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Physiotherapy New Zealand Professional Indemnity Policy Wording



**PHYSIOTHERAPY
NEW ZEALAND**
Kōmiri Aotearoa

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Important Information

Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, that may affect our decision to insure you and on what terms.

This duty continues during the term of your insurance with us and you must notify us if your circumstances change.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You Do Not Need To Tell Us Anything That:

- reduces the risk we insure you for;
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If You Do Not Tell Us Something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both, or we may refuse to pay a claim and treat the contract as if it never existed.

The Fair Insurance Code

This policy is subject to the protections provided by the Insurance Council of New Zealand Fair Insurance Code.

Claims Made Policy

This policy is a claims made policy of insurance. This means that the policy covers you for claims made against you and notified to us during the period of insurance. The policy does not provide cover in relation to:

- events that occurred prior to the retroactive date, if any, specified in the policy;
- claims notified or arising out of circumstances notified under any previous policy (whether made or issued by us or any other insurer);
- claims made against you prior to commencement of the period of insurance;
- claims arising out of claims and circumstances noted on the proposal form for the current period of insurance or on any previous proposal form;
- subject to what is said in the next paragraph, claims made after expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance.

Where you give notice to us in writing of facts that might give rise to a claim as soon as was reasonably practicable after you become aware of those facts but before the policy expires, you are covered for any claim made against you arising from those facts even if it is not made against you until after the period of insurance has expired.

Privacy

The Privacy Act 1993 applies and requires us to inform you that:

Purpose of Collection

We collect personal information (this is information or an opinion about an individual whose identity is apparent or can reasonably be ascertained and which relates to a natural living person) for the purpose of:

- providing insurance services to you, including to evaluate your application;
- to evaluate any request for a change to any insurance provided;
- to provide, administer and manage the insurance policy following acceptance of an application;
- to investigate and, if covered, manage claims made in relation to any insurance you have with us or other members of the group of companies to which we belong.

The personal information collected can be used or disclosed by us for a secondary purpose to those purposes listed above, but only if:

- the secondary purpose is directly related to the purposes listed above; or
- you authorise the use of the information for that secondary purpose; or
- the use or disclosure of the information for a secondary purpose is otherwise in compliance with the Privacy Act 1993.

Disclosure

We may disclose your personal information (and receive some personal information), when necessary and in connection with the purposes listed above, to and from other members of the group of companies to which we belong, to your insurance broker or our agent, Government bodies, loss assessors, claims investigators, reinsurers, other insurance companies, mailing houses, claims reference providers, other service providers, hospitals, medical and health professionals, legal and other professional advisers.

Consequences if information is not provided

If you do not provide us with the information we need, we will be unable to consider your application for insurance cover, administer your policy or manage any claim under your policy.

Access

You may request access to your personal information by contacting us at the address shown in the schedule.

Resolving Complaints & Disputes

Policyholders should discuss their concerns or complaint with the company that issued their insurance policy or that is handling their claim and attempt to resolve the issue.

In the event the matter is still not resolved the policyholder may contact the Lloyd's Underwriters' General Representative in New Zealand:

Lloyd's Underwriters' General Representative in New Zealand:

PO Box 5639, Wellington 6145
Email: IDRNewZealand@lloyds.com
Tel: 04 472 7582

Lloyd's Underwriters' General Representative will forward details of the complaint to Lloyd's Australia to review. Lloyd's Australia will obtain a full copy of the file from the company that issued the policy and/or managed the claim.

Lloyd's Underwriters' General Representative will assist the liaison with the policyholder and any relevant coverholder if required. Lloyd's Australia will give the policyholder the name and contact details of the person handling the complaint.

Thereafter Lloyd's Australia will send written advice to the policyholder about the progress of the investigation of the complaint.

In the event Lloyd's Australia cannot resolve the matter within two months they will give you the reasons why and advise you of your right to elevate the matter to the Insurance and Financial Services Ombudsman (IFSO) (www.ifso.nz).

Policy Wording

This Policy is underwritten by Certain Underwriters at Lloyd's.

OUR AGREEMENT

This Policy is a legal contract between **you** and **us** and is made up of the Policy Wording and the **Schedule**. **You** pay **us** premium and **you** may access the benefit of cover under the Policy, provided that **you** meet the eligibility criteria at the time.

There Are Also:

- conditions and exclusions which apply to specific covers or sections;
- general exclusions,
- general conditions,
- claims conditions,
- and other terms,

which apply to how this Policy operates.

Excess

If **you** make a claim, **you** must pay the **excess** set out in the **Schedule** for every claim **you** make unless specified otherwise. The **excess** is inclusive of **costs and expenses**.

How Much We Will Pay

The most we will pay in respect of any **claim** is the **limit of indemnity** or any applicable **sublimit**.

The most **we** will pay in the **policy period** is the **aggregate limit**.

The most **we** will pay for cover under the Additional benefits where a **sublimit** applies is set out in the **Schedule**.

Schedule

| | |
|--|--|
| Policy Number | OB23A970A/M/PNZ |
| UMR | B1284OB23A970A |
| Insured | Eligible members of the Physiotherapy New Zealand Inc (PNZ) |
| Business | Membership body representing Physiotherapists |
| Professional Service | Physiotherapy services and related activities |
| Policy Period | From: 31 December 2023, 4:00pm New Zealand Standard Time To: 31 December 2024, 4:00pm New Zealand Standard Time |
| Limit of indemnity | Professional Indemnity: \$1,000,000 any one claim inclusive of all costs and expenses This limit of indemnity is subject to the sub-limits of indemnity as set out in the policy wording. |
| Aggregate Limit of Liability for Professional Indemnity | \$2,000,000 per member in the aggregate inclusive of all costs and expenses |
| Retroactive date | Unlimited excluding known claims or circumstances provided that the insured held equivalent cover as at the date of the performance of the professional services or occurrence giving rise to the claim or inquiry or loss. Otherwise, the Retroactive Date is the inception date of the Policy. |
| Deductible | NIL |
| Policy Wording | Physiotherapy New Zealand Professional Indemnity Policy Wording 10.23 VI |
| Territorial Limits | New Zealand |
| Governing Law | New Zealand |

Section 1: Insuring Clause

In consideration of payment of the premium, **we** will cover you in accordance with the definitions, terms, conditions, **limit of indemnity, sub-limits of indemnity, deductibles, exclusions and endorsements**, if any, of this policy. The words in bold are specially defined, and can be found in the definitions section.

A. Professional Liability

We will pay **your** civil liability for **loss** arising:

- from any **claim** first made against **you** during the **policy period**, and
- solely out of the performance of **your professional services** in connection with **your business**.

Section 2: Sublimits

Inquiry costs and expenses

\$1,000,000 each claim and \$1,000,000 in the aggregate for the policy period inclusive of costs and expenses.

Loss of documents

\$250,000 each claim and \$250,000 in the aggregate for the policy period inclusive of costs and expenses.

Penalties

\$50,000 each claim and \$50,000 in the aggregate for the policy period inclusive of costs and expenses.

Intellectual Property

\$100,000 each claim and \$100,000 in the aggregate for the policy period inclusive of costs and expenses

Continuous Cover

\$1,000,000 each claim and \$2,000,000 in the aggregate for the policy period inclusive of costs and expenses.

Court Attendance Costs

Up to \$250 per day for court attendance costs incurred by **employees** of the **insured** or **subsidiary**; or up to \$500 per day for court attendance costs incurred by directors, partners or principals of the **insured** or **subsidiary**

Refund of Fees

\$1,000 each patient inclusive of costs and expenses and \$1,000 in the aggregate for the policy period.

Extensions of Cover

| | |
|---|---|
| Libel, Slander and Defamation | \$100,000 each claim and \$100,000 in the aggregate inclusive of costs and expenses for the policy period. |
| Cyber Liability & Network Security Liability | Not Insured |
| Criminal Proceedings Costs and Expenses | Not Insured |
| Coronial Inquiry Costs and Expenses | \$250,000 each coronial inquiry and \$250,000 in the aggregate for costs and expenses only for the policy period. |
| Spousal Liability | \$1,000,000 each claim and \$2,000,000 in the aggregate for the policy period inclusive of costs and expenses. |
| Inquiry Mitigation Costs | \$2,500 each coronial inquiry and \$2,500 in the aggregate for costs and expenses only for the policy period. |

Section 3: Additional Benefits

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| Legal Assistance | We will pay for a single consultation with a member of our legal panel on any matter related to the risks insured under the Policy, except in relation to the scope of the Policy. |
| Continuous Cover | We will pay your civil liability for loss arising out of any circumstance giving rise to a claim first made against you during the policy period , or your costs and expenses for any circumstance giving rise to an inquiry first commenced during the policy period , which circumstance ought to have been notified to us under a prior policy but wasn't provided that you have been continuously insured by us since the date when the circumstance should have been notified and the failure to notify us was not deliberate or fraudulent. We will have the discretion to apply to this claim the limit of indemnity and the excess under the prior policy in place when the circumstance should have been notified. |
| Heirs and Estates | In the event of the death or mental incapacity of any director, employee , partner or principal of the insured or a subsidiary or a former director, employee, partner or principal of the insured or a subsidiary , we agree to extend the definition of you and your to include their heirs, estate, legal representatives or assignees. |

Court attendance costs

We will pay:

- up to \$250 per day for court attendance costs incurred by **employees** of the **insured** or **subsidiary**; or
- up to \$500 per day for court attendance costs incurred by directors, partners or principals of the **insured** or **subsidiary**;
- if they attend a civil proceeding as a witness in any **claim** or **inquiry** for which **we** have agreed to indemnify **you**.

You do not have to pay any **excess** if **you** claim under this additional benefit.

Extended Reporting Period

If this Policy is:

- not renewed; or
- cancelled (for any reason other than non-payment of premium);

then **we** will, subject to the full terms and conditions of this Policy, indemnify **you** for any **claim** first made within 60 days after the expiration or cancellation of this Policy and arising:

- solely out of the performance of **your professional services** in connection with **your business** prior to the expiration or cancellation of this Policy; or
- for **bodily injury or property damage** as a result of an **occurrence** in connection with your business provided the **occurrence** is prior to the expiration or cancellation of this Policy.

This additional benefit ceases once **you** are insured under another insurance policy.

Inquiry Costs And Expenses

We will pay **your costs and expenses**, up to the **sublimit**, resulting from **your** response or attendance at any **inquiry** into the performance of **your professional services**, first commenced during the **policy period** or arising out of a **claim** made or circumstance notified during the **policy period**. This additional benefit does not apply in relation to **your** appeal of any **inquiry** or any finding of any **inquiry** except with **our** prior written consent which is within **our** absolute discretion.

Loss Of Documents

(i) Restoration Costs

We will pay **your** costs incurred by **you** to replace or restore **documents**, resulting from the loss of any **documents** (including **your** own):

- for which **you** are legally responsible; and
- which have been unintentionally destroyed, damaged, lost or mislaid in the performance of **your professional services**.

Loss Of Documents
(Continued)

You must:

- undertake a diligent search to attempt recovery of the lost **documents**; and
- discover and report **your** loss during the **policy period**.

We will not pay for:

1. any consequential or indirect loss arising out of or in connection with the loss of any **documents**; or
2. loss of **documents** arising out of the theft, corruption or erasure of any data by a computer virus or by any intentional or malicious erasure by **your** current or former director, **employee**, partner or principal.

(ii) Civil Liability

We will pay **your** civil liability for **loss** arising from:

- any **claim** first made against **you** during the **policy period**; and
- as a consequence of **documents**, the property of or entrusted to **you** in the performance of **your professional services**, and which should be in **your** custody but which have been destroyed, irrecoverably damaged, lost or stolen, and after diligent search cannot be found.

The definition of **documents** is amended for the purposes of this additional benefit (ii) only as follows:

documents means deeds, wills, maps, plans, records, books, letters, certificates, forms and documents of any nature whether written, printed or reproduced by any other method (other than bearer bonds, coupons, tickets, bank notes, currency notes, negotiable instruments, computer systems' records and medical records).

We will not liable under this additional benefit (ii) for:

- any **claim** arising from, based upon, attributable to or in consequence of any actual or alleged defamation, libel or slander;
- any **claim** arising from, based upon, attributable to or in consequence of an actual or alleged breach of confidentiality or privacy.

You do not have to pay an **excess** if **you** claim under this additional benefit.

The maximum amount payable under additional benefit (i) and (ii) shall be the amount shown in the **sublimit**.

Penalties

We will indemnify **you** for **Penalties** up to the **sublimit**, which **we** are not prohibited by law from paying, arising out of a **claim** first made or **inquiry** first commenced during the **policy period** and arising solely out of the performance of **your professional services** in connection with **your business**.

Unlimited Run Off Cover

The **policy period** may be extended with **our** agreement for former and present directors, **employees**, partners or principals of the **insured** or **subsidiary**, provided that:

- he or she has ceased to provide **professional services** in connection with **your business**;
- **you** are insured with **us** as at the date he or she ceased to provide **professional services** in connection with **your business**;
- he or she confirmed the above in writing to **us** prior to the expiration of the **policy period** and he or she has received written confirmation from **us** that the run-off cover has been activated; and
- this clause does not increase the **limit of indemnity** or the **aggregate limit**;

provided that:

- any cover will only apply in respect of any **claim** arising from the **professional services** provided prior to the date that he or she ceased to provide **your professional services** in connection with **your business**; and
- any cover will only apply for as long as **we** continue to provide uninterrupted cover to the **insured** or **subsidiary**.

Intellectual Property

We agree to indemnify **you** for any **claim** first made against **you** during the **policy period** arising in the conduct of **your business** up to the **sublimit** for infringement or alleged infringement of copyright, trademarks, registered designs or patents, provided that **your** infringement is unintentional.

Good Samaritan Acts

We agree to indemnify **you** for **your** civil liability for **loss** arising from any **claim** first made against **you** during the **policy period** and solely out of **your** performance of a **good 12nauthori act**.

Section 4: Exclusions

We will not be liable under this Policy in respect of any **claim, inquiry or loss**, or **our** liability to indemnify under any extension or additional benefit, unless expressly stated to the contrary:

Abuse and Molestation

arising directly or indirectly, based upon, attributable to or in consequence of any actual or alleged verbal, physical or sexual abuse, act of molestation or physical interference of or with any person. We will not be liable for any **costs and expenses** involving consensual contact, consensual touching or consensual relationships between the patient and **you** that is not related to the performance of **your professional services**.

Asbestos

arising directly or indirectly from, based upon, attributable to, or in any way connected with asbestos other than in respect to the provision of **your professional services** for an asbestos-related disease.

Alcohol, Narcotics And Intoxicants

arising directly or indirectly from, based upon, attributable to or in consequence of **you** being under the influence of alcohol, intoxicants or narcotics.

Contractual Liability

arising directly or indirectly, from any liability assumed under a contract or agreement or guarantee (including but not limited to an indemnity and liquidated damages) or warranty which **you** have agreed to give in the course of **your professional services** unless:

- **you** have assumed a liability under contract by reason of having contracted out of the operation of proportional liability legislation; or
- such liability would have attached in the absence of such contract or agreement.

Damage to Products

arising directly or indirectly from:

- property damage to **products** if the damage is attributed to any defect in them or to their inherent nature or unsuitability; or
- repairing or replacing **products** as a result of **your** workmanship or **your** supervision of workmanship.

Directors And Officers And Superannuation Trustee

arising directly or indirectly from, based upon, attributable to, or in consequence of **you** acting in the capacity of a director or officer of a company, association or other legal entity or in the capacity of a superannuation trustee.

Dishonesty And Recklessness

subject to the Dishonesty Extension, arising directly or indirectly from, based upon, attributable to or in consequence of the performance of **your professional services** that is:

- criminal, dishonest, fraudulent, malicious or reckless;
- a deliberate breach of contract, professional duty or any law; or

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| | <ul style="list-style-type: none"> a deliberate infringement of copyright, trademark, registered designs or patent. |
| General Anesthesia | arising directly or indirectly from any operation or procedure carried out under general anaesthesia unless performed in a hospital. |
| Jurisdictional Limits | <ol style="list-style-type: none"> I. brought in a court of law within the territorial limits of the United States of America or its territories or protectorates; or II. arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to the laws of the United States of America or its territories or protectorates; or III. which we are prohibited from paying by law in the jurisdiction concerned. |
| Licensing | arising directly or indirectly from, based upon, attributable to, or in consequence of you or your contractors actually or allegedly not being licensed, registered, or accredited to provide the professional services . |
| Nuclear | arising directly or indirectly from, based upon, attributable to, or in consequence of 14nauthor radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste which is from the combustion of any nuclear fuel. |
| Obligations To Employees | <p>arising directly or indirectly from, based upon, attributable to, or in consequence of</p> <ul style="list-style-type: none"> bodily injury of any employee; or damage to or destruction of any property of any employee including loss of use of property, arising out of, or in the course of their employment with you; or any dispute in connection with employment. |
| Pollution | arising directly or indirectly from, based upon, attributable to, or in consequence of the actual or alleged discharge, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkali, chemicals or waste including, but not limited to asbestos or toxic mould. Waste includes materials to be recycled, reconditioned or reclaimed. |
| Prior Or Pending | <ol style="list-style-type: none"> I. made, threatened or intimated against you prior to the policy period; or II. arising directly or indirectly from, based upon, attributable to, or in consequence of any fact or circumstance or occurrence: <ul style="list-style-type: none"> of which notice has been given, or ought reasonably to have been given, under any previous policy, or disclosed in a proposal form; or of which you first became aware prior to the policy period, and which you knew or ought reasonably to have known had potential to give rise to a claim or inquiry. |

| | |
|---------------------------------------|--|
| Product Recall | arising directly or indirectly from, or in any way involving withdrawing a good or product from sale or recalling any good or product. |
| Refunds Of Fees Or Charges | for return or refund of any professional fees, charges, commissions or other remuneration received by, paid by or payable to you . |
| Related Or Associated Entities | <p>brought or maintained by or on behalf of:</p> <ul style="list-style-type: none"> • you; • any parent company or other entity which owns, controls or manages you; • any successor or assign of you; or • any person who, at the time the professional services giving rise to the claim were provided, was a family member of yours. |
| Radioactivity | <p>arising directly or indirectly from, caused by, contributed to by, or in connection with or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.</p> <p>But this exclusion does not apply to any claim or inquiry arising from the use of radium, radium compounds or radioisotopes when used away from the place where such are made or produced and used exclusively for the provision of professional services and in the conduct of your business.</p> |
| Retroactive Date | <p>arising directly or indirectly from:</p> <ul style="list-style-type: none"> • the performance of your professional services; or • an occurrence; <p>prior to the Retroactive Date stated in the Schedule.</p> |
| Terrorism | <p>arising directly or indirectly from, based upon, attributable to, or in consequence of any actual or alleged act of terrorism or any action taken in controlling, preventing, suppressing or in any way relating to any actual or alleged act of terrorism.</p> <p>This exclusion operates in connection with any act of terrorism regardless of any other cause or event and regardless of the sequence of the act of terrorism and the other cause or event.</p> |
| Trading Debts | arising directly or indirectly from, based upon, attributable to, or in consequence of any trading debt, liability or losses incurred by you or any guarantee given by you for a debt or your insolvency, administration, receivership or bankruptcy. |

Vehicles

arising directly or indirectly from:

- the ownership, possession or use by **you** or on **your** behalf of any motor vehicle or trailer for which compulsory insurance is required by law, other than that arising from damage to any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking; or
- ownership, possession or use by or on **your** behalf of any aircraft, watercraft or hovercraft, other than that arising from the emergency transportation of any patient accompanied by **you**.

War

arising directly or indirectly from, based upon, attributable to, or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or ~~16~~authorized~~16~~on or requisition of or damage to property by or under the order of any government, public or local authority.

Section 5: Claims Conditions

What you need to tell us

You must tell **us** in writing as soon as practicable of any **incident** or **claim** including, but not limited to:

- a patient suffering a major complication; or
- there is an error made, causing harm; or
- an adverse outcome results in significant anger in **your** patient or their family; or **you** receive a letter from a solicitor indicating dissatisfaction or requesting a patient record; or
- you** are concerned that an **incident** has occurred (including a **complaint**, investigation or inquiry) which **you** think may lead to a **claim**.

If **you** do not tell **us** of an **incident** or **claim** as soon as practicable, **you** may not be covered under this policy and **your** right to any cover may be significantly reduced by **us**.

To report an incident or claim you must notify us in writing. In the first instance please notify BMS via the contact details below:

Phone: 0800 999 267

Email pnz@bmsgroup.com

Your notification must include **your** details, the details of the **incident** or **claim** including the date of the **incident** giving rise to the **claim**, the patient's name and details of any allegations.

Assistance And Co-Operation

You must provide **us** with all reasonable assistance **we** require when **you** deal with **us** and **you** will:

- be truthful and frank;
- not behave in a way that is abusive, dangerous, hostile, improper or threatening;
- co-operate fully with **us**, even after **we** have paid a claim.

Claims

Where **we** have accepted **your** claim we will pay **your costs and expenses** in advance provided that the tax invoices are made out to **us**.

Notification

You must notify **us** as soon as you become aware of a **claim** or **inquiry** by sending an email to pnz@bmsgroup.com. **You** may also ask **your** financial services provider to notify **us** on **your** behalf. **You** are responsible for ensuring **your** financial services provider complies with the notification provisions of this Policy.

You must provide **us** with:

- all documentation in **your** possession; and
- information **you** are aware of;

which relates to the **claim** or **inquiry** **you** have notified to **us**.

Allocation

Where a **claim** or **inquiry** is covered only in part by this Policy, **we** and **you** will use best efforts to agree a fair and proper allocation of amounts that are covered and those that are not covered under this Policy.

If **we** and **you** cannot agree on a fair and proper allocation then the matter will be referred to **Queen's Counsel** (to be mutually agreed upon by **you** and **us**) whose opinion will be binding.

The costs of Queen's Counsel's opinion will be regarded as part of the **costs and expenses**.

Defence And Settlement

We may:

- instruct **you** to conduct the defence of a **claim** if **we** believe that it will not exceed the **excess**, in which case **you** will be responsible for **your own costs and expenses** and any settlement up to the amount of the **excess**. In the event that **your** reasonable **costs and expenses** or payment made to dispose of the **claim** exceeds the **excess**, **we** will reimburse **you** those reasonable **costs and expenses**;
- instruct **you** to conduct **your** response and attendance for an **inquiry** if **we** believe that it will not exceed the **excess**, in which case **you** will be responsible for **your own costs and expenses** up to the amount of the **excess**. In the event that **your** reasonable **costs and expenses** exceed the **excess** **we** will reimburse **you** those reasonable **costs and expenses**;
- at **our** sole discretion take over and conduct, in **your** name, the defence or settlement of any **claim** at any time, in which case **we** will then have sole control of that **claim**;
- at **our** sole discretion take over **your** response and attendance for an **inquiry**, in which case **we** will then have sole control of that **inquiry**.

You agree:

1. not to negotiate or settle any **claim**, incur any **costs and expenses** or investigation or other costs and expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **claim, inquiry** or **loss** without **our** prior written consent, provided that **we** shall not unreasonably withhold such consent;
2. that any information that is received by **our** external lawyers in the course of investigating, defending or settling any **claim** made against **you** or **inquiry** can be provided to **us** and relied upon by **us** in relation to any issue that may arise regarding **our** liability to indemnify **you**;
3. that **our** external lawyers may provide advice to **us** on any issue regarding **our** liability to indemnify **you** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **claim** or **inquiry**;
4. further, in the circumstances described under items 2, 3 above, **you** agree:

- a. that **our** communications with **our** external lawyers are privileged and that **you** are not entitled to obtain any such communications;
- b. to waive any entitlement that **you** may have for legal professional privilege between **you** and **our** external lawyers;
- c. if any actual or apparent conflict arises between **our** interests and **your** interests, **our** external lawyers may cease acting on **your** behalf and may continue to act on **our** behalf.

Your Right To Contest

In the event that **we** recommend a settlement in respect of any **claim** and **you** do not agree that such **claim** should be settled, then **you** may elect to contest such **claim**, provided that **our** liability in connection with such **claim** shall not exceed the amount for which the **claim** could have been so settled plus the **costs and expenses** incurred with **our** written consent up to the date of such election, less the **excess**.

Queen's Counsel Clause

We shall not require **you** to contest any **claim** unless a **Queen's Counsel** (to be mutually agreed upon by **you** and **us**) shall advise that such **claim** should be contested.

In formulating such advice, **Queen's Counsel** shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the claimant, the likely **costs and expenses** and the prospects of **you** successfully defending the **claim**.

The cost of such **Queen's Counsel's** opinion shall be regarded as part of the **costs and expenses**.

Section 6: General Conditions

These conditions apply to **your** policy.

Assignment

No assignment of any rights under this Policy shall be effective except when made by written endorsement to this Policy and signed by **us**.

Cancellation

The **insured** can cancel this Policy at any time by telling **us** in writing.

We may cancel this Policy in any of the circumstances permitted by law by informing the **insured** in writing. **We** will give the **insured** notice in person or send it to the **insured's** address (including an electronic address) last known to **us**.

If **you** have paid **your** premium in advance, **we** will refund **you** the proportion of the premium for the remaining **policy period**.

Reasonable Care

You must take reasonable care to prevent or 20nauthor any **loss** that might give rise to a **claim** or **inquiry** under this Policy. At all times, **you** must:

- minimise the cost of any **claim** under this Policy; and
- comply with all laws.

Related Claims

For the purposes of applying any **excess** or **limit of indemnity** or **sublimit**, all **loss** otherwise recoverable under this Policy resulting from or in connection with:

- one and the same act, error or omission or **occurrence**; or
- a series of acts, errors or omissions or **occurrences** arising out of or attributable to the same originating cause, or source,

shall be deemed to be one **claim** or **inquiry**.

Severability/Non-Imputation/Innocent Non-Disclosure

We agree that where this Policy insures more than one party, where one party:

- failed to comply with the duty of disclosure; or
- made a misrepresentation to **us** before the Policy was entered into;

this shall not prejudice the right of any other insured person to indemnity as may be provided by this Policy; Provided that:

- **you** were not aware of the failure or misrepresentation;
- as soon as is reasonably practicable upon becoming aware of any such conduct, **you** advise **us** in writing of all known facts in relation to such conduct; and

Claims Mitigation And Co-Operation

- the conduct of the principals, partners and directors of the **insured** are imputed to the **insured**.

If **you**, either prior to or during the **policy period** become aware of a situation which could, if not rectified, lead to a **claim** or increase the quantum of a **claim**, **you** must use due diligence and do all things reasonably practicable to avoid or diminish any **loss**.

Reasonable Assistance

If at the time of any **loss**, damage or liability there is any other insurance (whether effected by **you** or by any other person) which covers the same **loss**, damage or liability **you** must provide **us** with any reasonable assistance we require to make a claim for contribution from any other insurer(s).

Other Insurance

This Policy does not cover any **claim**, **inquiry** or **loss** or **our** liability to indemnify for which **you** are entitled to be indemnified under any other insurance.

Recovery Action And Uninsured Loss

You must not do anything that may prejudice **our** rights of recovery against any third party, including but not limited to agreeing not to seek any compensation from any other person that is or is potentially liable to compensate **you** for any **loss**.

If **we** pay your **claim**, **we** may seek to recover the amount paid to **you** from the third party who caused the loss. **We** will do this in **your** name and **you** must assist **us** with any reasonable requests.

If **you** have suffered loss which is not covered by this Policy, **we** may offer to attempt to recover this for **you**. **You** may specifically ask **us** to recover this for **you**. **You** will need to give **us** documents supporting **your** loss. Before **we** include any uninsured loss in the recovery action **we** will also ask **you** to agree to the basis on which **we** will handle **your** recovery action. **You** may need to contribute to legal costs in some circumstances.

Material Alteration To Risk

You will give **us** notice in writing as soon as possible of any material alterations to the risk that is the subject of this Policy including but not limited to:

- a. any change in the **professional services** offered by **you**;
- b. **you** going into bankruptcy, receivership, liquidation or any other form of external administration.

Governing Law

This Policy is governed by the law of New Zealand.

Policy Interpretation

The headings in this Policy do not form part of the Policy wording and are for descriptive purposes only.

Lloyd's service of suit

In accepting this Insurance we agree that :

- I. if a dispute arises under this Insurance, this Insurance will be subject to New Zealand law and practice and we will submit to the jurisdiction of any competent Court in New Zealand;
- II. any summons notice or process to be served upon us may be served upon:

Lloyd's Underwriters' General Representative
in New Zealand
PO Box 5639
Wellington 6145
who has authority to accept service;

if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

Section 7: Extensions to Cover – Endorsements

Coronial Inquiry Costs and Expenses Extension

The following extension clause is added to and forms part of this Policy. It is subject to the exclusions and conditions precedent set out below, as well as to the exclusions, terms and conditions of the Policy which are not inconsistent with those below.

We will pay **your costs and expenses**, up to the **sublimit**, resulting from your response or attendance at any inquiry by a Coroner arising out of **your professional services** in connection with **your business**, first commenced during the **policy period** or arising out of a **claim** made or circumstance notified during the **policy period**.

We will not be liable under this extension for any **costs and expenses** arising directly or indirectly from an **occurrence** prior to the Retroactive Date stated in the **Schedule** or arising directly or indirectly from the performance of **your professional services** prior to the Retroactive Date stated in the **Schedule**.

We will not be liable under this extension for any **costs and expenses** in relation to **your** appeal of any inquiry by a Coroner or any finding at any inquiry by a Coroner except with **our** prior written consent which is within **our** absolute discretion.

All other terms, conditions, limitations and exclusions remain unaltered.

The following extension clause is added to and forms part of this Policy. It is subject to the exclusions and conditions precedent set out below, as well as to the exclusions, terms and conditions of the Policy which are not inconsistent with those below.

If a **claim** against **you** which is covered under the insuring clauses or additional benefits includes a **claim** against **your** spouse solely by reason of:

- such **spouse's** legal status as **your spouse**; or
- such **spouse's** ownership or interest in property that the claimant seeks to recover as a result of a **claim** made against **you**,

we agree to indemnify **your spouse** for civil liability for **loss** arising out of such **claim**.

No cover is provided to **your spouse** to the extent that the **claim** alleges any act, error or omission by **your spouse**.

The maximum amount payable under this extension shall be the amount shown in the **sublimit**.

Definitions

Wherever the following words or terms appear in bold in this endorsement, they mean what is set out below:

Spousal Liability Extension

Libel, Slander and Defamation Extension

Spouse

means a lawful spouse, domestic partner (including without limitation same sex partner) or any person deriving similar status by reason of the common law or statute.

All other terms, conditions, limitations and exclusions remain unaltered.

The following extension clause is added to and forms part of this Policy. It is subject to the exclusions and conditions precedent set out below, as well as to the exclusions, terms and conditions of the Policy which are not inconsistent with those below.

We will pay **your** civil liability for **loss** from any **claim** first made against **you** during the **policy period** up to the **sublimit**:

- for any actual or alleged defamation, libel or slander committed by **you** without animosity; and
- solely in the conduct of **your business**; and
- only where, upon **our** reasonable request, **you** issue an apology or expression of regret, the form and content of which are to be approved by **us**.

We will not be liable to pay your civil liability for **loss** under this extension:

- if **you** refuse to issue such an apology or expression of regret upon **our** reasonable request;
- for any **claim** arising from the contents of any journal or publication, or in any communication or contribution to the press or media; or
- for any actual or alleged defamation, libel or slander committed prior to the Retroactive Date stated in the **Schedule**.

All other terms, conditions, limitations, and exclusions remain unaltered.

Inquiry Mitigation Costs

The following extension clause is added to and forms part of this Policy. It is subject to the exclusions and conditions precedent set out below, as well as to the exclusions, terms and conditions of the Policy which are not inconsistent with those below.

If **you** notify **us** of a circumstance that is not covered by this **policy** but **we** believe that it could lead to an **inquiry**, **we** will pay **your costs and expenses**, which **you** incur with a lawyer on **our** legal panel, up to the sublimit, to provide guidance in relation to a possible inquiry.

This extension will not provide for technical advice regarding accounting and billing errors.

Section 8: Additional Policy Clauses

Sanctions Limitation and Exclusion Clause

Sanctions Limitation and Exclusion

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or United States of America.”

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(Re)insurers Liability Clause

(Re)insurers Liability several not joint

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (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 next to its stamp. This is subject always to the provision concerning “signing” below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. 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 (re)insurer that may underwrite this contract. 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.

Several Liability Notice

Proportion of liability

Unless there is “signing” (see below), the proportion of liability under this contract underwritten by each (re)insurer (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 next to its stamp and is referred to as its “written line”.

Where this contract permits, written lines, or certain written lines, may be adjusted (“signed”). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd’s syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd’s syndicate, the total of the proportions underwritten by all the members of a Lloyd’s syndicate taken together) is referred to as a “signed line”. The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

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

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The subscribing insurers’ obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

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Section 9: Words With Special Meanings

Some key words and terms used in the Policy have special meaning. Wherever the following words or terms appear in bold in the policy, they mean what is set out below:

| Word | Specific meaning |
|---------------------------|--|
| Aggregate limit | the amount shown as the Aggregate limit of indemnity in the Schedule . |
| Bodily injury | physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any natural person. |
| Claim | the receipt of any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice, or written demand for compensation. |
| Business | the Business as stated in the Schedule . |
| Costs and expenses | the reasonable legal costs including reasonable appeal costs and other necessary expenses incurred by you or on your behalf. Costs and expenses does not include your overheads or any salaries, wages, fees or benefits of your directors, employees , partners or principals. |
| Documents | any documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material. Documents does not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument. |
| Excess | the amount shown as the excess in the Schedule . |
| Employee | any natural person employed under a contract of service or apprenticeship with you , or any person under your direction, supervision or control including employed students; employee does not include a medical practitioner or any contractor. |
| Good Samaritan act | emergency first aid or medical assistance administered at the scene of a medical emergency, accident or disaster by you who are present either by chance, or in response to an S.O.S call and for which you have no expectation of payment or other reward. |
| Inquiry | an investigation, examination or inquiry by a regulatory authority or disciplinary committee of any association or professional body of which you are a member; inquiry does not include any audit of you or any inquiry by a Coroner. |
| Insured | the insured named on the Schedule . |

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| Insured member | a legal entity or natural person who has paid and been accepted to be covered under the Policy or who is an accepted student or retired member of Physiotherapy New Zealand. |
| Limit of indemnity | the amount shown as the limit of indemnity in the Schedule . |
| Loss | means damages, costs and expenses and awards of damages and costs. Loss does not include taxes, fines or penalties (except for Penalties) payable by you , non-compensatory damages including exemplary, aggravated, punitive, multiple or liquidated damages, or restitutionary relief. |
| Medical practitioner | a person registered or licensed as a medical practitioner under New Zealand law that provides for the registration or licensing of medical practitioners. |
| Occurrence | means an event, including continuous or repeated exposure to conditions, which results in bodily injury or property damage , neither expected nor intended from your standpoint. |
| Penalties | any civil penalty imposed by a regulatory authority or a disciplinary committee of any association or professional body of which you are a member. |
| Policy period | the period specified in the Schedule . |
| Products | <p>anything which:</p> <p>has been sold, supplied, repaired, altered, treated, manufactured, constructed, installed or maintained by you in connection with your business, and</p> <p>has ceased to be in your possession or control.</p> <p>Products does not include:</p> <p>anything sold or supplied to anyone other than retail customers including patients, and/or</p> <p>anything which requires regulatory approval for sale, supply or use in New Zealand and is not so approved.</p> |
| Property damage | the damage to or loss of or destruction of tangible property or loss of use of tangible property resulting directly from property damage to other tangible property. |
| Schedule | the schedule to this Policy, including any endorsement. |

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| Premium | the amount shown as premium in the Invoice . |
| Professional services | the professional service(s) specified in the Schedule . |
| Regulatory authority | a person or entity appointed, constituted or acting under a delegation pursuant to any legislation for the purposes of enforcement of such legislation. |
| Sublimit | the amount shown as a sublimit of indemnity in the Schedule . |
| Queen's Counsel | a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court. |
| Subsidiary | <p>a company or entity of which the insured</p> <p>is the sole owner; or</p> <p>controls the composition of the board of directors; or</p> <p>controls more than half the voting power; or</p> <p>holds more than half of the issued share capital;</p> <p>as at the inception date of the policy period.</p> |
| Terrorism | an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear. |
| Our, us, we | Certain Underwriters at Lloyd's |
| You, your | <p>the insured, subsidiary, and their</p> <p>directors, employees, partners or principals; and</p> <p>former directors, employees, partners or principals.</p> <p>You and your does not include a medical practitioner.</p> |