurer** with:

- (i) affirmative proof of the **Direct Financial Loss**; and
- (ii) all requested information and documents and co-operation in all matters pertaining to the investigation of the **Direct Financial Loss**.

All notifications must be in writing and addressed via the **Insured's** insurance broker or to the **Insurer** for the attention of the Claims Manager.

#### 4.5 **Related Claims**

Any **Claim** or **Claims** arising out of, based upon or attributable to:

- (i) the same acts, errors or omissions; or
- (ii) a series of related acts, errors or omissions; or
- (iii) the same matter or transaction;

shall be considered a single **Claim** for the purposes of this **Policy** and a single **Retention** shall be payable.

All such **Claims** shall be considered first made at the earliest time that any such **Claim** is first made against the **Insured**.

Any **Direct Financial Loss** resulting from a series of continuous, repeated or related fraudulent or dishonest acts shall be considered a single **Direct Financial Loss**.

#### 4.6 **Duties in the Event of a Business Crisis Event or Adverse Public Relations Event**

The **Insured** must see to it that the **Insurer** is notified as soon as practicable of a **business crisis event** or **adverse public relations event**. To the extent possible, notice should include:

- (i) how, when and where the **business crisis event** or **adverse public relations event** took place;
- (ii) the nature and location of the **business crisis event** or **adverse public relations event**; and
- (iii) written documentation of all **business crisis event costs** and **reputation protection costs**.

Written notice should be mailed, delivered, faxed or emailed to us using the contact information contained in the Schedule.

## 5 **General Conditions**

### 5.1 **Authorisation**

The **Policyholder** shall act as agent on behalf of all **Insureds** with respect to all matters under this **Policy** including:

- (i) the giving and receiving of all correspondence regarding this **Policy**; and
- (ii) the giving of notice of any **Claim** or other matter; and
- (iii) the sending or receiving of notice of cancellation; and
- (iv) the payment of the **Premium**; and
- (v) the receipt and acceptance of any endorsements attaching to and forming part of this **Policy**.

## 5.2 Cancellation

- (i) The **Insured** may cancel the **Policy** at any time by notifying the **Insurer** in writing. In such case, the **Insurer** shall be entitled to retain a pro-rata proportion of the **Premium**. Payment of unearned **Premium** by the **Insurer** shall be made as soon as practicable to the **Insured** but will not change the effective date of cancellation of the **Policy**.
- (ii) The **Insurer** may cancel the **Policy** in accordance with the *Insurance Contracts Act 1984 (Cth)*. In such case, the **Insurer** shall be entitled to retain a pro-rata proportion of the **Premium**. Payment of unearned **Premium** by the **Insurer** shall be made as soon as practicable to the **Insured** but will not change the effective date of cancellation of the **Policy**.

## 5.3 Confidentiality

The **Insured** shall not disclose to any third party any of the terms of this **Policy** or the amount of the **Premium** except to the extent that they are required by law or they receive prior written consent from the **Insurer** to make such disclosure.

## 5.4 Retention

The **Insurer** shall only pay for the amount of any **Claim** or **Direct Financial Loss** in excess of the **Retention**. For the avoidance of doubt, the **Retention** applies to all amounts payable under this **Policy**, including **Defence Costs**, unless expressly stated otherwise. The **Retention** is to be borne by the **Insured** and shall remain uninsured.

## 5.5 Entire Agreement

This **Policy** constitutes the entire agreement between the parties. The terms, conditions and limitations of this **Policy** can be waived or changed only by written endorsement to this **Policy**.

## 5.6 Governing Law and Jurisdiction

This **Policy** shall be governed by the laws of Australia whose Courts shall have exclusive jurisdiction in any dispute arising hereunder.

Where legally permissible and subject to the USA/Canada Exclusion, this **Policy** shall apply to any **Claim** made against any **Insured** anywhere in the world.

## 5.7 Territory and Loss in Foreign Jurisdictions

Where legally permissible and subject to the USA/Canada Exclusion, coverage shall apply worldwide irrespective of where a **Claim** is made, the **Wrongful Act** is committed or the incident causes **Damage**.

If permitted by applicable law, when determining coverage under this **Policy** for **Damages** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply to such **Claim** the terms and conditions of this **Policy**, as amended to include the terms and conditions of the **Foreign Policy** in such **Foreign Jurisdiction**. However, this paragraph shall not apply to: (i) any provision of any **Foreign Policy** addressing the **Limit of Indemnity**, **Retention**, other insurance, non-renewal, duty to defend, defence within or without limits, taxes, conformance to law or excess liability coverage, or any claims made provisions, and (ii) any provision in this **Policy** that excludes or limits coverage for specific events or litigation.

Any **Damages** incurred by the **Policyholder** in a **Foreign Jurisdiction** is payable to the **Policyholder** at the address listed in Item 2 of the Schedule. Any such payment by the **Insurer** to the **Policyholder** pursuant to this paragraph shall fully discharge the **Insurer** liability under the **Policy** for such **Damages** to such **Policyholder**.

Any **Damages** incurred by a natural person insured under this **Policy** in **Foreign Jurisdiction** shall, to the extent permissible under applicable law, be paid to such natural person in a jurisdiction mutually acceptable to such natural person and the **Insurer**.

#### 5.8 **Limit of Indemnity**

The total amount payable by the **Insurer** under this **Policy** shall not exceed the applicable **Limit of Indemnity**. **Sub-Limits of Indemnity**, **Defence Costs** and any amounts specified in the Cover are part of and not payable in addition to the **Limit of Indemnity**. The inclusion of more than one **Insured** under this **Policy** does not increase the total amount payable by the **Insurer** under this **Policy**.

#### 5.9 **Plurals, Headings and Titles**

The descriptions in the headings and titles of this **Policy** are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this **Policy** words and their grammatical variations in bold typeface have the special meaning as set out in this **Policy**.

#### 5.10 **Sanctions**

This **Policy** does not provide any cover and the **Insurer** will not be liable to pay any amount or provide any benefit thereunder to the extent that the provision of such cover, payment of such amount or provision of such benefit would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

#### 5.11 **Severability and Non Imputation**

In granting cover to the **Insured**, the **Insurer** has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied. That written proposal for coverage shall be construed as a separate proposal form individually submitted for each **Insured**. No state of mind or knowledge possessed by an **Insured** shall be imputed to any other **Insured** for the purpose of determining entitlement to coverage unless the relevant **Policyholder** or **Subsidiary** is a company with a sole director, in which case the knowledge of the sole director shall be imputed to the **Policyholder** or **Subsidiary**.

Where cover is granted to multiple **Insureds** under this Policy and one or more of these **Insureds** fails to comply with any terms or conditions of this Policy these failures will not act to prejudice any other innocent **Insureds** so long as they:

- i. before the contract of insurance was entered into with the **Insurer**, the **Insured** undertook proper inquiry of its directors and officers (where applicable) for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984. For the sake of clarity, this provision is not intended to limit the duty of disclosure owed by any **Insured**
- ii. are innocent of and have had no prior knowledge of any such conduct; and

- iii. as soon as is reasonably practicable upon becoming aware of any such conduct, advise the **Insured** in writing of all known facts in relation to such conduct;

#### 5.12 **Subrogation**

If any payment is to be made under this **Policy** in respect of a **Claim** or **Direct Financial Loss**, the **Insurer** shall be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for the loss suffered. The **Insurer** shall be entitled to pursue and enforce such rights in the name of the **Insured**, who shall provide the **Insurer** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any amount recovered in excess of the **Insurer's** total payment under the **Policy** shall be restored to the **Insured** less the cost to the **Insurer** of such recovery. The **Insurer** agrees not to exercise any such rights of recovery against any **Employee** unless the **Claim** is brought about or contributed to by serious or wilful misconduct of the **Employee**. In its sole discretion, the **Insurer** may, in writing, waive any of its rights in this clause.