



## MEDICAL MALPRACTICE LIABILITY & LEGAL EXPENSES PURSUIT & DEFENCE COVER

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## Medical Malpractice Liability Insurance

In consideration of the payment of premium once paid in full, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follow:

### SECTION 1: INSURING AGREEMENT

The **Underwriters** will indemnify the **Insured** for **Damages** and **Defence Costs** resulting from any **Claim** for civil liability for compensation as a result of **Malpractice** in the conduct of the **Insured's Profession**, provided that such **Claim** is first made against the **Insured** and notified to the **Underwriters** during the **Policy Period**.

### SECTION 2: AUTOMATIC EXTENSIONS

The following Extensions are included automatically, provided always that each Extension is to be read in conjunction with Section 1. Certain Extensions have specified **Sub-Limits of Liability** and specific Excesses and these will apply unless specifically stated otherwise in the **Schedule**.

#### 2.1 Automatic Reinstatement – Damages

In the event that the **Limit of Liability** shown in item 3A of the **Schedule** is exhausted by one or more **Claims**, such **Limit of Liability**, with respect to **Damages** only, will be automatically reinstated during the **Policy Period**, subject to the following conditions:

- a The reinstatement will apply only in respect of new **Claims** made and notified during the **Policy Period** that are unrelated to the **Claims** or **Circumstances** already notified to the **Underwriter** or any other insurer that exhausted the **Limit of Liability**;
- b The reinstatement is limited in total to an amount equal the **Limit of Liability** set out in Item 3A of the **Schedule**;
- c The reinstatement will only apply after the total aggregate **Limit of Liability** available under the **Policy** is exhausted;
- d The reinstatement will only apply in excess of the total aggregate indemnity available under any other policy or policies that apply in excess of the **Policy**.

- e This reinstatement extension shall not apply to **Defence Costs**.

## 2.2 Boards and committees of the Insured

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** in relation to the acts or omissions of any formal medical, audit or quality assurance board or ethical committee convened by the **Insured** where such investigation, enquiry or decision of that board or committee may lead to a **Claim** under this **Policy**.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.2. of the **Schedule**.

## 2.3 Breach of Privacy / Confidentiality

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from:

- a any **Claim** or written complaint made against the **Insured** for unintentional breach of any duty of confidentiality owed to any patient:
  - ii arising at law; or
  - iii arising from the Privacy Act 1993, Health and Disability Commissioner Act 1994 or any amending or replacing legislation in New Zealandprovided that:

The **Underwriter** shall not be liable for:

- b the costs of compliance with any regulatory, administrative, Court or Tribunal directives or any non-compensatory relief; or

The maximum amount payable by the **Underwriter** in respect of all **Claims** or complaints covered by this extension shall be as specified in Coverage Clause 2.3 of the **Schedule**.

## 2.4 Continuous cover clause

This **Policy** extends cover for the **Damages** and **Defence Costs** resulting from any **Claim** arising out of, based upon or attributable to a **Circumstance** which could have been, but was not, notified by the **Insured** under any **Prior Policy** provided by the **Underwriters** and which is first notified to the **Underwriters** during the **Policy Period**, provided that:

- a the failure by the **Insured** to notify such **Circumstance** under such **Prior Policy** was not fraudulent; and

- b the **Underwriters** have the discretion to apply either the Conditions or the terms and conditions of such **Prior Policy** in effect when the **Circumstance** first arose; and

- c the **Insured's** entitlement to indemnity will be reduced by the extent of any prejudice to the **Underwriters** as a result of the **Insured's** failure to notify such **Circumstance** under such **Prior Policy**.

## 2.5 Defamation

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** made against the **Insured** for libel, slander or defamation by the **Insured**.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.5. of the **Schedule**.

## 2.6 Dishonest or Fraudulent Employees

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** made against the **Insured** arising from any dishonest or fraudulent act or omission committed by any **Employee**, provided that:

- a such conduct has not been knowingly permitted or condoned by any other **Insured** who is unconnected with such **Claim**; and
- b there is no indemnity under this Policy for the person(s) who carried out or was alleged to have carried out the conduct, or condoned the conduct.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.6 of the **Schedule**.

## 2.7 Exemplary damages

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** in respect of legal liability for any **Claim** brought for punitive or exemplary damages as a result of personal injury happening in New Zealand that was a personal injury for which coverage is determined to exist under the Accident Compensation Act 2001 or any amending or replacing legislation.

Provided that:

- a any liability for punitive and exemplary damages in respect of such personal injury arising from assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse by the **Insured** is excluded.

However, it is agreed that **Claims** brought for punitive or exemplary damages as a result of personal injury arising from assault, battery & false imprisonment shall not be excluded by point (a) above, where such personal injury is caused by acts or omissions in the conduct of the **Insured's Profession**.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.7 of the **Schedule**.

### 2.8 Fair Trading Act 1986

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** made against the **Insured** alleging breach of the Fair Trading Act 1986 (sections 9 to 14), the Consumer Guarantees Act 1993 or any similar fair trading legislation under the laws of New Zealand.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.8 of the **Schedule**

### 2.9 Good Samaritan acts / emergency first aid

The **Underwriters** will indemnify the **Insured** for **Damages** and **Defence Costs** in respect of the provision of emergency first aid assistance by a **Health Professional** who is an **Employee** of the **Insured** to any person other than a member of that **Employee's** family. No indemnity is provided by this extension where the **Employee** was acting under a contract of employment with any other employer other than the **Insured**.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.9 of the **Schedule**

### 2.10 Representation costs for investigations, inquiries and inquests

The **Underwriter** shall indemnify the **Insured** for the **Damages** and **Defence Costs** incurred with the **Underwriters** prior written consent for legal representation:

- a in relation to any coronial inquiry or inquest; and/or
- b in relation to any investigation by the Health and Disability Commissioner pursuant to the Health and Disability Commissioner's Act 1994; and/or
- c in relation to any investigation by the Privacy Commissioner pursuant to the Privacy Act 1993 (or any amending or replacing legislation); and/or
- d in relation to any investigation by the Human Rights Commissioner pursuant to the Human Rights Act 1993; and/or

e in relation to any investigation by the Accident Compensation Corporation; and/or

f for reasonable costs and expenses incurred in respect of an investigation and the defence of the **Insured** at proceedings for any complaint lodged against the **Insured** with a statutory registration board or similar regulatory authority insofar as any statutory or professional body claims jurisdiction to inquire in or adjudicate the matter,

where such inquest or investigation has arisen from or may lead to an allegation of **Malpractice** in the conduct of the **Insured's Profession**.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.10 of the **Schedule**.

### 2.11 Intellectual Property

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** arising from any **Claim** made against the **Insured** alleging infringement of copyright, trade mark, registered design or patent, plagiarism or breach of commercial confidentiality, provided such infringement was accidentally and unintentionally made by the **Insured**.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.11 of the **Schedule**.

### 2.12 Loss Mitigation

If the **Named Insured** reasonably determines during the **Policy Period** that urgent action is needed in order to avoid or minimise the risk of a **Claim** for which coverage under this **Policy** would apply, the **Insured** shall be entitled to retain a suitably qualified loss mitigation advisor to provide services in connection with avoiding or minimising such risk.

The **Underwriters** shall pay the **Insured** for the reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Underwriters'** prior written consent (such consent not to be unreasonably withheld or delayed), for such loss mitigation services. This Automatic Extension does not extend to cover the **Insured's** own time spent in mitigating any such risk.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.12 of the **Schedule**.

### 2.13 Loss of Documents

The **Underwriters** will indemnify the **Insured** for the reasonable and necessary costs and expenses

incurred in replacing and restoring **Documents** that after a diligent search cannot be located or that have been destroyed, damaged, or distorted beyond reasonable use, provided that:

- a the **Documents** belong to the **Insured**, or the **Insured** is legally responsible for such **Documents**;
- b the **Documents** are in the custody of the **Insured**, or of any person to whom, or with whom, they have been entrusted, lodged or deposited by the **Insured**;
  - i the **Documents** are used in connection with, or are related to, the performance of **Insured's Profession**;
- c the loss, destruction, damage or distortion of **Documents** is first discovered by the **Insured** during the **Policy Period**; and
- d the **Insured** provides the **Underwriters** with bills and accounts substantiating such costs and expenses, which shall be subject to approval by the **Underwriters** or by a competent person nominated by the **Underwriters** with the **Insured's** consent.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.13 of the **Schedule**.

#### 2.14 Criminal Investigation Defence Costs

The **Underwriter** shall pay **Defence Costs** only, in connection with a prosecution or potential prosecution alleging manslaughter and all lesser offences, other than those excluded by **Exclusion 4.11 Harassment / Discrimination / Sexual Assault**, against an **Employee** of the **Named Insured**, arising or allegedly arising out of the provision or omission to provide medical or **Health Professional** services for which they are acquitted by a court.

This extension of cover is subject to:

- a The **Underwriter** shall not be under any obligation to advance **Defence Costs** as they are incurred, but may advance **Defence Costs** at the **Underwriters'** sole and absolute discretion. The Excess applicable to each and every **Claim** under this extension is \$10,000 or the Excess specified in Item 4 of the **Schedule**, whichever is the greater.
- b The **Underwriter** shall not pay **Defence Costs** under this extension in relation to any appeals.
- c This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.14 of the **Schedule**.

#### 2.15 New subsidiary companies

The **Underwriter** agrees to indemnify any subsidiary company acquired or created during the **Policy Period** for a period of up to 30 days from the date of acquisition but only in respect of activities carried out after the date of acquisition and subject to the **Insured's Profession** noted on the current **Schedule** of Insurance.

- a The **Underwriter** agrees to indemnify any subsidiary company created or acquired during the **Policy Period** from the date of creation or acquisition, in respect of activities carried out after the date of creation, subject to the provisions of general condition 6.4 (Alteration to risk).

Cover provided by this extension does not alter the **Limit of Liability** and is subject to the **Period of Insurance**.

#### 2.16 Public Relations Costs

The **Underwriter** will reimburse the **Insured** the public relations expenses incurred by the **Insured** in connection with a **Public Relations Event**, which first takes place, or is reasonably anticipated to take place, during the **Policy Period** and is reported to the **Underwriters** in accordance with **Claims** and general conditions.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.16 of the **Schedule**.

#### 2.17 Run off cover

The **Underwriter** will indemnify, until expiry of the **Policy Period**, any **Insured** entity which is sold, ceased trading, merged or wound up during the Period of Insurance in respect of those activities of the **Insured** prior to the sale, cessation of trade, merger or winding up.

#### 2.18 Severability

Where any person fails to comply with their duty of disclosure, makes a misrepresentation or is in breach of a **Policy** term or condition, the **Underwriter** will not deny indemnity to any other person on these grounds if that other person was unaware of the matter not disclosed or the fact of the misrepresentation or did not breach the **Policy** term or condition.

#### 2.19 Vicarious Liability

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** made against the **Insured** arising from any act, error or omission committed or alleged to have been



committed by any consultant, sub-contractor, agent or person acting on behalf of the **Insured**.

This coverage is subject to a Sublimit of Liability as specified in Coverage Clause 2.19 of the **Schedule**.

## SECTION 3: DEFINITIONS

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

### 3.1 Circumstance

**Circumstance** means an incident, occurrence, fact, matter, act, error or omission which may give rise to a **Claim** against the **Insured**.

### 3.2 Claim

**Claim** means:

- a any circumstance that a reasonable person in the position of the **Insured** would consider may give rise to a demand for compensation;
- b the receipt by the **Insured** of any written or verbal notice of demand for compensation made by a third party for actual or alleged medical **Malpractice**; or
- c service on the **Insured** of any statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third party or similar notice claiming compensation for actual or alleged medical **Malpractice**.

### 3.3 Continuous Cover

**Continuous Cover** means the date specified in Item 7 of the **Schedule**

### 3.4 Damages

**Damages** means:

- a damages, settlements or judgments;
- b pre-judgment or post-judgment interest; and
- c costs or fees awarded in favour of the claimant, which an **Insured** is legally liable to pay to a third party.
- d financial awards by the Human Rights Review Tribunal (HRRT)

**Damages** also means any amounts payable, other than **Defence Costs**, under any Automatic Extension of this **Policy**.

### 3.5 Defence Costs

**Defence Costs** means reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Underwriters'** prior written consent, in the investigation, defence, adjustment, settlement or appeal of any **Claim** for which the **Insured** is legally liable to pay to a third party.

**Defence Costs** shall not include internal or overhead expenses of the **Insured** or the cost of any **Insured's** time.

### 3.6 Documents

**Documents** means images deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method, computer records and electronically stored data.

**Documents** does not include bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

### 3.7 Employee

**Employee** means any natural person who was or presently is:

- a under an employment agreement, or an agreement deemed to be an employment agreement by a New Zealand court, or apprenticeship with the **Insured**
- b supplied to, hired by or borrowed by the **Insured**, or
- c under any work experience or similar scheme with the **Insured**, while employed or engaged by, and under the control of, the **Insured**
- d registrars, clinical placements, secondees and temps

**Employee** shall include any director, principal, partner or member.

### 3.8 Health Professional

**Health Professional** means a natural person who meets the definition of "health care provider" or "health care practitioner" under the Health and Disability Commissioner Act 1994 and who is an **Employee** of the **Named Insured**.

### 3.9 Insured's Profession

**Insured's Profession** means the profession specified in Item 1C of the **Schedule**.

### 3.10 Insured(s)

**Insured** means:

- a the person, persons, partnership, company, corporation or other entity specified as the **Insured** in the **Schedule** including their predecessors in business;
- b any person who is, during the **Policy Period**, a principal, partner, director, **Employee** or volunteer worker of the **Insured** in respect of work performed for and on behalf of the **Insured**;
- c any former principal, partner, director or **Employee** of the **Insured** in respect of work performed for and on behalf of the **Insured**;
- d the estate, heirs, or legal representatives of any **Insured** in the event of the death or incapacity of that **Insured** but only if such persons observe and are subject to the terms and conditions of this **Policy**; and
- e any student practitioner appointed to the **Insured** by a university or college of advanced education.

### 3.11 Joint Venture

**Joint Venture** means any enterprise carried on in common by the **Insured** with a third party or parties (not being an **Insured** under this **Policy**).

### 3.12 Limit of Liability

**Limit of Liability** means the amount specified in Item 3A of the **Schedule**.

### 3.13 Malpractice

**Malpractice** means a breach of legal, professional and ethical standards in the provision of medical or **Health Professional** services.

### 3.14 Named Insured

**Named Insured** means the person or entity named in Item 1A of the **Schedule**.

### 3.15 Policy

**Policy** means this Policy wording including the **Schedule**, any additional endorsements and

the proposal form and underwriting information provided to the **Underwriter** prior to the **Policy Period**.

### 3.16 Policy Period

**Policy Period** means the period of time from the inception Date set forth in Item 2A of the **Schedule** to the earlier of the expiration date set forth in Item 2B of the **Schedule** or the effective date of cancellation of this **Policy**.

### 3.17 Prior Policy

**Prior Policy** means any medical **Malpractice** insurance policy issued to the **Named Insured** prior to the commencement of the **Policy Period**.

### 3.18 Public Relations Event

**Public Relations Event** means the publication of unfavourable information relating to a **Claim**, which can be reasonably considered to lessen public confidence in the competence, integrity or viability of the **Insured** to conduct business.

### 3.19 Retroactive Date

**Retroactive Date** means the date set forth in Item 6 of the **Schedule**.

### 3.20 Schedule

**Schedule** means the current schedule to this **Policy**.

### 3.21 Underwriter(s)

**Underwriter** means the underwriter(s) named in Item 13 of the **Schedule**.

## SECTION 4: EXCLUSIONS

Indemnity provided by this **Policy** does not include liability for **Claims**:

### 4.1 Admitted Claims

which the **Insured** has settled or has agreed to settle or where the **Insured** has made an admission, offer, payment or otherwise assumed any contractual obligation with respect to any **Claim**. This includes a contractual obligation that excludes or limits the **Insured's** rights of recovery from a third party.

### 4.2 Asbestos

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

#### 4.3 Associates

arising out of, based upon or attributable to any **Claim** made by or on behalf of:

- a the **Insured**; or
- b any firm, partnership or entity in which any **Insured** (except an **Employee**) has a financial or executive interest;

provided, however, that this Exclusion shall not apply to any **Claim** brought by an independent third party.

#### 4.4 Continuous Cover

arising out of, based upon or attributable to any event, act, error or omission occurring or alleged to have occurred prior to the Continuity Date stated in Item 7 of the **Schedule**.

#### 4.5 Contractual liability

arising out of, based upon or attributable to any:

- a contractual liability or other obligation assumed by the **Insured**, that goes beyond the duty to use such reasonable skill and care as is ordinarily applied in performing the **Insured's Profession**;
- b performance warranty (including but not limited to a fitness for purpose warranty), guarantee, penalty clause or liquidated damages clause; or
- c delay in performing, failing to perform or failing to complete the **Insured's Profession**, unless such delay or failure arises from a breach of professional duty by an **Insured**;

provided, however, that this Exclusion shall not apply to the extent that liability would have attached to the **Insured** in the absence of any contract or provision thereof.

#### 4.6 Dishonesty

- a arising out of or connected with any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of any **Insured** or their consultants, contractors, sub-contractors, or agents; or
- b arising out of or connected with a wilful breach of any statute, contract or duty, or any act or omission committed or omitted or alleged to have been committed with a reckless disregard for the consequences by the **Insured** or their consultants, contractors, sub-contractors or agents;
- c except to the extent to which cover is provided under extension 2.6 (Dishonest or Fraudulent Employees).

#### 4.7 Directors Liability

arising out of any duties of any **Insured** as a director, trustee or legal officer of any company or entity

#### 4.8 Employment Contract Liability

Alleging or arising out of any liability assumed by the **Insured** under an employment contract or agreement.

#### 4.9 Financial Condition

Alleging or in respect of the insolvency, bankruptcy, receivership, statutory management or liquidation of the **Insured**.

#### 4.10 Fines and penalties

for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law, to the extent not expressly covered by extension 2.7 (Exemplary damages).

#### 4.11 Harassment / Discrimination / Sexual Assault

Alleging or arising out of harassment (including but not limited to sexual harassment or molestation) or discrimination of any kind, or sexual assault.

#### 4.12 Intoxicants and Drugs

Alleging, arising from or contributed to by the rendering of, or failure to render, competent services of the **Insured's Profession** by any **Insured** while under the influence of intoxicants or drugs.

#### 4.13 Joint Ventures

Arising directly or indirectly or in any way connected with the activities in which the **Insured** engages as a participant in a **Joint Venture**

#### 4.14 Jurisdictional and Territorial limits – New Zealand only

arising out of, based upon or attributable to

- a any legal action brought in a court of law outside the jurisdiction of New Zealand; or
- b brought in a court of law within the jurisdiction of New Zealand to enforce a judgment of a court of law outside the jurisdiction of New Zealand whether by way if a reciprocal agreement or otherwise; or
- c in which the proper law to be applied to the **Claim** is that of a country other than the country of New Zealand; or

d conduct of the **Insured's Profession** outside New Zealand

unless otherwise specified in the **Schedule**

#### 4.15 Known claims and circumstances

- a made against, or intimated to, the **Insured** prior to the commencement of the **Policy Period**; or
- b notified under any **Previous Policy**; or
- c arising out of or connected with any facts or **Circumstances** which:
  - i the **Insured** was aware of prior to commencement of the **Policy Period**; and
  - ii a reasonable person in the position of the **Insured** would have considered may give rise to a **Claim** against the **Insured**; or

arising out of or connected with the **Insured's Profession** carried out prior to the **Retroactive Date**, if any, specified in the **Schedule**.

#### 4.16 Obligations to employees

arising out of or connected with the bodily injury, mental injury, sickness, disease or death of any **Employee** of the **Insured** or damage to or destruction of any property of any **Employee**, including loss of use, arising out of, or in the course of their employment.

for any obligation for which the **Insured** may be held liable under the Accident Compensation Act 2001 or any worker's compensation legislation or amendment thereto.

#### 4.17 Pollution

arising out of, based upon or attributable to:

- a the actual, alleged or threatened presence, discharge, dispersal, release or escape of Pollutants; or
- b the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising Pollutants, whether or not any of the foregoing are or should be performed by the **Insured** or by others.

#### 4.18 Property Damage

Arising directly or indirectly, caused by or in any way connected with any damage to or destruction of property, including the loss of use of property.

#### 4.19 Radioactive Contamination and Explosive Nuclear Assemblies

- a for loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or
- b for any legal liability of whatsoever nature, directly or indirectly caused by or contributed to by or arising from:
  - i ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - ii the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### 4.20 Retroactive Date

arising out of, based upon or attributable to any event, act, error or omission occurring or alleged to have occurred prior to the Retroactive Date stated in Item 6 of the **Schedule**.

#### 4.21 Refund of Fees

for a refund of professional fees, by way of damages or otherwise.

#### 4.22 Sanctions

arising out of, based upon or attributable 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.

#### 4.23 Supply of Goods

Alleging or arising from the sale, storage, supply, or distribution of any good or product by or on behalf of the **Insured** other than a **Claim** which arises directly from a breach of a professional duty during the actual provision of medical services.

#### 4.24 Terrorism

resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss or any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism; provided, however, that:



- a if the **Underwriters** allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this **Policy**, the burden of proving the contrary shall be upon the **Insured**; and
- b in the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

For the purposes of this Exclusion, an “act of terrorism” means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious,

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

#### 4.25 Uninsurable

any liability, loss, cost or expense that is uninsurable under New Zealand Law.

#### 4.26 War

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

## SECTION 5: CLAIMS CONDITIONS

### 5.1 Notification

5.1.1 As a condition precedent to the right to be indemnified under this **Policy** for any **Claim** or **Circumstance**, the **Insured** shall provide the **Underwriters** with written notice as soon as practicable, but no later than the end of the **Policy Period**, of any:

- a **Claim** first made against an **Insured** during the **Policy Period**; or
- b **Circumstance** occurring during the **Policy Period**;

however, in the event the **Insured** first becomes aware of any **Claim** or **Circumstance** within the last seven (7) days of the **Policy Period**, notice shall be provided as soon as practicable, but in no event later than seven (7) days after

the Expiration Date set forth in Item 2B of the **Schedule**.

5.1.2 The notification of such **Claim** or **Circumstance** must include full particulars, including the identity of the claimant or potential claimant, details of the allegations and potential allegations against an **Insured**, identification of the project and services giving rise to the **Claim** or potential **Claim**, the potential quantum if known involved in the **Claim** and, in the case of a **Circumstance**, the notification must also include the reasons for believing that a **Claim** is likely to be made.

5.1.3 If notification of any **Circumstance** is provided to the **Underwriters** in accordance with Sections 5.1.1 and 5.1.2 above, any **Claim** that is subsequently made against an **Insured** alleging, arising out of, based upon or attributable to such **Circumstance**, shall be considered made at the time notice of such **Circumstance** was provided.

5.1.4 As a condition precedent to the right to be indemnified under Automatic Extension 2.13, the **Insured** shall provide the **Underwriters** with written notice within thirty (30) days of discovering that any **Document** cannot be located or has been destroyed, damaged or distorted beyond reasonable use, but in no event later than the Expiration Date set forth in Item 2B of the **Schedule**. However, in the event the **Insured** makes such discovery during the last seven (7) days of the **Policy Period**, notice shall be provided as soon as practicable, but no later than seven (7) days after the expiration date set forth in Item 2B of the **Schedule**.

5.1.5 Any notice provided to the **Underwriters** under this Section 5.1 shall be delivered, posted or emailed to the **Underwriters** at the address(es) specified on the **Schedule**. The posting of such notice as aforesaid shall be sufficient proof of notice. Any notice provided to the **Underwriters** under any other section of this **Policy** shall be posted or emailed to the **Underwriters** at the address(es) specified on the **Schedule**.

### 5.2 Legal Defence, Settlement and Allocation

5.2.1 As a condition precedent to the right to be indemnified under this **Policy**, the **Insured** (and any person, firm, or company acting for or on the **Insured's** behalf) must not incur any **Defence**

**Costs**, admit liability for, compromise, settle or make any offer or payment in respect of any **Claim, Circumstance** or other matter for which coverage is provided under this **Policy** without the **Underwriters'** prior written consent, such consent not to be unreasonably withheld or delayed.

**5.2.2** The **Insured** shall defend any **Claim** brought against the **Insured**; however, the **Underwriters** shall have the right but not the duty to take over the investigation, defence and settlement of any **Claim** or **Circumstance**, and the **Underwriters** shall have full discretion in the handling thereof (notwithstanding that a dispute may have arisen between the **Insured** and the **Underwriters**).

**5.2.3** The **Insured** shall not be required by the **Underwriters** to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the **Underwriters** and **Insured** and in the absence of such agreement to be determined by the President of the New Zealand Law Society), shall advise that such proceedings can be contested with a reasonable prospect of success. The cost of such advice shall be regarded as part of the **Defence Costs**.

**5.2.4** If the **Insured** does not agree with a decision by the **Underwriters** to settle a **Claim**, the **Insured** can elect to contest the **Claim** at its own expense but the liability of the **Underwriters** 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 **Underwriters** and in the absence of such agreement to be determined by the President of the New Zealand Law Society). The **Underwriters** shall pay all **Defence Costs** incurred up to the date the **Insured** notifies the **Underwriters** in writing of its election under this section, and shall pay the **Insured** (subject to the Excess) the amount for which the **Claim** could have been so settled. The **Insured** expressly agrees that the **Underwriters'** liability in respect of such **Claim** shall then be at an end.

**5.2.5** This **Policy** shall provide coverage only for covered **Damages** and **Defence Costs**. In the event of a **Claim** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the

**Underwriters** 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.

### 5.3 Cooperation

**5.3.1** As a condition precedent to the right to be indemnified under this **Policy**, the **Insured** must provide to the **Underwriters** (or their appointed agent) promptly, and in any event within fourteen (14) days of any request made by the **Underwriters** (or their appointed agent), the full details together with any other information requested regarding any matter for which the **Insured** has requested to be indemnified. The **Insured** must also provide such cooperation and assistance

as the **Underwriters** (or their legal advisers or appointed agents) may require, including but not limited to:

- a providing all documentation;
- b providing detailed comments on any claim document;
- c providing detailed signed statements of fact;
- d ensuring access to any and all information;
- e providing information, assistance and signed statements of fact in respect of any subrogation proceeding commenced by the **Underwriters**; and
- f providing all other information and assistance, within the time period requested.

**5.3.2** All **Insureds** and all persons, firms and companies acting for or on the **Insured's** behalf shall ensure that all documents that may be relevant to any **Claim, Circumstance** or other matter for which coverage may be provided under this **Policy** shall not be intentionally destroyed or otherwise intentionally disposed of.

**5.3.3** All **Insureds** waive all claims to legal professional privilege between themselves and any solicitor retained by the **Underwriters** to act on the **Insured's** behalf in relation to any **Claim**. The **Insured** shall allow the solicitor to disclose to the **Underwriters** and their reinsurers any information obtained in the course of him or her acting on the **Insured's** behalf.

#### 5.4 Fraudulent Claims

If the **Insured** shall give any notice or make any request in respect of any **Claim**, knowing such notice or request to be false or fraudulent as regards amount or otherwise, this **Policy** shall become void and all entitlements to any indemnity under this **Policy** shall be forfeited.

#### 5.5 Subrogation

The **Underwriters** shall be subrogated to all of an **Insured's** rights of recovery against any third party that may exist before and after any indemnity is provided under this **Policy**. However, the **Underwriters** shall not exercise any such rights against any **Employee**, director, principal, partner or member, except if the **Claim** for which indemnity is provided under this **Policy** was contributed to, or caused by, a fraudulent, dishonest or malicious act or omission by such person. The **Insured** shall, without charge, provide such assistance as the **Underwriters** require in any subrogation proceeding.

## SECTION 6: GENERAL CONDITIONS

### 6.1 Limit of Liability

6.1.1 The **Limit of Liability** for this **Policy**, as set forth in Item 3A of the **Schedule**, is the **Underwriters'** maximum liability under this **Policy**.

6.1.2 Any Sublimit of Liability for this **Policy** as set forth in Coverage Clauses 2.1 to 2.19 of the **Schedule**: (a) shall be part of, and not in addition to, the **Limit of Liability** of this **Policy**; and (b) is the maximum liability of the **Underwriters** for all amounts to which the Sublimit of Liability applies.

6.1.3 Any payment of **Damages** under this **Policy** shall reduce and may exhaust the **Limit of Liability** of this **Policy** set forth in Item 3A of the **Schedule**. If the **Limit of Liability** of this **Policy** is exhausted by the payment of **Damages**, the **Underwriters** will have no further obligations of any kind with respect to this **Policy**, including any obligation to pay any further **Defence Costs**, and the Premium set forth in Item 14 of the **Schedule** will be fully earned.

6.1.4 Any payment of **Damages** under this **Policy** shall reduce and may exhaust the applicable Sublimit of Liability set forth in Coverage Clauses 2.1 to 2.19 of the **Schedule**. If any Sublimit of Liability of this **Policy** is exhausted by the payment of **Damages**, the **Underwriters** shall have no further obligations under this **Policy** with respect to any matter to which such Sublimit of Liability applies, including any obligation to pay any further **Defence Costs**.

6.1.5 **Defence Costs** are not part of, and are in addition to, the **Limit of Liability** and any Sublimit of Liability of this **Policy**. Payment by the **Underwriters** of **Defence Costs** shall not reduce any such **Limit of Liability** or Sublimit of Liability. The **Underwriters** maximum liability for **Defence Costs** is set forth in Item 3B of the **Schedule**

### 6.2 Excess

6.2.1 The **Underwriters** shall only be liable to pay or reimburse the **Insured** for any **Damages** and **Defence Costs** that exceed the applicable Excess set forth in Item 4 of the **Schedule**. The Excess shall be borne by the **Insureds** and remain uninsured. The applicable Excess shall apply to each and every **Claim** or other matter giving rise to coverage under this **Policy**. A single Excess amount shall apply to all **Damages** and **Defence Cost** from all **Related Claims**.

### 6.3 Related Claims

6.3.1 All **Claims** arising out of, based upon or attributable to:

- a the same acts, errors or omissions;
- b a series of related acts, errors or omissions; or
- c the same matter or transaction,
- d shall be considered a single **Claim** for the purposes of this **Policy**.

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

### 6.4 Alteration to risk

The **Insured** must give notice in writing to the **Underwriter** as soon as practicable of any material change to the risk. A material change to the risk includes without limitation activities that

are materially different from those declared in the proposal form or that are outside the normal activities of the **Insured's Profession** specified in the **Schedule**.

#### 6.5 Address for Service

Delta Insurance New Zealand Limited, as agent for and on behalf of certain **Underwriters** at Lloyd's, will accept notification of any **Claims** or **Circumstance** upon presentation to the address set forth in the **Schedule**.

#### 6.6 Policy disputes

This **Policy** and any issue, including all and any disputes, relating to its formation, construction, validity or operation shall be determined by the laws of New Zealand whose Courts shall have exclusive jurisdiction to hear any dispute.

#### 6.7 Other insurance

This **Policy** shall apply only in excess of any other valid and collectable insurance, whether or not such insurance is collected and even if the other insurance policy has a condition to similar effect as this condition 6.7 Other Insurance. For the avoidance of doubt, this condition applies to **Health Professionals** who are **Employees** of the **Named Insured** and have their own medical **Malpractice** or other professional indemnity insurance.

#### 6.8 GST

Where the **Insured** is liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the section or Act) upon receiving any indemnity payment under this **Policy**, the **Underwriters** will indemnify the **Insured** for the costs of that tax. The indemnity under this Section 6.8 is payable by the **Underwriters** in addition to the **Limit of Liability** and any Sublimit of Liability set forth in Items 3A and Coverage Clauses 2.1 to 2.19 of the **Schedule**, respectively.

#### 6.9 Cancellation

##### a Method of cancellation:

- i the **Insured** may cancel **this Policy** at any time by notifying the **Underwriter** in writing.
- ii The **Underwriter** may cancel **this Policy** at any time by giving 30 days' notice in writing to the

**Insured** of the date from which cancellation is to take effect. Such notification is to be delivered via email to the appointed insurance broker for the **Insured**. Proof of emailing is sufficient proof of notification.

##### b Adjustment of premium:

- i after cancellation by the **Insured**, the **Underwriter** will retain or be entitled to the premium for the period during which this **Policy** has been in force. In the event that a **Claim** has been made under this **Policy** no refund of premium is due or payable to the **Insured**.
- ii after cancellation by the **Underwriter**, the **Insured** is entitled to a pro-rata refund of the premium.

#### 6.10 Several Liability

**6.10.1** The liability of an **Underwriter** under this **Policy** is several and not joint with other **Underwriters** party to this **Policy**. An **Underwriter** is liable only for the proportion of liability it has underwritten. An **Underwriter** is not jointly liable for the proportion of liability underwritten by any other **Underwriter**; nor is an **Underwriter** otherwise responsible for any liability of any other **Underwriter** that may underwrite this **Policy**.

**6.10.2** The proportion of liability under this **Policy** underwritten by an **Underwriter** (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

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



**6.10.4** Although reference is made at various points in this clause to “this Policy” in the singular, where the circumstances so require this should be read as a reference to policies in the plural.

### **6.11 Medical practitioners’ insurance requirements**

The **Insured** must take reasonable steps to ensure that all medical practitioners carrying out activities at or from the **Insured’s** premises are fully indemnified members of a medical defence organisation or are otherwise insured for legal liability arising out of medical **Malpractice**.

### **6.12 Insured’s warranty**

It is agreed between the Insured and the Underwriter that the written proposal provided by the Insured forms the basis of the Policy and the Insured warrants the truth of all statements made therein.

### **6.13 Complaints Procedure**

**6.13.1** Any enquiry or complaint relating to this **Policy** should be referred to Delta Insurance New Zealand Limited in the first instance.

**6.13.2** If this does not resolve the matter or the **Insured** is not satisfied with the way the enquiry or complaint has been dealt with, the **Insured** should write to:

Lloyd’s General Representative in New Zealand  
C/O Hazelton Law  
Level 3, 101 Molesworth Street  
P O Box 5639  
Wellington, New Zealand

### **6.14 Late Notice, Innocent Non-Disclosure and Material Non-Disclosure**

The **Underwriters** shall not exercise its right to avoid this **Policy**, nor will the **Underwriters** reject a request for indemnity, solely on the grounds of non-disclosure in the **Proposal Form** or a breach of the notice provisions set forth in Section 5.1, provided that:

**a** the **Insured** shall establish to the **Underwriters’** reasonable satisfaction that such non-disclosure or breach was free of any fraudulent conduct or intent to deceive; and

**b** if the **Insured** was aware, prior to the Inception Date set forth in Item 2A of the **Schedule**, of any **Claim**, **Circumstance** or any matter for which cover is provided under this **Policy**, then if the indemnity available under this **Policy** is greater or wider in scope than that which would have been available, if any, to the **Insured** prior to such Inception Date, the **Underwriters** shall only be liable to indemnify the **Insured** for such amount and on such terms as would have been available to the **Insured** prior to such Inception Date, except that nothing in this provision shall entitle the **Insured** to any indemnity wider or more extensive than is otherwise available under this **Policy**; provided, however, that this subsection (b) shall not apply to Automatic Extension 2.4 (Continuous Cover Extension); and

**c** if such non-disclosure or breach has resulted in prejudice to the **Underwriters** in the handling or settlement of any **Claim** or request for indemnity, the indemnity afforded by this **Policy** in respect of such **Claim** or request for indemnity shall be reduced by such sum as would have been payable, in the **Underwriters’** reasonable opinion, by the **Underwriters** in the absence of such prejudice; and

**d** no indemnity shall be available for any matter for which the **Insured** fails to provide notice within the applicable time frames specified in Section 5.1.1 (no later than the end of the **Policy Period** or no later than seven (7) days after the Expiration Date as set in Item 2B of the **Schedule**).

In consideration of the **Underwriters** waiving its right to avoid this **Policy** in accordance with Section 6.10.1, and in the event of a material non-disclosure in the **Proposal Form**, the **Underwriters** shall be entitled in their sole discretion: (a) to determine the amount of any additional premium to be paid by the **Insured**; and (b) to charge such additional premium to the **Insured**.

## Medical Practice Legal Expenses Pursuit & Defence Cover

### POLICY WORDING

This **Policy** is a contract between **You** (named in the **Policy Schedule**) and the **Underwriters** and is managed by Delta Insurance New Zealand Limited (hereafter referred to as **Us, Our, We**).

Provided the premium specified in the **Policy Schedule** has been paid in the required manner, the **Underwriters** shall provide the insurance specified in this **Policy** (which includes any attached **Endorsements**) and **Policy Schedule** during the **Period of Insurance**.

This document, the **Policy Schedule** and any **Endorsements** attached form **Your Policy**. This document sets out the conditions of the insurance between **You** and **Underwriters**. Please read this **Policy** carefully and if the coverage or benefits provided do not meet **Your** requirements or **You** do not comply with the conditions set out in this section, please return these documents as soon as practicable to the Insurance Intermediary who arranged this **Policy** on your behalf.

It is important that:

- **You** check that the Sections of Cover that **You** have requested are included in the **Policy Schedule**
- **You** check that the information **You** have given **Us** is accurate – please see the “Information That **You** Provide to **Us**” further below
- **You** notify **Your** Insurance Intermediary as soon as practicable of any inaccuracies in the information that **You** have provided to **Us**
- **You** comply with **Your** duties under each Section of Cover for which **You** are insured, and under the terms and conditions of this **Policy** as a whole

### Information That You Provide to Us

**We** are relying upon the information **You** provide to **Us**, either directly or through **Your** Insurance Intermediary, in deciding whether to provide **You** with this **Policy** and on what terms and at what premium.

If **You** become aware that any information **You** have given **Us** is not complete or accurate or **You** fail to notify **Your** Insurance Intermediary that the information **You** have provided **Us** is inaccurate or incomplete, and **We** establish that **You** deliberately or recklessly provided **Us** with false or misleading information, then **Underwriters** may treat this **Policy** as if it never existed and decline all claims.

If **We** establish that **You** carelessly provided **Us** with false or misleading information, then the cover and benefits under this **Policy** could be affected and **Underwriters** might, for example:

- Treat this **Policy** as if it never existed and return **Your** premium paid; and/or
- Cancel this **Policy** and refuse to pay any **Claim**; and/or
- Revise the premium; and/or
- Charge an additional premium; and/or
- not pay a **Claim** in full.

### Important Information

**We** will write to **You** via **Your** Insurance Intermediary if **Underwriters** are going to treat this **Policy** as if it never existed or need to amend the terms of **Your Policy**.

### How to Make a Claim

If **You** need to notify a **Claim** or possible **Claim**, **You** should contact **Our** Claims Department as soon as practicable after **You** become aware of a cause, event or circumstance which has given or may give rise to a **Claim**, dispute or legal proceedings involving **You**.

Tel: +64 9 300 0165

Email: [claims@deltainsurance.co.nz](mailto:claims@deltainsurance.co.nz)

Post: Delta Insurance New Zealand Ltd,  
PO Box 106 276, Auckland 1143.

**You** should provide **Your** Policy Number (which is listed on the **Policy Schedule**) and brief details of the circumstances. **We** will promptly send **You** a Notification Form for completion once contact is made and this must be returned to **Us** as soon as practicable.

If **You** encounter any issues with this process, **You** should contact **Your** Insurance Intermediary who sold **You** this **Policy** (whose contact details will appear on their correspondence sent to **You**). **Your** Insurance Intermediary will be able to assist **You** with making the claim and any further issues that may arise.

### Fraudulent Claims

If **You** or any other person acting on **Your** behalf make any request for payment under this **Policy** knowing it to be fraudulent or false through concealment, misstatement or deliberative provision of false information, in any respect or if **You** ought to reasonably in the circumstances to know it to be fraudulent or false, or where there is collusion between any parties to any dispute or legal proceedings for which **Legal**

**Expenses** cover under this **Policy** is being requested, then **We** may:

- cancel this **Policy** and not refund any premium;
- decline a Claim in full or in part; and/or
- recover any amounts paid in support of any false or fraudulent **Claim**.

### Cancellation

**You** may cancel this **Policy** at any time by providing **Us** with written notice stating when such cancellation shall be effective, either directly or through **Your** Insurance Intermediary who arranged this **Policy** for **You**. **We** will refund the premium **You** have paid to **Us** less the amount of premium which relates to the time period under which **You** have been covered under this **Policy**, provided **You** have not made a **Claim** and post receipt of a No Claims Declaration by **You**. **We** may cancel this **Policy** by giving thirty (30) days written notice to **You** at **Your** last known address and to **Your** Insurance Intermediary. **We** will only do this for a valid reason, for example:

- Failure to pay the premium within 60 days after the Inception Date set out in the **Policy Schedule**; or
- Non-cooperation or failure to supply information or documentation upon request; or
- A change in risk occurring such that **We** are no longer able to provide **You** with insurance cover; or
- If **You** are placed in liquidation, receivership or administration or bankruptcy or if any application is made to the Court or meeting convened for any these purposes

If this **Policy** is cancelled for any reason, then, **We** will refund the premium **You** have paid less the amount of premium which relates to the time period under which **You** have been covered under this **Policy**, provided that **You** have not made a **Claim** and post receipt of a No Claims Declaration by **You**.

### Complaints

**We** are dedicated to providing **You** with a first class service and **Our** wish is to ensure that all aspects of **Your** insurance are dealt with promptly, fairly and efficiently at all times. If **You** feel that **We** have not offered a first class service or **You** have any questions or concerns about this **Policy** or the handling of **Your** claim, in the first instance please contact:

Compliance Department  
Antares Managing Agency Limited  
21 Lime Street London EC3M 7HB  
Tel: +44 207 959 1900  
Email: [compliance2@antaresunderwriting.com](mailto:compliance2@antaresunderwriting.com)

Underwriters will acknowledge **Your** complaint and attempt to resolve it within 10 business days, if Underwriters have all necessary information and have completed any investigation required. If further information or investigation is required, Underwriters will agree reasonable alternative timeframes with **You**. In the unlikely event that this doesn't resolve the matter or **You** are not satisfied with the way **Your** complaint about this **Policy** has been dealt with, **You** can contact the Underwriter directly at:

Lloyd's General Representative in New Zealand  
C/O Hazelton Law  
Level 3, 101 Molesworth Street  
P O Box 5639  
Wellington, New Zealand  
Tel: +64 4 472 7582  
Email: [scott.galloway@hazelton.co.nz](mailto:scott.galloway@hazelton.co.nz)

If **Your** complaint remains unresolved after this, **You** can refer the matter to the Insurance & Financial Services Ombudsman (IFSO). The IFSO provides free and independent dispute resolution services for consumers who have general insurance disputes. The contact details for the IFSO are:

Insurance & Financial Services Ombudsman  
Free Phone: 0800 888 202  
Telephone: + 64 4 499 7612  
Fax: + 64 4 499 7614  
Post: PO BOX 10-845, Wellington 6145, New Zealand  
Email: [info@ifos.co.nz](mailto:info@ifos.co.nz)

### Telephone Legal Advice

**You** have access to commercial legal advice by calling the Delta Legal Line telephone number specified in the **Insurance Schedule** and quoting **Your Policy** Number shown in the **Insurance Schedule**.

### Call recording

In the interest of monitoring the quality of advice and service, and where appropriate to ensure compliance with the terms and conditions under this **Policy**, conversations may be recorded. **You** agree that in all circumstances **We** have **Your** express permission to listen to any of these recordings and expressly authorise the Telephone Adviser to provide these recordings to **Our** Claims and Underwriting departments.

## DEFINITIONS

Wherever words or phrases appear in **bold** type in this **Policy**, they will have the specific meanings described in this Definitions Section, unless otherwise shown in any Sections of Cover that apply as specified in the **Policy Schedule**. Any words used in this **Policy** that are in the singular shall include the plural and vice versa.

### Acts of Parliament

All Acts of Parliament means any Act of the New Zealand Parliament, including any amendments, re-enactments, replacements or Statutory Regulations of such Act.

### Any One Claim

All **Claims** or possible **Claims** arising from the same original cause, event or circumstance.

### Appointed Representative

A lawyer, patent or trademark agent or other appropriately qualified person appointed to act for **You** in accordance with the terms of this **Policy**.

### Business Description

As specified in the **Policy Schedule**.

### Claim

A claim under this **Policy** for **Legal Expenses**.

### Co-Insurance

The amount specified in the **Policy Schedule** that **You** must pay expressed as a percentage of **Legal Expenses** in respect of **Any One Claim** above any **Excess** specified in the **Policy Schedule** before **Underwriters** shall be liable to make any payment under this **Policy**.

### Construction Contract

A contract to provide construction work as defined by the Construction Contracts Act 2002. (For the avoidance of doubt supply of a construction contract to a residential occupier will be deemed a **Construction Contract** for the purposes of this **Policy**).

### Contracting Party

A person, firm or company domiciled within the **Territorial Limits** with whom **You** have a direct contractual relationship.

### Due Date

The date monies owed to **You** first becomes due and payable.

### Endorsement

Any changes to the terms and conditions of this **Policy** or **Policy Schedule** which form part of this insurance contract.

### Employee

Any person who is employed by the **Insured** in connection with the **Insured's Business** and in respect of whose remuneration the **Insured** deducts pay-as-you-earn (PAYE) tax at source.

### Excess

The amount specified in the **Policy Schedule** **You** must pay in respect of **Legal Expenses** in respect of **Any One Claim** before **Underwriters** shall be liable to make any payment.

### Policy Schedule

The document showing details of the cover **You** have purchased.

### Legal Expenses

Any professional fees, expenses and other disbursements reasonably incurred by the **Appointed Representative** with **Underwriters'** prior written consent; and any costs awards made against **You** in any Court or tribunal proceedings or become liable to pay these costs under a settlement made with another party with **Underwriters'** prior written consent, but excluding any costs which **You** may be ordered to pay by a Court for an offence under the Crimes Act 1961.

### Limits of Our Liability

**Our** maximum liability under this **Policy** is limited to the amounts specified in the **Policy Schedule** for:

- **Any One Claim**; or
- All **Claims** notified during the **Period of Insurance**.

### Minimum Sum in Dispute

The sum in dispute between **You** and the **Contracting Party** as specified in the **Policy Schedule** below which **We** shall not be liable to provide cover under this **Policy**.

### Period of Insurance

As specified in the **Policy Schedule**.



## Policy

The contractual terms and conditions of insurance coverage and benefits payable to **You** set out in this document, **Policy Schedule**, and any **Endorsements**.

## Property

Land and/or buildings owned or occupied by **You** for which **You** are legally responsible.

## Statutory Licence

A licence or certificate of registration issued under statute, statutory instrument or by a Government or Local Authority to **You** provided that this licence or certificate is necessary to engage in **Your Business Description**.

For the avoidance of doubt and for purposes of this policy **Statutory Licence** does not include any registration certificate or licence for an individual's medical and/or associated professional practise.

## Territorial Limits

As specified in the **Policy Schedule**.

## We / Us / Our

Delta Insurance New Zealand Limited, who manage this **Policy** on behalf of **Underwriters**.

## You / Your

The company, firm, partnership or trading individual as specified in the **Policy Schedule** and if requested by **You** and agreed in writing by **Us**, also to include any **Employee** including director or partner, conditional on the same **Appointed Representative** acting for all parties insured under this **Policy**.

## CONDITIONS PRECEDENT

**You** must comply with the following Conditions Precedent, unless **We** agree in writing to the contrary, before any contractual duty that **Underwriters** might have to **You** under this **Policy** arises.

### 1. Notification of Claims

It is a condition precedent to **Underwriters'** liability that **We** be notified by **You** in writing during the **Period of Insurance** and as soon as practicable after **You** are aware of any cause, event or circumstance which has given or may give rise to a **Claim**, dispute or legal proceedings involving **You**.

Where this notification has been given, **We** agree to treat any subsequent **Claim** in respect of the same cause, event or circumstance as notified as though the subsequent **Claim** had been notified during the **Period of Insurance**.

### 2. Our Consent

It is a condition precedent to **Underwriters** liability that **Underwriters'** consent to incur **Legal Expenses** must be obtained in writing prior to **You** incurring any **Legal Expenses**. This consent will be given by **Us** if **You** can satisfy **Us** that:

- a it is reasonable to incur **Legal Expenses** having regard to the proportionality between the remedy claimed and the **Legal Expenses** to be incurred and;
- b where **You** are pursuing a claim, there are reasonable prospects of proving the other party's legal liability and of recovering the damages claimed or other legal remedy sought; or
- c where **You** are defending a claim, the other party does not have reasonable prospects of proving **Your** legal liability.

If during the course of a **Claim** **You** cease to satisfy **Us** in respect of the applicable points a-c above, all future payments will cease in respect of **Legal Expenses** related to that **Claim**.

The decision to grant or withhold **Our** consent will be made on receipt of the following information:

- a fully completed insurance claim form; and
- the information and documentation **We** reasonably request; and
- a legal opinion from the **Appointed Representative** as to the applicable points a-c above; and
- any advice **We** may deem necessary to take.

With **Your** agreement, **We** may provide assistance in settling disputes or legal proceedings, the costs of which will be covered under this **Policy** subject to the payment of the **Excess** and **Co-insurance** within the **Limits of Our Liability**.

**Underwriters** may require **You** to obtain an opinion from Senior Counsel at **Your** expense assessing the merits of the subject matter of the **Claim** and any legal action. If based upon this opinion **Underwriters** are satisfied in respect of the applicable points a-c above the **Legal Expenses** in obtaining that opinion will be paid by **Underwriters** within the **Limits of Our Liability**.

In granting **Our** consent **Underwriters** undertake to pay **You** subject to the terms and conditions of this **Policy** and its **Policy Schedule** but this consent does not imply that all **Legal Expenses** will be paid. In particular **Legal Expenses** for matters that go beyond the immediate scope of the **Claim** shall be deemed by **Underwriters** to fall outside the insurance coverage provided by this **Policy**. **Underwriters** reserve the right to limit **Our** consent by time and/or financial amount of **Legal Expenses** and/or stage of proceedings to allow for a review of **Underwriters** continued consent.

If after **Underwriters** prior written consent has been granted it is shown the **Claim** has not been brought within the terms and conditions of this **Policy** and its **Policy Schedule**, **Our** consent will be withdrawn and no insurance coverage under this **Policy** shall be provided for this **Claim**. **Underwriters** shall be entitled to recover any **Legal Expenses** previously paid.

If **You** elect to proceed with the pursuit or defence of a dispute or legal proceedings to which **Underwriters** consent has not been granted because **You** have not satisfied applicable points a-c above, and if **You** are successful in this pursuit or defence, **Underwriters** will pay the **Legal Expenses** incurred after **Underwriters** consent had not been granted subject to the terms and conditions of this **Policy**.

### 3. Disclosure

It is a condition precedent to **Underwriters** liability that:

- a **You** must give the **Appointed Representative** and **Us** all necessary cooperation, assistance and information including a complete and truthful account of the facts of the **Claim** and all relevant documentation or other evidence in **Your** possession; and
- b **You** must provide, obtain or execute all documents as necessary and attend meetings or conferences as requested; and
- c **You** must instruct the **Appointed Representative** to provide **Us** with any information, documents or advice in connection with any **Claim** and the subject matter of any **Claim** even if privileged; and

- d **You** must instruct the **Appointed Representative** to provide **Us** with regular updates on the progress of the subject matter of any **Claim** and inform **Us** as soon as practicable if and when any circumstance adversely impacts the factors on which **We** granted **Our** consent.

The insurance coverage under this **Policy** may be withdrawn if **You** fail to co-operate with **Our** or the **Appointed Representative's** requests or if **You** or the **Appointed Representative** fails to provide **Us** with any information in connection with any **Claim** or the subject matter of any **Claim**.

### 4. Offer of Settlement

It is a condition precedent to **Underwriters** liability that **You** must inform **Us** in writing as soon as an offer to settle the subject matter of the **Claim** is received and/or **You** propose to make an offer of settlement. In deciding whether to accept or reject any settlement offer, **You** must consider the **Legal Expenses** incurred or likely to be incurred and recovered.

No insurance coverage under this **Policy** shall be provided if **You** enter into any agreement to settle without **Our** prior written consent (this consent not to be unreasonably withheld) and **Underwriters** shall be entitled to recover any **Legal Expenses** previously paid.

If **You** reject an offer of settlement which **Underwriters** recommend that **You** accept, or **You** make an offer with which **Underwriters** do not agree, no further insurance coverage under this **Policy** shall be provided for the subject matter **Claim**.

**Underwriters** may at **Our** discretion decide to pay **You** the amount of damages that **You** are claiming or that are being claimed against **You** instead of paying **You** for **Legal Expenses** to pursue or defend the dispute or legal proceedings. Where **Underwriters** exercise this discretion **Underwriters** will cease to be liable for any further **Legal Expenses** for the subject matter **Claim**.

## SECTIONS OF COVER

The Sections of Cover applicable to **You** are specified in the **Policy Schedule**.

**Underwriters** will only pay **You** for **Claims** where the dispute or legal proceedings are or would be within the **Territorial Limits** and the **Claim** is notified during the **Period of Insurance** and the dispute or legal proceedings are in connection with activities within the scope and extent of **Your Business Description**.

### SECTION A – PRACTICE PROPERTY DISPUTES

#### WHAT IS COVERED

**Underwriters** agree to pay **You** for **Legal Expenses** incurred in any dispute or legal proceedings made by or brought against **You** provided **You** will suffer financial loss if **You** fail to pursue or defend the dispute or legal proceedings:

- Over the physical possession of the **Property** provided that all statutory and contractual notices have been correctly served by **You**; or
- Over the terms of a tenancy agreement between **You** and a **Contracting Party** relating to the use or maintenance of the **Property**; or
- The actual or alleged negligence, damage (including trespass) or nuisance to the **Property** other than with a tenant.

### SECTION B – DATA PROTECTION

#### WHAT IS COVERED

**Underwriters** agree to pay **You** for **Legal Expenses** incurred in defending any dispute or legal proceedings brought against **You** regarding an alleged breach under the Privacy Act 1993 or unlawful disclosure of personal information.

### SECTION C – STATUTORY LICENCE

#### WHAT IS COVERED

**Underwriters** agree to pay **You** for **Legal Expenses** incurred in:

- An appeal by **You** against the suspension, revocation, imposed alteration of or refusal to renew a **Statutory Licence**.
- An appeal by **You** against the service of a remedial or stop-work order under the Health and Safety at Work Act 2015

## EXCLUSIONS TO SECTION C

### WHAT WE DO NOT COVER

**Underwriters** shall not be liable to pay **You** in respect of **Claims** arising out of or in connection with any allegation relating to arising from:

- Any suspension, revocation, alteration or refusal to renew a **Statutory Licence** which is imposed as a result of loss of medical or associated professional practice registration or certification of an individual within **Your** practice; or
- Any suspension, revocation, alteration or refusal to renew a **Statutory Licence** which is imposed by an **Act of Parliament** or national or local government regulation or order; or
- Any costs incurred to comply with a notice or order; or
- Driving licences.

### SECTION D – EMPLOYEE'S BREACH OF RESTRICTIVE COVENANTS

#### WHAT IS COVERED

**Underwriters** agree to pay **You** for **Legal Expenses** incurred in pursuing legal proceedings against an **Employee** or **ex-Employee** to obtain the remedy of an injunction against that **Employee** or **ex-Employee** for their breach of an express restrictive covenant in their employment contract where the breach by the **Employee** or **ex-Employee** relates to or arises from:

- Soliciting **Your Employees**, or
- Soliciting **Your** customers or clients.

## EXCLUSIONS TO SECTION D

### WHAT WE DO NOT COVER

**Underwriters** shall not be liable to pay **You** for **Legal Expenses** incurred in respect of any **Claims** arising out of or in connection with individuals who before the inception of this **Policy** either ceased to be **Employees** or were working out their notice period (including where the **Employee** was on a period of gardening leave).

Failure to seek advice will not invalidate **Your** insurance coverage under this **Policy**, but could decrease **Your** prospects of a successful defence in any subsequent disputes or legal proceedings and **Your** ability to make a **Claim**.

## SECTION E – PRACTICE CONTRACT DISPUTES

### WHAT IS COVERED

**Underwriters** agree to pay **You** for **Legal Expenses** incurred in the pursuit or defence of any dispute or legal proceedings made by or brought against **You** in a contractual dispute or legal proceedings with a **Contracting Party** over a contract for the sale of goods or a contract for the hire of goods or a contract for the supply of a service within the meaning set out in the Sale of Goods Act provided that:

- **Legal Expenses** incurred in the pursuit of any dispute or legal proceedings shall be limited to seventy-five percent (75%) of the amount in dispute; and
- The amount in dispute exceeds the **Minimum Sum in Dispute**; and
- Where the contract is a **Construction Contract** the construction operations are carried out or are to be carried out by the **Contracting Party** on **Your Property** and the **Construction Contract** is for the repair or renovation of the **Property** and the repair and renovation of the **Property** is not part of **Your Business Description**; and
- Where the dispute or legal proceedings arise from an undisputed debt, **You** have exhausted all reasonable methods of recovery and the **Appointed Representative** recommends legal action.

### EXCLUSIONS TO SECTION E

#### WHAT WE DO NOT COVER

**Underwriters** shall not be liable to pay **You** in respect of **Claims** arising out of or in connection with:

- Contracts that provide or arrange credit, insurance, securities, guarantees or other financial products and financial services; or
- Contracts where the liability or right of recovery is incurred through **Your** agent or by assignment; or
- Franchise contracts; or
- Contracts of employment; or
- Any tenancy or licence to use any real property.

## GENERAL EXCLUSIONS

### WHAT WE DO NOT COVER

We shall not be liable to pay **You** for **Legal Expenses** incurred in respect of:

1. **Your** defence in civil legal proceedings arising from:
  - a Injury or disease including psychiatric injury and stress; or
  - b Loss, destruction or damage of or to property; or
  - c Alleged breach of any professional duty; or
  - d Any non-contractual wrongful act or infringement of a right (other than as specified in **Section A Practice Property Disputes** if **You** are covered under that Section of Cover as specified in the **Insurance Schedule**); or
2. Any dispute or legal proceedings brought, made or commenced outside the **Territorial Limits**; or
3. **Legal Expenses** incurred without **Our** prior written consent or for a sum in excess of **Our** consent; or
4. Any **Claim** or possible **Claim** relating to or arising from any cause, event or circumstance occurring prior to or existing at inception of this **Policy** and which has or which **You** knew or ought reasonably to have known may give rise to a dispute or legal proceedings by or against **You**; or
5. Fines or other penalties imposed by a Court or tribunal; or
6. Any dispute or legal proceedings in respect of which **You** are, or but for the existence of this **Policy** would be, entitled to any payment under any insurance policy whether a legal expenses insurance or not or under a legal aid certificate or representation order; or
7. Any **Claim** arising from **Your** intentional wrongdoing or an act or omission with negligent disregard as to its consequences; or
8. Any dispute or legal proceedings with Government or Local Authority departments concerning the imposition of statutory charges; or
9. Disputes or legal proceedings between **You** as specified in the **Policy Schedule** or any **Endorsement**, or with any parent company or subsidiary company or associated company or partner; or
10. Any dispute or legal proceedings between **You** and **Us**, or **You** and the **Appointed Representative**, or **You** and **Your** Insurance Intermediary; or



11. Any dispute or legal proceedings arising out of breach or alleged breach of confidentiality or passing off whether related to intellectual property or not; or
12. Any dispute or legal proceedings arising out of the ownership or existence of any intellectual **Property** rights; or
13. Any dispute or legal proceedings arising out of or in connection with actual or alleged defamation or malicious falsehood; or
14. Any **Legal Expenses** incurred in respect of or in connection with a judicial review; or
15. Appeals arising out of legal proceedings to which **Our** prior written consent has not been granted or withdrawn; or
16. Any claim, legal liability or any loss or damage to property or **Property** directly or indirectly caused by or contributed to by seepage, pollution or contamination of any kind; or
17. Any **Legal Expenses** which **You** should or would have had to incur irrespective of any dispute or legal proceedings; or
18. any expense, legal liability or any loss or damage to property or **Property** directly or indirectly caused by or contributed to by:
  - a Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - b The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component; or
19. Any loss, damage, cost or expense directly or indirectly caused by, resulting from or in connection with (including any action taken in controlling, preventing, suppressing or in any way relating to any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
  - a War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  - b Any act including but not limited to the use or threat of force or violence by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any

organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

## GENERAL CONDITIONS

These are the conditions of the insurance coverage under this **Policy** that **You** need to meet as **Your** part of this contract. If **You** do not meet these conditions, **Underwriters** may reject **Your Claim** or a **Claim** payment could be reduced. In some circumstances, **Your Policy** may not be valid.

1. **Instruction and Choice of Appointed Representative and Counsel** **Underwriters** will choose an **Appointed Representative** to act on **Your** behalf in any **Claim**. In all cases the **Appointed Representative** shall be appointed in the name of and on behalf of **You**. If in the course of any **Claim** the **Appointed Representative** wishes to instruct Senior Counsel or an expert, Senior Counsel's or the expert's name and an explanation of the necessity for this instruction must be submitted to **Us** for **Underwriters'** prior written consent to the proposed instruction which will not be unreasonably withheld.

### 2. Payment of Legal Expenses

All invoices and requests for payment for **Legal Expenses** which **You** receive from the **Appointed Representative** should be forwarded to **Us** as soon as practicable upon receipt. If **We** so require **You** must ask the **Appointed Representative** to submit to **Us** the bill of costs for assessment. **You** are responsible for payment of all **Legal Expenses**. **We** may settle these requests for payment of **Legal Expenses** directly at **Our** discretion if requested by **You** to do so. The payment of some **Legal Expenses** by **Us** is not an indication that all **Legal Expenses** will be paid.

### 3. Recovery of Costs

Whenever **You** are awarded costs or under the terms of any settlement where costs are included, those costs are to be repaid to **Us**.

**You** and **Your Appointed Representative** must make every reasonable effort to make a recovery of costs. Where a settlement purports to be a global or a without costs settlement or where costs are awarded but not recovered, **You** agree that a fair and reasonable proportion of that settlement will be

deemed costs and due to **Us**. Where this settlement is paid in instalments all costs to **Us** shall be paid first.

#### 4. Appeal Procedure

If, following legal proceedings to which **We** have given **Our** prior written consent, **You** wish to appeal against the judgment or decision of a Court or tribunal, the grounds for this appeal must be submitted to **Us** through the **Appointed Representative** as soon as practicable so that **We** may consider whether to consent to this further action.

If an appeal is lodged against a judgment or decision of a Court or tribunal made in **Your** favour following legal proceedings to which **We** have given **Our** prior written consent, **You** must notify **Us** as soon as practicable in order that cover may continue. **We** will inform the **Appointed Representative** of **Our** decision. If **We** so require it **You** must co-operate in an appeal against the judgment or decision of a Court or tribunal.

#### 5. Duty to Mitigate

**You** must take all reasonable precautions to avoid, prevent and mitigate **Claims**, disputes or legal proceedings. **You** must use every endeavour and take all reasonable measures to minimise the cost and effect of any **Claim**.

#### 6. Alteration of Risk

**You** must notify **Us** as soon as practicable in writing of any change in circumstances that might affect **Our** decision to provide **You** with this **Policy** or the premium charged. Examples include changes to **Your Business Description** or the acquisition of or by another company.

#### 7. Exercise of Reasonable Care

**You** must exercise reasonable care to prevent injury, loss or damage to **You** or others and comply with all the terms and conditions of this **Policy**.

#### 8. Governing Law and Jurisdiction

This **Policy** and any issue, including all and any disputes, relating to its formation, construction, validity or operation shall be determined by the laws of New Zealand whose Courts shall have exclusive jurisdiction to hear any dispute.

#### 9. Privacy Act 1993

**You** agree that any information provided to **Us** regarding **You** will be processed by **Us** in compliance with the provisions of the Privacy Act 1993 for the purposes of providing insurance, facilitating renewal of insurance and handling **Claims**, if any, which may necessitate providing this information to third parties including **Your** Insurance Intermediary and **Your** data being transferred outside of New Zealand.

#### 10. Your Insolvency or Liquidation

If **You** become insolvent or are placed in liquidation, receivership, administration or bankruptcy or enter into a voluntary arrangement or deed of arrangement or if any application is made to the Court or meeting convened for any these purposes **We** have the right to cease to provide under this **Policy** for **Legal Expenses** despite any previous consent **Underwriters** may have granted.

#### 11. Goods and Services Tax

If **You** are registered for GST, **We** will not pay the GST element of any **Legal Expenses**.

#### 12. Third Parties

This Policy is not intended to create an obligation enforceable at the suit of any person who is not a party to this **Policy**, and any such person shall have no right to enforce any obligation under this **Policy** under the Contract and Commercial Law Act 2017.

#### 13. Sanctions, Export and Exchange Control

**We** shall not be deemed to provide insurance cover and **Underwriters** shall not be liable to pay any **Claim** or provide any benefit under this **Policy** to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose **Us** and/or **Underwriters** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of New Zealand, Singapore, the European Union, United Kingdom or United States of America.

#### 14. Several Liability

**Underwriters'** liability under this **Policy** is several and not joint with other underwriters party to this **Policy**. An underwriter is liable only for the proportion of liability it has underwritten. An underwriter is not jointly liable for the proportion of liability underwritten by any other underwriter; nor is an underwriter

otherwise responsible for any liability of any other underwriter that may underwrite this **Policy**.

The proportion of liability under this **Policy** underwritten by an underwriter (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown on the **Policy** Schedule.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an underwriter. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other

members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion; nor is any member otherwise responsible for any liability of any other Underwriter that may underwrite this Policy. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this section to "this **Policy**" in the singular, where the circumstances so require this should be read as a reference to **Policies** in the plural.