

# Non-Proprietor Pharmacists Liabilities Insurance Master Policy

Pharmaceutical Defence Limited nominated members



# Making a Choice That's Right for you

PDL's master liabilities insurance policy has been developed in partnership with Guild Insurance, one of Australia's leading professional insurers. It is designed to provide a level of cover that is consistent with requirements of non-proprietor pharmacists who are nominated members of PDL.

This policy-booklet details everything you need to know about what's covered under your policy, and any exclusions or limitations that apply. Please read it carefully and keep it in a safe place with your policy schedule.

# The value of insurance to a practising professional is undeniable.

Thank you for insuring with Guild Insurance. We are pleased to provide you with your policy documentation.

## **Don't trust your livelihood to just any insurer**

For over 50 years PDL has been partnering with Guild Insurance to ensure pharmacists are supported by tailored and comprehensive insurance solutions and a dedicated team of qualified legal experts.

So if the time comes to make a claim, you can enjoy the confidence and peace-of-mind knowing you're insured with one of Australia's leading insurance providers.

## **Cover you can rely on**

As a professional, you are exposed to a number of risks each day, and worrying about them is the last thing that you need. PDL's partnership with Guild Insurance provides comprehensive insurance cover developed to protect you, your livelihood and your reputation so you can get on doing what you do best.

## **About Guild Insurance**

This Policy is underwritten by Guild Insurance Limited, ABN 55 004 538 863 and AFS Licence No. 233791, of Level 13, 171 Collins St, Melbourne Victoria 3000. Guild Insurance Limited (hereafter referred to as We, Us or Our) is part of the Guild Group of Companies, a wholly owned subsidiary of the Pharmacy Guild of Australia.

**If you need assistance at any time,  
please call Pharmaceutical Defence  
Limited (PDL) on 1300 854 838 or go to  
[pdl.org.au](http://pdl.org.au)**

# Making a Claim

When you need to make a claim call  
PDL on 1300 854 838

## Registering your claim with us

As soon as you experience any adverse event that has the potential to lead to a claim covered by your policy, or if a claim is made against you by third party, you need to report it to PDL.

It's important that we know what's happening as soon as possible so that we can help you deal with the situation and manage your claim efficiently. We will immediately offer you support, advice and guidance on what further action to take.

Please follow the points outlined below so the process is easier for you, and for us.

**1. Take all reasonable steps** to minimise the loss or liability and to prevent any further problems arising.

**2.** Contact Pharmaceutical Defence Limited on **1300 854 838** or report the incident online at **pdl.org.au**

**3. When you contact us**, you will be asked to provide us with the following:

- > Details of the incident (when, where, how);
- > Your PDL member number, if available;
- > Details of the adverse event or claim made against you.

Where appropriate we may appoint a solicitor.

## What you must do

To protect our mutual interests in defending a claim, you must do the following:

- > **Make sure you comply** with the general conditions and claims conditions of this policy.
- > **Do not admit liability**, no matter what your own views are concerning the incident.
- > **Forward every letter, demand, writ, summons or other legal process** to us as soon as practicable after you receive it.
- > **Pay any applicable excess** that is stated in the schedule or in this policy-booklet in relation to your claim under this policy.

If the person notifying us of a claim is not a person listed as an insured on this policy, they must obtain your written authority before the claim can proceed.

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# Introduction

## Applying for Cover with Us

Prior to this Policy coming into effect You have provided Us with information in support of Your request for Cover with Us. The information that You have provided to Us is referred to as Your Application for this Policy.

You must ensure the information provided to Us is accurate and that You have complied with Your duty of disclosure.

## Your Policy

Your Policy consists of:

- > the Policy wording;
- > a Schedule; and
- > other documentation indicating a change to the Policy, including Endorsements.

The Policy wording together with the Schedule form the legal contract of insurance between You and Us.

## Complaints and Disputes Resolution

We work hard at building strong relationships with Our clients. However, complaints and disputes may still arise and when that happens Our objective is to resolve any disagreement as amicably and quickly as possible.

We have a formal complaints and dispute resolution process that is fair, efficient and accessible to all Our clients. This service is free of charge to You. Please do not hesitate to contact Us should You have any matter which You feel has not been satisfactorily resolved.

If You would like to make a complaint please call Us during office hours and speak to one of Our staff who will assist You.

If Your complaint cannot be resolved You can request that the matter be referred to Our Dispute Resolution Manager who will endeavour to resolve it through Our internal dispute resolution process.

If Our internal dispute resolution facility is unable to resolve Your dispute and You wish to take the matter further We will provide You with information regarding a free external and independent dispute resolution service or other external dispute resolution options (if any) that may be available to You. Alternatively You may seek independent legal advice at Your own expense.

You can view Our complaints resolution procedures at [www.guildinsurance.com.au](http://www.guildinsurance.com.au).

## General Insurance Code of Practice

We are a signatory to and fully support the General Insurance Code of Practice. The objectives of this Code are to commit

insurers and the professionals they rely upon to higher standards of customer service.

Please contact Us if You would like further information about the Code of Practice. Alternatively, You can view the Code of Practice at [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

## Privacy

We are committed to complying with privacy laws and protecting Your personal information. By entering into a contract with Us, You agree to:

- > the collection, use and disclosure of Your personal information to evaluate, effect, manage and administer Your insurance Cover, financial service or product provided to You by Us, any related company, or in conjunction with Us. This applies to personal information provided previously, currently and in the future;
- > the collection, use and disclosure of Your personal information to inform You of other products and services offered by Us, Our related entities or Your representative;
- > the use and disclosure of Your personal information to test and improve upon the systems used to manage Your Policy or financial product;
- > the collection from, and/or disclosure of, Your personal information to a third party which may include Your professional association, Your employer and Our service providers (including but not limited to other insurers, medical practitioners, lawyers, claims consultants, loss assessors and investigators), where this is relevant for the administration of Your Policy, financial product or a claim under this Policy;
- > the disclosure of Your personal information to overseas recipients, where relevant, such as some of Our reinsurers; and
- > the disclosure of Your personal information to a person, regulatory bodies or other entities if We are required or permitted to do so by law.

If You do not provide the requested personal information We may not be able to evaluate, effect, manage or administer Your Policy and You may also be in breach of Your duty of disclosure.

We will ensure that Your personal information is accurate, up-to-date and complete. You may access personal information We hold about You by contacting Us.

If You would like to make a complaint about how We have handled Your personal information please contact Us and speak to one of Our staff who will assist You.

Our privacy policy contains further information on access, correction and complaints handling procedures and can be accessed online at [www.guildinsurance.com.au/privacy-policy](http://www.guildinsurance.com.au/privacy-policy). Alternatively, You can write to Us at Locked Bag 32010 Melbourne VIC 3001 or contact Us during office hours and We will arrange for a copy of the privacy policy to be provided to You.

# Important Information

**The following important information applies to this Policy. Please read this information carefully and if You are in any doubt as to how this information may affect You please contact Us and ask for an explanation.**

This Policy Covers Your Professional Services arising from Your practise as a pharmacist as You have represented these to Us. It is important for You to advise Us immediately of any changes to Your Professional Services that may result in an increased risk of liability to third parties.

For example, You should advise Us when there is a change in:

- > the nature of Your Professional Services including services for which You individually and/or directly charge to a customer or the carrying out of any pharmacist services or other activities not Covered under this Policy;
- > Your professional registration status including but not limited to cancellation, restriction or lapse of Your professional registration;
- > Your Professional Services not previously disclosed to Us;
- > Your being placed into bankruptcy; or
- > any other change to Your Professional Services whereby the risk Covered under any Section of this Policy is increased.

When We receive Your notification of a change We may:

- > adjust Your Premium; or
- > restrict the scope of Professional Services covered under this Policy.

## Claims Happening Outside of Australia and/or Legal Proceedings in Foreign Courts and/or Legal Jurisdiction

There are limited circumstances in which this Policy provides Cover for any actual or alleged act, error, omission, conduct, Bodily Injury or damage to property happening outside of Australia and only very limited circumstances in which We will Cover You in respect of any such Claim when that Claim is brought in a court outside of Australia.

If You have any queries regarding carrying out or performing pharmacist services overseas or other activities overseas please contact Us to discuss Cover.

## Your 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, may affect Our decision to insure You and on what terms.

You have this duty until We agree to insure You.

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; or
- > 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.

If Your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

## Excess

An Excess may apply to Your claim under this Policy. The amount of any Excess applicable is stated in the Schedule or in this policy-booklet.

We will deduct the amount of any Excess from the amount We pay in relation to any claim under this Policy. The Excess will be deducted from Your claim before the Limit of Liability amount is applied.

## Financial Support for Associations

Where We have a referral agreement with a professional association We may provide financial support to that association. Such support can include:

- > sponsorship;
- > marketing assistance;
- > a referral fee of up to ten per-cent (10%) of Your annual Policy Premium before government charges.

If You would like to know if Your association has entered into a referral agreement with Us or require further information please contact Us.

### GST – Goods and Services Tax

This Policy has a GST provision in relation to Premiums and to payments We may make in respect of claims under this Policy.

Your Policy contains claims conditions in respect of:

- > GST and claim payments for compensation;
- > GST and claim payments for legal and other costs; and
- > Our limitation for GST payment.

You should read the claims conditions contained in this policy-booklet to make sure You understand both Our and Your obligations in respect of how GST will be treated in respect of the payment of claims under this Policy.

### Limits of Liability

Cover under this Policy is limited to the Limits of Liability stated in the Schedule. The Limits of Liability applicable to this Policy represent the full extent of Our maximum liability to You in relation to all claims under this Policy.

### Limitations of Cover

#### Claims Made and Notified Cover

This Policy operates on a 'claims made' basis of Cover.

A 'claims made' basis of Cover means that We only Cover Claims first made against You during the Period of Cover. You must advise Us during the Period of Cover of any Claim first made against You by another party. If You do not notify Us during the Period of Cover You may not be Covered under this Policy.

You should refer to the Policy wording for the full description of the 'claims made' Cover provided under this Policy.

This Policy **does not** provide Cover in relation to:

- > acts, errors, omissions or conduct occurring or committed by You prior to the Retroactive Date of the Policy Section Cover as stated in the Schedule (if such a date is actually specified in the Schedule);
- > a Claim made after the expiry of the Period of Cover even though the act, error, omission or conduct giving rise to the Claim may have occurred during the Period of Cover;
- > Claims made, threatened or intimated against You prior to the commencement of the Period of Cover;
- > facts or circumstances of which You first became aware prior to the Period of Cover and which You knew or ought reasonably to have known had the potential to give rise to a Claim or other claim Covered under this Policy; or
- > any Claim, fact or circumstance that may give rise to a Claim or Inquiry disclosed or reported to Us or any other insurer under any insurance policy prior to the Period of Cover.

Where You have given notice in writing to Us of any facts or circumstances that might give rise to a Claim against You as soon as reasonably practicable after You become aware of those facts or circumstances but before the expiry of the Period of Cover You may have rights under Section 40(3) of the Insurance Contracts Act 1984 to be indemnified in respect of any Claim subsequently made against You arising from those facts or circumstances notwithstanding that the Claim is made after the expiry of the Period of Cover.

Any such rights arise under the Insurance Contracts Act 1984 legislation only. The terms and effect of this Policy are that You are not Covered for Claims made against You after the expiry of the Period of Cover.

### Premiums

Your Premium will be subject to the inclusion of:

- > GST in accordance with relevant taxation legislation; and
- > stamp duty as imposed by the relevant legislation of each Australian State or Territory.

### Waiver of Rights and Subrogation

#### Waiver of Rights

No provision of this Policy, either in whole or in part, shall be considered to have been waived by Us unless the provision is expressly stated in writing to be waived by Us.

Where We do waive Our rights to subrogation that waiver will be stated in any relevant Section of this Policy. You should refer to the Policy wording for those Sections where such a waiver applies.

#### Subrogation - Preventing Our Right to Recovery

If You have agreed not to seek compensation from another person who is liable to compensate You for any liability which is Covered under this Policy We may not Cover You under this Policy for that liability.

# Your Policy

This policy-booklet together with the Schedule We provide to Pharmaceutical Defence Limited or to You and any Endorsement form Your insurance Policy with Us.

## **Our Agreement with You**

We agree to provide You with the Cover set out in this Policy and which is stated in the Schedule.

The Cover is in force for the Period of Cover stated in the Schedule.

You have paid Your Premium to Pharmaceutical Defence Limited and Pharmaceutical Defence Limited have paid Us the Premium in accordance with the terms set out in the Schedule.

## **Exclusions, General Conditions, Claims Conditions and Definitions**

This Policy has:

- > exclusions;
- > general conditions;
- > claims conditions; and
- > definitions;

that will apply to this Policy.

## **Grammatical Forms**

A number of the defined words or terms in this Policy have different grammatical forms. The meaning given to them in their definition applies specifically to one of their grammatical forms but their other grammatical forms have a corresponding meaning.

## **Headings**

This policy-booklet contains headings which are used for reference only and must not be used when interpreting this Policy.

## **Singular and Plural Words**

In this Policy, a reference to the singular includes the plural and vice versa.

# Section – Professional Indemnity

## What is Covered

We will Cover You for Your civil liability in respect of any Claim as a result of a breach of professional duty by You in the provision of the Professional Services where such Claim is first made against You and notified to Us during the Period of Cover.

The Cover provided includes but is not limited to Your civil liability in respect of any Claim as a result of any of the following in the provision of the Professional Services:

Your actual or alleged unintentional:

- a. defamation, libel or slander;
- b. unlawful discrimination;
- c. breach of Australian Consumer Law under the Competition and Consumer Act 2010 (Cth) and other legislation enacted for the protection of consumers in any State or Territory;
- d. infringement of any copyright, trademark, registered design or patent;
- e. breach of any duty of confidentiality arising at law; and
- f. breach of any privacy legislation in Australia or of any other applicable legislation in Australia in respect of privacy of personal information.

### Defence Costs

Where We agree to provide Cover to You for a Claim Covered under this Section We will also pay Defence Costs.

### Limit of Liability

Our maximum liability under this Section in respect of:

- a. any one Claim will be limited to an amount not exceeding the Limit of Liability amount for Limit of Liability any one Claim or where applicable to the sub-limit amount in respect of any specific Cover under this Section; and
- b. all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding the Limit of Liability amount for Limit of Liability in the Aggregate any one Period of Cover or where applicable to the sub-limit amount in respect of any specific Cover under this Section.

The Limit of Liability amount in respect of each of clauses a. and b. above **is inclusive of Defence Costs and any amounts payable** under any and all of the additional benefits under this Section or of any other extension of Cover under this Section.

We will not be liable to defend or to continue to defend any Claim or pay or continue to pay any Defence Costs associated with

such defence once We have paid an amount equivalent to the Limit of Liability amount in each of clause a. or b. above.

The Limit of Liability amount for each of clause a. or b. above will not be reduced by the Excess amount payable by You.

### Insured Member to Insured Member Liability

Where more than one nominated member comprises 'You' under this Section each nominated member will be considered as separate and distinct from the other and the word 'You' will apply to each nominated member as if a separate Policy had been issued to each nominated member:

### Provided that:

nothing in this clause will increase Our Limit of Liability in respect of any one Claim made against any one nominated member Covered under this Policy or for all Claims in the aggregate made against one nominated member Covered under this Policy during the Period of Cover.

### Multiple Claims

All acts, errors, omissions or conduct which are in any way related to or originate from one source or original cause shall jointly constitute a single act, error, omission or conduct. Where a single act, error, omission or conduct or causally connected or interrelated acts, errors, omissions or conduct result in more than one Claim or a series of Claims all such Claims shall jointly constitute one Claim and the Limit of Liability any one Claim and one Excess shall apply to that Claim.

## Additional Benefits

We will, subject to all of the provisions of this Policy, Cover You in relation to the following additional benefits.

Our liability will be limited to the amount stated in the relevant additional benefit or, if no amount is stated, the Limit of Liability amount stated in the Schedule.

### Continuous Cover

Notwithstanding exclusion 'Known Circumstances or Known Claims' We will Cover You for Your civil liability in respect of a Claim first made against You or a notice of an Inquiry first served on You during the Period of Cover where such Claim or Inquiry arises from a fact or circumstance:

- a. You first became aware of prior to the Period of Cover and You knew or ought to have reasonably known might give rise to a Claim or Inquiry; and
- b. You did not notify Us of such fact or circumstance under the Policy in force with Us at the time when You first became aware of such fact or circumstance:

**Provided that:**

- i. there is an absence of fraud in Your not notifying Us of such fact or circumstance;
- ii. We have continued to be Your professional indemnity insurer without interruption between the date when the fact or circumstance could have been first notified to Us and the date the Claim or Inquiry was actually notified to Us;
- iii. other than the Limit of Liability amount Cover is subject to all of the provisions and Excess of this Section;
- iv. Cover is limited to the Limit of Liability amount of the policy for the period of cover in force at the time when You could have first notified Us of such fact or circumstance; and
- v. We may reduce Our liability under this Section to the extent of any prejudice suffered by Us due to Your not notifying Us of such fact or circumstance when You first became aware of it.

**Court Attendance Costs**

When We agree to Cover You for a Claim under this Section and if You are legally required to attend court as a witness, or where We require such attendance, in respect of such a Claim We will reimburse You for any out-of-pocket expenses incurred by You as a result of Your court attendance.

Our maximum liability under this additional benefit will be limited to an amount not exceeding:

- a. \$500 per day for any one Claim; and
- b. \$25,000 for all Claims in the aggregate during any one Period of Cover;

unless otherwise stated in the Schedule:

**Provided that:**

- i. You must provide Us with invoices and accounts in support of such out-of-pocket expenses incurred as a result of attending court; and
- ii. We will not reimburse You for any loss of earnings, salary or other lost remuneration or associated expenses.

No Excess will apply to this additional benefit.

**Fraud and Dishonesty**

Notwithstanding exclusion 'Fraudulent, Dishonest, Criminal, Malicious or Wilful or Intentional Acts', We will Cover You for Your civil liability in respect of any Claim as a result of any fraudulent, dishonest, criminal or malicious act, error, omission or conduct including Medicare Benefits Fraud in the provision of the Professional Services where the Claim was first made against You and notified to Us during the Period of Cover:

**Provided that:**

**We will not Cover:**

- i. any of You who committed or condoned the act, error, omission or conduct excluded under exclusion 'Fraudulent, Dishonest, Criminal, Malicious or Wilful or Intentional Acts'; or
- ii. any Claim relating to:
  - Money or electronic funds or records of electronic funds; or
  - the unauthorised or illegal transfer of Money, land or other property by any means.

**Good Samaritan Acts**

We will Cover Your civil liability in respect of any Claim as a result of Good Samaritan Acts where:

- a. such Claim is first made against You during the Period of Cover and notified to Us during the Period of Cover; and
- b. You were not acting under the terms of a contract for service or apprenticeship with another employer, entity or practice at the time of the Good Samaritan Acts.

**Inquiries and Proceedings**

We will Cover You for Your Inquiry Legal Costs incurred by Us or by You with Our prior written consent in Your legal representation at any Inquiry:

**Provided that:**

- i. notice of the Inquiry is first served on You and notified to Us during the Period of Cover; and
- ii. You are legally required to respond to and/or attend the Inquiry:

**Provided that:**

**We will not Cover** You under this additional benefit for an act, error, omission or conduct arising from Your provision of the Professional Services when You were unregistered, unauthorised, ineligible, not accredited or disqualified to practise or to provide the Professional Services at the time of such act, error, omission or conduct.

Our maximum liability in respect of any one Inquiry and in the aggregate for all Inquiries Covered under this additional benefit during the Period of Cover will be limited to the amount stated in the Schedule for Inquiries and Proceedings.

**Loss of Documents**

We will Cover You for Your civil liability in respect of any Claim for the loss of or damage to Business Documents not owned by You but which are in Your custody or control in the ordinary course of

Your Professional Services and for which Business Documents You are legally responsible:

**Provided that:**

- i. the loss or damage occurred and was first discovered by You during the Period of Cover;
- ii. the loss or damage occurred within the territorial limits of Australia;
- iii. You notified Us within thirty (30) days from first discovery of the loss of or damage to such Business Documents and prior to the expiry of the Period of Cover;
- iv. You must provide Us with invoices and accounts in support of the costs and expenses incurred by You in replacing or restoring such Business Documents for Our consideration and approval; and
- v. any Business Document held in electronic format is duplicated via daily back-up of material capable of restoring any lost or damaged document to its original status:

**Provided further that:**

**We will not Cover** You for:

- vi. loss of or damage to Business Documents arising from a computer virus or the theft, corruption or erasure of any data by a former Insured;
- vii. loss of or damage to Business Documents brought about by wear and tear, vermin, mould or mildew or any other gradual deterioration; or
- viii. consequential or indirect loss of any kind.

Our maximum liability under this additional benefit for any one Claim and all Claims in the aggregate during the Period of Cover will be limited to the Loss of Documents sub-limit stated in the Schedule.

An Excess of \$1,000 costs inclusive will apply to this additional benefit.

**Reinstatement of Limit of Liability**

Where the Limit of Liability amount is exhausted partially or totally by the payment of a Claim or Claims Covered under this Section We will reinstate the Limit of Liability amount up to the maximum aggregate Limit of Liability for Section – Professional Indemnity during the Period of Cover to Cover You for any subsequent Claim or Claims Covered under this Section:

**Provided that:**

- i. We will only reinstate the Limit of Liability amount for any such subsequent Claim or Claims arising from acts, errors,

omissions or conduct unrelated to any Claim or Claims already Covered (whether in whole or in part) within the original Limit of Liability amount;

- ii. Our aggregate liability for all Claims Covered under Section – Professional Indemnity will not exceed the Limit of Liability in the Aggregate;
- iii. notwithstanding the aggregate Limit of Liability amount available Our maximum liability in respect of any one Claim or Claims arising from the same or interrelated acts, errors, omissions or conduct will be limited to an amount not exceeding the Limit of Liability amount for Section – Professional Indemnity inclusive of any additional benefits or other amounts Covered and Defence Costs; and
- iv. this additional benefit will not apply to the extent that there is other insurance cover available to You in excess of the original Limit of Liability amount under this Section.

**Run-off Cover**

We will Cover You if, on or after 30 April 2015, You:

- a. permanently retire from the provision of the Professional Services; or
- b. permanently cease to provide the Professional Services;

for Claims first made against You or notices of Inquiry first served on You and notified to Us during the Period of Cover on or after the happening of any of the matters listed in clauses a. or b. above:

**Provided that:**

- i. such Claim or Inquiry arises out of an act, error, omission or conduct which occurred prior to the date of the happening of any of the matters listed in clauses a. or b. above but on or after the Retroactive Date; and
- ii. Cover shall only continue up to the expiry of the Period of Cover and is only in respect of Claims or Inquiries arising from an act, error, omission or conduct occurring whilst We were Your professional indemnity insurer:

**Provided further that:**

all Cover under this additional benefit shall cease if:

- iii. You cease retirement;
- iv. You resume Your conduct of any of the Professional Services; or
- v. another policy of insurance is arranged to insure any liability arising from the retirement or permanent cessation of the Professional Services.

### Teaching, Publications, Expert Opinion Reports

We will Cover You for Your civil liability in respect of any Claim as a result of a breach of professional duty by You in the provision of any lecturing, mentoring, teaching or training services by You including the provision of any expert opinion reports, articles or other publications written by You, directly relating to Your Professional Services:

#### Provided that:

- i. such Claim is first made against You and notified to Us during the Period of Cover; and
- ii. **We will not Cover** any teaching or training institution or the publisher of any article or publication written by You.

### Temporary Leave of Absence Cover

When You commence a Temporary Leave of Absence We will Cover You during the Period of Cover for Your civil liability in respect of any Claim or for Your Inquiry Legal Costs as a result of a breach of professional duty by You in the provision of the Professional Services:

#### Provided that:

- i. such Claim or Inquiry is first made against You and notified to Us on or after the commencement date of Your Temporary Leave of Absence;
- ii. We will only Cover You under this additional benefit for Claims or Inquiries in respect of any act, error, omission or conduct committed or alleged to have been committed by You prior to the commencement date of Your Temporary Leave of Absence;
- iii. We will only Cover You under this additional benefit for a period no longer than thirty (30) months immediately following the commencement date of Your Temporary Leave of Absence;
- iv. all Cover under this additional benefit shall cease immediately upon the cessation of Your Temporary Leave of Absence; and
- v. Cover shall only continue up to the expiry of the Period of Cover and is only in respect of Claims or Inquiries arising from an act, error, omission or conduct occurring whilst We were Your professional indemnity insurer.

For the purpose of this additional benefit:

'Temporary Leave of Absence' means:

You temporarily ceasing to practise the Professional Services due to You:

- a. maternity or paternity leave;

b. illness or injury;

c. study; or

d. travel or holiday.

### Volunteer Services

We will Cover You for Your civil liability in respect of any Claim as a result of Volunteer Services where such Claim is first made against You during the Period of Cover and notified to Us during the Period of Cover.

# Section – Public and Products Liability (claims made)

## What is Covered

### Public Liability

We will Cover You for Your civil liability in respect of any Claim for Bodily Injury or Property Damage where such Claim is first made against You and notified to Us during the Period of Cover as a result of an Occurrence happening in connection with Your Business:

#### Provided that:

**We will not Cover** You under Public Liability for any Bodily Injury or Property Damage as a result of an Occurrence happening in connection with Your Products.

### Products Liability

We will Cover You for Your civil liability in respect of any Claim for Bodily Injury or Property Damage where such Claim is first made against You and notified to Us during the Period of Cover as a result of an Occurrence happening in connection with the nature, condition or quality of Your Products:

#### Provided that:

**We will not Cover** You under Products Liability for any Bodily Injury or Property Damage which is Covered or could be Covered under Public Liability.

### Defence Costs

Where We agree to provide Cover to You for a Claim Covered under either Public Liability or Products Liability We will also pay Defence Costs.

### Limit of Liability

#### Public Liability

Our maximum liability under this Section for Public Liability in respect of:

- a. any one Claim will be limited to an amount not exceeding the Limit of Liability amount stated in the Schedule for Public Liability for Limit of Liability any one Claim or where applicable to the sub-limit amount stated in the Schedule in respect of any specific Cover under this Section; and
- b. all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding the Limit of Liability amount stated in the Schedule for Public Liability for Limit of Liability in the Aggregate any one Period of Cover or where applicable to the sub-limit amount in respect of any specific Cover under this Section.

The Limit of Liability amount in respect of each of clauses a. and b. above **is inclusive of Defence Costs and any amounts payable** under any and all of the additional benefits under this Section or of any other extension of Cover:

#### Provided that:

- i. We will not be liable to defend or to continue to defend any Claim or pay or continue to pay any Defence Costs associated with such defence once We have paid an amount equivalent to the Limit of Liability amount in each of clause a. or b. above; and
- ii. the Limit of Liability amount for each of clause a. or b. above will not be reduced by the Excess amount payable by You.

#### Products Liability

Our maximum liability under this Section for Products Liability in respect of:

- a. any one Claim will be limited to an amount not exceeding the Limit of Liability amount stated in the Schedule for Products Liability for Limit of Liability any one Claim or where applicable to the sub-limit amount stated in the Schedule in respect of any specific Cover under this Section; and
- b. all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding the Limit of Liability amount stated in the Schedule for Products Liability for Limit of Liability in the Aggregate any one Period of Cover or where applicable to the sub-limit amount in respect of any specific Cover under this Section.

The Limit of Liability amount in respect of each of clauses a. and b. above **is inclusive of Defence Costs and any amounts payable** under any and all of the additional benefits under this Section or of any other extension of Cover:

#### Provided that:

- i. We will not be liable to defend or to continue to defend any Claim or pay or continue to pay any Defence Costs associated with such defence once We have paid an amount equivalent to the Limit of Liability amount; and
- ii. the Limit of Liability amount for each of clause a. or b. above will not be reduced by the Excess amount payable by You.

#### Insured Member to Insured Member Liability

Where more than one nominated member comprises 'You' under this Section each nominated member will be considered as separate and distinct from the other and the word 'You' will apply to each nominated member as if a separate Policy had been issued to each nominated member:

#### Provided that:

nothing in this clause will increase Our Limit of Liability in respect of any one Claim made against any one nominated member Covered under this Policy or for all Claims in the aggregate made against one nominated member Covered under this Policy during the Period of Cover.

### Multiple Claims

Where in respect of each of:

- > Public Liability; or
- > Products Liability;

a single Occurrence results in more than one Claim or a series of Claims against You all such Claims shall jointly constitute one Claim and one Limit of Liability and one Excess shall apply.

### Additional Benefits

We will, subject to all of the provisions of this Policy, also Cover You in relation to the following additional benefits.

Our liability will be limited to the amount stated in the relevant additional benefit or, if no amount is stated, the Limit of Liability amount stated in the Schedule.

### Conferences, Training, Teaching

We will Cover You for Your civil liability in respect of any Claim for Bodily Injury or Property Damage as a result of an Occurrence happening in connection with Your attendance at any professional conference, mentoring, training or teaching facility during the course of Your Business and where such Claim is first made against You and notified to Us during the Period of Cover.

### Continuous Cover

Notwithstanding exclusion 'Known Circumstances or Known Claims' We will Cover You for Your civil liability in respect of a Claim first made against You during the Period of Cover where such Claim arises from an Occurrence:

- a. You first became aware of prior to the Period of Cover and You knew or ought to have reasonably known might give rise to a Claim; and
- b. You did not notify Us of such Occurrence under the policy in force with Us at the time when You first became aware of such Occurrence:

#### Provided that:

- i. there is an absence of fraud in Your not notifying Us of such Occurrence;
- ii. We have continued to be Your public and products liability insurer without interruption between the date when the Occurrence could have been first notified to Us and the date the Claim was actually notified to Us;
- iii. other than the Limit of Liability amount Cover is subject to all of the provisions and Excess of this Section;

- iv. Cover is limited to the Limit of Liability amount of the policy for the period of cover in force at the time when You could have first notified Us of such Occurrence; and
- v. We may reduce Our liability under this Section to the extent of any prejudice suffered by Us due to Your not notifying Us of such Occurrence when You first became aware of the Occurrence.

### Reinstatement of Limit of Liability

#### Public Liability

Where the Limit of Liability is exhausted partially or totally by the payment of a Claim or Claims Covered under this Section in respect of Public Liability We will reinstate the Limit of Liability amount up to the maximum aggregate Limit of Liability for Public Liability during the Period of Cover to Cover You for any subsequent Claim or Claims Covered under Public Liability:

#### Provided that:

- i. We will only reinstate the Limit of Liability amount for any such subsequent Claim or Claims arising from any Occurrence unrelated to any Claim or Claims already Covered (whether in whole or in part) within the original Limit of Liability amount;
- ii. notwithstanding the aggregate Limit of Liability available Our maximum liability in respect of any one Claim or in the aggregate for all Claims arising from the same or interrelated Occurrence will be limited to an amount not exceeding the Limit of Liability amount for Public Liability inclusive of any additional benefits or other amounts Covered and Defence Costs;
- iii. Our aggregate liability for all Claims Covered under Public Liability will not exceed the Limit of Liability amount for Limit of Liability in the Aggregate any one Period of Cover; and
- iv. this additional benefit will not apply to the extent that there is other insurance cover available to You in excess of the original Limit of Liability amount of this Section.

#### Products Liability

There is no reinstatement of the original Limit of Liability available for any Claim Covered under this Section in respect of Products Liability.

### Run-off Cover

We will Cover You if, on or after 30 April 2015, You:

- a. permanently retire; or
- b. permanently cease to conduct the Business;

for Claims Covered under Public Liability or Products Liability which are first made against You and notified to Us during the

Period of Cover on or after the happening of any of the matters listed in clauses a. or b. above:

**Provided that:**

- i. such Claim arises out of an Occurrence happening prior to the date of the happening of any of the matters listed in clauses a. or b. above but on or after the Retroactive Date; and
- ii. Cover shall only continue up to the expiry of the Period of Cover and is only in respect of Claims arising from an Occurrence happening whilst We were Your public and products liability insurer:

**Provided further that:**

all Cover under this additional benefit shall cease immediately if:

- iii. You cease retirement;
- iv. You resume Your conduct of the Business; or
- v. another policy of insurance is arranged to insure any liability arising from the retirement or permanent cessation of the Business.

**Temporary Leave of Absence Cover**

When You commence a Temporary Leave of Absence We will Cover You during the Period of Cover for Your civil liability in respect of any Claim for Bodily Injury or Property Damage as a result of an Occurrence happening in connection with Your Business:

**Provided that:**

- i. such Claim is first made against You and notified to Us on or after the commencement date of Your Temporary Leave of Absence;
- ii. We will only Cover You under this additional benefit for Claims in respect of an Occurrence happening prior to the commencement date of Your Temporary Leave of Absence;
- iii. We will only Cover You under this additional benefit for a period no longer than thirty (30) months immediately following the commencement date of Your Temporary Leave of Absence;
- iv. all Cover under this additional benefit shall cease immediately upon the cessation of Your Temporary Leave of Absence; and
- v. Cover shall only continue up to the expiry of the Period of Cover and is only in respect of Claims arising from an Occurrence happening whilst We were Your public and products liability insurer.

For the purpose of this additional benefit:

'Temporary Leave of Absence' means:

You temporarily ceasing to conduct Your Business due to Your:

- a. maternity or paternity leave;
- b. illness or injury;
- c. study; or
- d. travel or holiday.

# Exclusions

**The following exclusions apply to this Policy. Please read them carefully.**

This Policy does not Cover and We will not be liable for any claim under this Policy for, directly or indirectly arising out of or in any way connected with:

## Aircraft

- a. Your ownership, maintenance, service, operation, use or legal control of an Aircraft or Aircraft landing area; or
- b. any of Your Products that are used or incorporated in or connected with Aircraft or which You could be reasonably expected to know are or would be incorporated or used in Aircraft.

Aircraft landing area includes any land, building or structure in an area where Aircraft take off or land or are housed, maintained, operated or refuelled.

## Asbestos

the existence or presence of asbestos in whatever form or quantity.

## Bankruptcy, Insolvency or Business Sold

Your being placed into bankruptcy.

## Computer, Electronic Equipment, Electronic Data and/or Software

in respect of the Cover provided under Section – Public and Products Liability:

- a. total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
- b. error in creating, amending, entering, deleting or using Electronic Data; or
- c. total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;

from any cause whatsoever regardless of any other contributing cause or event contributing concurrently or in any other sequence:

### Provided that:

- i. this exclusion shall not apply to Claims for Bodily Injury or Property Damage caused by or arising out of the ownership, possession, operation, control or use by You of Electronic Data; and
- ii. such Claims do not arise out of or are in any way connected with any of Your Products:

### Provided further that:

**We will not Cover** You for the costs of restoration, repair, recovery, reconfiguration or loss of Electronic Data.

## Contract Works

any alteration, renovation or addition work to or of any buildings or structure by You or on Your behalf where the total contract price or estimated commercial value of such works exceeds \$500,000.

## Contractual Liability

liability assumed:

- a. under any contract, warranty, guarantee, indemnity or agreement unless such liability would have attached to You regardless of the existence of the contract, warranty, guarantee, indemnity or agreement; and/or
- b. which is outside the normal course of Your Professional Services or conduct or Your Business:

### Provided that:

this exclusion will not apply when such liability:

- i. is assumed under any statutory guarantee of fitness or quality regarding Your Products as required by any legislation in Australia in respect of product safety;
- ii. has been specifically agreed to by Us and stated in the Schedule; or
- iii. in respect of the Cover provided under Section – Public and Products Liability, in respect of Public Liability Cover only, is assumed under any Incidental Contract.

## Defamation, Libel, Slander

in respect of the Cover provided under Section - Public and Products Liability:

the publication or utterance of a libellous, slanderous or defamatory remark:

- a. made prior to the Period of Cover;
- b. made by You or at Your direction and/or with knowledge of its falsity; or
- c. related to advertising, broadcasting, publishing, telecasting activities or on-line social media activities conducted by You or on Your behalf.

### Directors and Officers

in respect of the Cover provided under Section – Professional Indemnity:

Your acting in the capacity of a director or officer of any legal entity, corporation or other incorporated body.

### Employer's Liability

- a. Bodily Injury to any Employee arising out of or sustained in the course of their employment with You;
- b. Bodily Injury to any individual who is deemed to be Your Employee pursuant to any workers' compensation legislation or similar law or who is deemed to be Your Employee at common law;
- c. Bodily Injury to an Employee for which You are indemnified or entitled to be indemnified under any policy of insurance or self-insurance licence arrangement required to be taken out pursuant to any workers' compensation legislation or accident compensation legislation, whether or not You are a party to such policy;
- d. liability imposed by the provisions of any workers' compensation legislation;
- e. liability imposed by the provisions of any industrial award, agreement or determination; or
- f. property or Money belonging to or in the physical or legal control of any Employee.

### Employment Practices Liability

any wrongful or unfair dismissal, discrimination, harassment of any kind, misleading or deceptive representation, mis-statement, denial of natural justice, defamation, demotion or failure to promote or hire, relating to or in respect of:

- a. the employment; or
- b. the prospective employment;

of any person by You.

### Error in Design

in respect of the Cover provided under Section – Public and Products Liability:

an error or omission in design, plan or specifications or failure of design in Your Products.

### Failure to Take Reasonable Precautions

failure to take all reasonable precautions for the maintenance and protection of business property whether belonging to You or any person or entity with whom You are engaged under a contract

of service or whilst any such property is in Your physical or legal control.

### Faulty Workmanship

the cost of performing, re-performing, correcting, improving, rectifying or completing any work undertaken by You or on Your behalf.

### Fines and Penalties or Liquidated, Punitive, Exemplary or Aggravated Damages

- a. fines and/or penalties;
- b. liquidated damages, punitive, exemplary or aggravated damages or additional damages resulting from the multiplication of compensatory damages; or
- c. non-compensatory damages or taxes.

### Fraudulent, Dishonest, Criminal, Malicious or Wilful or Intentional Acts

any actual or alleged:

- a. dishonest, fraudulent, criminal or malicious act or conduct;
- b. wilful act or intentional conduct intended to cause loss, damage, harm or liability or committed with a reckless disregard for the consequences thereof; or
- c. wilful or intentional breach of any regulation, statute or other law, contract or duty;

committed by You or any person acting with Your knowledge, consent or connivance.

### Hovercraft

- a. Your ownership, maintenance, service, operation, use or legal control of a Hovercraft or Hovercraft landing area; or
- b. any of Your Products that are used or incorporated in or connected with Hovercraft or which You could be reasonably expected to know are or would be incorporated or used in Hovercraft.

Hovercraft landing area includes any land, building or structure in an area where Hovercraft take off or land or are housed, maintained, operated or refuelled.

### Infectious and/or Transmissible Diseases

- a. Transmissible Spongiform Encephalopathy (TSE) including but not limited to Bovine Spongiform Encephalopathy (BSE) or new Variant Creutzfeldt-Jakob Disease (VCJD); or
- b. the existence or suspected existence of any infectious disease where an infectious disease is defined as Highly Pathogenic Avian Influenza or any other diseases which are deemed to

be quarantinable diseases under the Australian Quarantine Act 1908 (Cth) and subsequent amendments irrespective of whether it was discovered on Your Business premises or elsewhere:

**Provided that:**

this exclusion shall not apply where You or others acting on Your behalf have complied with all relevant published professional and/or government protocols and standards for the treatment of patients with conditions referred to in clauses a. and b. above.

**Intoxicants or Drugs**

any act, error, omission or conduct by You while under the influence of alcohol, intoxicants or drugs.

**Jurisdiction and Territorial Limits**

- a. any event or any actual or alleged act, error, omission, conduct, Bodily Injury or damage to property happening in the United States of America and/or Canada and/or their respective territories or protectorates other than as specifically Covered under this Policy;
- b. any Claim, action or matter brought in a court outside of Australia;
- c. any Claim, action or matter brought in a court within Australia to enforce a judgment handed down by a court outside of Australia; or
- d. any Claim, action or matter where You have agreed to submit to the legal jurisdiction of a court outside of Australia:

**Provided that:**

clause a. shall not apply in respect of:

- i. additional benefit 'Good Samaritan Acts' as Covered under Section – Professional Indemnity; or
- ii. Your attendance at any conference, training or teaching facility as Covered under additional benefit 'Conferences, Training, Teaching' under Section – Public and Products Liability:

**Provided further that:**

with respect to Volunteer Services provided outside of Australia, clauses b. c. and d. are deleted in their entirety and replaced as follows:

- b. any Claim, action or matter brought in a court within the United States of America or Canada, or their respective territories or protectorates;
- c. Volunteer Services You provide outside of Australia, the United States of America or Canada, or their respective territories or protectorates for a period of 61 days or more during the Period of Cover; or

- d. any Claim, action or matter where You have agreed to submit to the legal jurisdiction of a court within the United States of America or Canada, or their respective territories or protectorates.

**Known Circumstances or Known Claims**

any Known Circumstance and/or Known Claim.

**Loss of Use**

in respect of the Cover provided under Section – Public and Products Liability:

loss of use of real or tangible property that has not been physically damaged, destroyed or lost as a result of:

- a. a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- b. the failure of Your Products to meet the level of performance, quality, fitness or durability warranted or represented by You:

**Provided that:**

clause b. of this exclusion will not apply to loss of use of other real or tangible property not being Your Products resulting from sudden and accidental physical loss, destruction of or damage to any of Your Products after Your Products have been put to use by any person or organisation other than You.

**Manufacturing Activities**

in respect of the Cover provided under Section – Public and Products Liability:

any Bodily Injury or Property Damage directly or indirectly related to any of Your Products or goods manufactured or wholesaled by You other than where prepared by You for sale, supply or distribution in the normal conduct of Your Business.

**Medical Practitioners**

any liability attributable to a Medical Practitioner or You acting in the capacity of a Medical Practitioner in the provision of any care, treatment, advice, service or goods in respect of the physical or mental health of any person.

**Nuclear Material**

- a. ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- b. the radioactive, toxic, explosive or other hazardous properties or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- c. any weapon or device employing atomic or nuclear fission and/or fusion or other reaction or radioactive force or matter;

- d. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter; or
- e. nuclear weapons material:

**Provided that:**

this exclusion will not apply to any claim under this Policy arising from the use of radioisotopes when used away from the place where such are made or produced and used solely for the purpose of medical, industrial or scientific services in the conduct of Your Business or Professional Services.

**Occupier's and Owner's Liability**

in respect of the Cover provided under Section – Professional Indemnity:

Your occupation, ownership, lease or management of any land, building, structure or other real or tangible property.

**Pollution and/or Contamination**

- a. the actual or threatened discharge, dispersal, release, seepage, migration or escape of any Pollutant or harmful substance into or upon any property, land, watercourse, body of water or the atmosphere;
- b. costs and expenses incurred in the prevention, removal, nullifying or clean-up of contamination or pollution or harmful substance caused by Pollutants into or upon any property, land, watercourse, body of water or the atmosphere; or
- c. the actual or threatened discharge, dispersal, release, seepage, migration or escape of any contamination, Pollutant or harmful substance occurring in the United States of America, Canada or any other territory coming within or subject to the jurisdiction of the courts of the United States of America or Canada:

**Provided that:**

in respect of the Cover provided under Section – Public and Products Liability:

- i. clauses a. and b. above shall not apply where the discharge, dispersal, release or escape of any contamination, pollution or harmful substance was sudden, identifiable, unexpected and unintended and took place in its entirety at a specific time and place; and
- ii. in such circumstances Our total aggregate liability for any one Claim and all Claims Covered under this Policy in connection with Pollutants or harmful substances shall not exceed the Limit of Liability amount stated in the Schedule for Public Liability or the Limit of Liability amount stated in the Schedule for Products Liability. **We will not Cover** You for more than one Limit of Liability for all such Claims.

**Product Defect**

damage to Your Products if the damage arises from:

- a. any defect contained within Your Products;
- b. Your Products' harmful nature or unsuitability for intended purpose; or
- c. Your Products' inherent ineffectiveness:

**Provided that:**

this exclusion shall not apply to any resultant damage to third party goods caused by Your Products that are found to be defective, harmful, unsuitable or ineffective.

**Product Recall**

any recall, including but not limited to the withdrawal, inspection, repair, replacement, adjustment, removal, disposal or loss of use of:

- a. any goods or products manufactured, sold, supplied or distributed by You; or
- b. any of Your Products or any other property of which Your Products form a part if Your Products are recalled or withdrawn from the market or from use because of any known or suspected defect or deficiency in Your Products.

**Products**

in respect of the Cover provided under Section – Professional Indemnity:

the manufacture, preparation, modification, repair, sale or supply, maintenance, wholesale, distribution or treatment by You of any goods or products other than where such Claim arises directly from a breach of professional duty in the compounding of pharmaceutical products by You or advice in respect to any therapeutic goods or therapeutic products sold or supplied by You.

**Professional Liability**

in respect of the Cover provided under Section – Public and Products Liability:

the rendering of or failure to render professional advice or services or any act, error, omission or conduct connected with such professional advice or service by You.

**Professional Registration Breach**

in respect of the Cover provided under Section – Professional Indemnity:

any Professional Services provided by You at a time:

- a. when You were not registered to practise the Professional Services and such registration is required under any law, legislation, rule or regulation; or
- b. when You were not permitted to provide such Professional Services under the terms, conditions, undertakings or limitations of Your professional registration.

#### Property in Care, Custody or Control

any damage to property in Your physical or legal control.

#### Railways, Tramways and Trolleybuses

the construction and/or operation and/or ownership and/or structural maintenance of railways, tramways or trolleybuses:

##### Provided that:

in respect of the Cover provided under Section – Public and Products Liability:

this exclusion will not apply where rail loops, spurs or sidings are owned or operated by You in connection with Your Business for the sole purpose of loading or unloading of Your Business stock, goods or Your Products.

#### Related Entities

Claims made against You by or on behalf of:

- a. any subsidiary company or parent company of Yours;
- b. any joint venture partner of Yours; or
- c. any entity operated, controlled, owned or managed by You.

#### Retroactive Date

any act, error, omission or conduct committed or alleged to have been committed or any Occurrence happening prior to the Retroactive Date stated in the Schedule.

#### Terrorism

any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Property Damage, Bodily Injury or Claim or for any cost or expense including any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism.

#### Trading Debts, Profit, Refund of Fees

the refund or payment to You of:

- a. a trading debt;
- b. loss of profit; or
- c. fees or other remuneration or consideration;

paid or due to You or Your agent or contractor or any person or party Covered under this Policy.

#### Vehicle

Your ownership, possession, or use by You of any Vehicle:

- a. which is registered or required to be registered under any legislation; and
- b. for which compulsory liability insurance or statutory indemnity is required by law whether or not such insurance has been effected or a statutory indemnity provided:

##### Provided that:

in respect of the Cover provided under Section – Public and Products Liability, this exclusion will not apply to:

- i. Bodily Injury:
  - directly or indirectly arising out of or in any way connected with a Vehicle which does not require to be registered and have compulsory third party insurance or similar statutory indemnity under any legislation;
  - directly or indirectly arising out of or in any way connected with a Vehicle which is registered under legislation and by legislation is not required to have compulsory third party insurance or similar statutory indemnity and does not have compulsory third party insurance or similar statutory indemnity; or
  - where the compulsory liability insurance or statutory indemnity does not provide indemnity and the reason why that indemnity is not provided does not involve a breach by You of legislation relating to Vehicles;
- ii. liability caused by or arising out of the delivery or collection of goods to or from any Vehicle or during the loading and unloading of goods to or from any Vehicle;
- iii. Property Damage to any Vehicle, or the contents thereof, not belonging to You, leased or hired by You or on loan or rented to You or used by You or on Your behalf or in Your custody or control while within a car park owned or operated by You for the purpose of parking:
 

**but excluding** any Vehicle or its contents in any part of a car park owned or operated for fee or reward; or
- iv. Bodily Injury or Property Damage caused by or arising out of the use of any Vehicle including any tool or plant forming part of or attached to or used in connection with such Vehicle whilst being operated by You or on Your behalf as a Tool of Trade.

### **Vibration, Weakening of Support**

Property Damage resulting from:

- a. vibration; or
- b. removal or weakening of, or interference with, support to land, buildings or any other property.

### **War or Appropriation**

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

### **Watercraft**

Your ownership, use or operation of any Watercraft other than as specifically Covered under this Policy.

# General Conditions

The following general conditions apply to this Policy. Please read them carefully.

It is important that these conditions are observed.

If You or any other person or party Covered under this Policy do not comply with these conditions the Cover under this Policy may be cancelled or We may reduce any claim payment to You or refuse to pay Your claim under this Policy.

## Alteration of Risk

You must advise Us immediately if, during the Period of Cover, there is a change in:

- a. the nature of Your Professional Services;
- b. services for which You individually and/or directly charge to a customer or the carrying out of any pharmacist services or other activities not Covered under this Policy;
- c. Your professional registration status including but not limited to cancellation, restriction or lapse of Your professional registration;
- d. Your being placed into bankruptcy; or
- e. any other change to Your Professional Services whereby the risk Covered under any Section of this Policy is increased.

## Cancellation

### Cancellation by You

You may not cancel this Policy. You may cancel Your own participation in this Policy at any time by giving Pharmaceutical Defence Limited written notice.

In the event of cancellation of Your own participation by You:

- a. We will retain from the Premium paid to Us an amount that represents the period You were Covered by Us up to the date of cancellation and refund the balance of the Premium paid by You; and
- b. We may deduct from Your refund amount any reasonable administrative and transaction costs incurred by Us that are reasonably related to the acquisition and termination of Your participation in this Policy.

### Cancellation by Us

We may cancel this Policy when We are entitled to do so in accordance with the Insurance Contracts Act 1984.

## Estates, Heirs, Legal Representatives

We agree to provide Cover to Your estate, heirs, representatives or assigns in the event of Your death, mental incapacity, insolvency or bankruptcy to the same extent as Cover would otherwise be available to You under this Policy.

## Hazardous Goods

You may only use and store hazardous goods which are usual to Your Business and You must use and store them in the manner and quantities permitted by law.

## Joint Insurance – Non-imputation

Where this Policy Covers more than one of You:

- a. any misstatements or misrepresentations in Your Application for this insurance or in any information provided for any alteration to or renewal of this Policy or failure to comply with the duty of disclosure by one of You will not be imputed to any other of You where that other of You is innocent of and had no prior knowledge of the misstatement, misrepresentation or failure to comply with the duty of disclosure; or
- b. a failure of one of You to comply with all of the provisions of this Policy will not prejudice the Cover afforded to any other of You provided that other one of You is innocent of the conduct and advises Us in writing of all the facts relating to the failure as soon as possible after becoming aware of the failure.

## Jurisdiction

Any dispute arising under this Policy will be determined by Australian courts and in accordance with the laws of the State or Territory of Australia in which this Policy was issued.

## Non-accumulation of Limits of Liability

Where two or more insurance policies issued by Us (one of which includes this Policy) provide Cover in respect of the same claim the maximum amount We will pay in respect of that claim is the highest applicable Limit of Liability amount available under any one of such policies.

Only one Excess shall apply to such claim which will be the Excess applicable to the policy with the highest Limit of Liability amount.

## Notices and Authorisation

You and We agree that Pharmaceutical Defence Limited:

- a. shall act as Your agent in respect of all matters under this Policy in respect of:
  - receiving any notices under this Policy;
  - variation of the Policy Cover and any provision of this Policy; and
- b. may vary the provisions of this Policy without Your consent.

## Other Insurance

Where a claim Covered under this Policy may also be covered under another policy of insurance (not issued by Us) then We reserve Our right to seek contribution from the other insurer. When We so require You or any other person or entity entitled

to Cover under this Policy must give Us written notice of any insurance covering, whether in whole or in part, the claim under this Policy.

## Premiums

### Premium Payment

You have paid Your Premium to Pharmaceutical Defence Limited and Pharmaceutical Defence Limited have paid Us the Premium in accordance with the terms set out in the Schedule.

### Payment in Australian Currency

Payment of all Premiums payable for this Policy and any continuation thereof shall be made in Australian currency only.

### Reasonable Precautions

You are required to:

- a. take all reasonable actions and precautions for the safety and protection of others; and
- b. comply with all laws and regulations imposed by any government statutory authority for the safety of property or person.

### Waiver of Rights and Subrogation

No provision of this Policy, either in whole or in part, shall be considered to have been waived by Us unless the provision is expressly stated in writing to be waived by Us.

**We will not** pay a claim under this Policy where You have agreed not to recover from any person, entity or corporation liable to compensate You for liability or where You have agreed under any contract, lease or similar agreement to limit or exclude any right of recovery against any third party who would otherwise be liable to compensate You with respect to that liability.

# Claims Conditions

The following claims conditions apply to this Policy. Please read them carefully.

It is important that these claims conditions are observed.

If You or any other person or party Covered under this Policy do not comply with these conditions the Cover under this Policy may be cancelled or We may reduce any claim payment to You or refuse to pay Your claim under this Policy.

## Admission or Authorisations

You must obtain Our written consent before making any admission, offer, promise or offer of indemnity in connection with any claim under this Policy. You may make to a third party any expression of regret in respect of any injury suffered by such third party as permitted under the Australian Open Disclosure Framework provided You do not make any admission of liability.

## Claim Notification

You are required to provide Us with:

- a. notice of any liability or Claim made against You as soon as reasonably possible after any of these occur or You are notified of such liability or of any Claim made against You or are served with a notice in respect of any Inquiry; and
- b. all correspondence and/or notice of any proceedings in relation to any claim under this Policy and forward to Us every communication, Writ or Summons or other court pleading as soon as reasonably practicable after receipt by You or service on You.

## Claims Control and Legal Proceedings

We may, in Your name, take over and have full discretion in the conduct of the defence or prosecution of legal proceedings or settlement of any claim under this Policy or in the exercise of Our rights of subrogation.

## Claims Cooperation

You must provide to Us any reasonable assistance We require to investigate, defend or settle any claim under this Policy.

In particular, You are required to provide Us with:

- a. Your cooperation in assisting Us to handle any claim under this Policy on Your behalf including the gathering of all relevant information and Your attendance at court to give evidence; and
- b. at Your own expense, such books of account and other Business books, computer records and other documents, proofs, information, explanations and other evidence as We may require for the purpose of investigating or verifying a claim under this Policy.

## Claims Payments in Australian Currency

Payment of all claims Covered under this Policy shall be made in Australian currency only.

## Excess

You must first pay the Excess amount specified in the Schedule before We will make any payment in respect of a claim under this Policy. Our liability to make any payment in respect of a claim shall be limited to that part of the claim above the Excess.

## GST

### GST and Claim Payments for Compensation

Where We make a payment under this Policy as compensation instead of as a payment for a relevant acquisition of goods, services or other supply We will reduce the amount of the payment by the amount of any Input Tax Credit that You would have been entitled to had the payment been applied to acquire such goods, services or other supply.

### GST and Claim Payments for Legal and Other Costs

If We pay Defence Costs or any other costs or expenses on Your behalf or incurred by You with Our prior consent in relation to any claim under this Policy We will not pay or reimburse the amount of GST included in those costs or expenses to the extent that You are entitled to Input Tax Credits in relation to such costs and expenses.

### Limitation of GST Payment

If the Limit of Liability amount or other limits under this Policy is/ are not sufficient to Cover Your claim under this Policy We will only pay the respective proportion of the relevant GST amount that relates to the amount of Our settlement of Your claim under this Policy.

## Legal Proceedings and Waiver of Legal Privilege

Solicitors and other legal representatives retained by Us to act on Your behalf, or on behalf of any other Insured, must at all times be at liberty to disclose to Us any information obtained in the course of so acting whether from You or any other person or entity. For that purpose You and any other person or entity Covered under this Policy agree to waive any claim to legal professional privilege in respect of such information. We may rely on such information to determine Our obligation to provide Cover under this Policy.

## Loss Minimisation

You must do everything reasonable to prevent further liability following any event which is the subject of any claim under this Policy or which may lead to a claim under this Policy.

### **Our Right to Subrogation**

Where We make a payment to You or on Your behalf in respect of any claim under this Policy We will have the right to recover or obtain contribution from any person or organisation whom We consider liable at law for the liability and We shall be entitled to all Your rights of recovery against such person or organisation and We have the right to take such action in Your name.

You will be required to do all that is necessary to assist Us for the purpose of enforcing any rights and remedies or of obtaining indemnity from any other party to which We are entitled under this Policy.

### **Preservation of Evidence**

You must take all reasonable actions necessary to retain and preserve any damaged or defective appliances, machinery, plant or other things which might prove necessary or useful as evidence in connection with any claim under this Policy and, so far as possible with due regard for safety, no alteration or repair shall be made without Our prior consent.

### **Senior Counsel Clause**

We will not require You to contest any Claim unless a Senior Counsel (mutually agreed upon by You and Us or if no agreement can be reached within a reasonable time then by the President at the time of the Law Society of the State or Territory in Australia in which this Policy has been issued) advises that the Claim should be contested after taking into consideration the likely cost of defending the Claim, the prospects of successful defence of the Claim, awards or damages if any and the costs likely to be recovered from a third party claimant. The cost of the advice will be paid by Us in addition to the applicable Limit of Liability amount.

### **Your Right to Contest**

Where We recommend settlement of a third party claim under this Policy and You do not agree with the proposed settlement but wish the matter to remain contested Our liability shall not exceed the amount for which the claim could have been settled if the matter had not been contested. Any Defence Costs and all other costs shall be limited to those incurred up to the date the claim could have been settled.

# Definitions

**This Policy has words and terms with special meanings. We explain their meaning in the following definitions.**

**These defined words or terms are shown with a capital letter at the start of each word. Please read all definitions carefully.**

## Accredited Pharmacist

means a pharmacist who has current accreditation from an approved pharmacist accreditation body to conduct Medication Management Reviews including Home Medicines Review services and Residential Medication Management Review services.

## Aircraft

means any craft or object designed or intended to move through air, space or atmosphere other than model aircraft.

## Application

means the information provided by You or on Your behalf and submitted to Us when applying for this Policy and which We have relied on when agreeing to issue this Policy.

## Approved QUM Service Provider

means a registered pharmacist who provides Quality Use of Medicine (QUM) services under the Australian National Medicines Policy.

## Australia, Australian

means the States and Territories of Australia.

## Bodily Injury

means:

- a. bodily injury, death, sickness, disease, shock, fright, mental anguish, mental injury or loss of consortium resulting from any of them; or
- b. the physical or mental effects of:
  - false arrest, wrongful detention or imprisonment or malicious prosecution;
  - wrongful entry or wrongful eviction to or from any premises;
  - invasion of privacy; or
  - assault and battery not committed by or at the direction of You unless committed for the purpose of preventing or elimination of danger to persons or property.

## Business

means all the activities involved in Your business, as stated below, whether such activities are conducted for a fee or not:

- a. pharmacist or Non-Pharmacist Services under a contract of service;
- b. Locum Pharmacist;

- c. Accredited Pharmacist in the provision of a:
  - Home Medicines Review; or
  - Residential Medication Management Review;
- d. Approved QUM Service Provider; or
- e. pharmacist acting as a Credentialed Diabetes Educator.

## Business Documents

means written or printed deeds, wills, agreements, manuscripts, maps, plans, drawings, records, Electronic Data, designs, books of account, books, letters, certificates and other documents of any nature:

### but does not include:

- i. Money, bearer bonds, coupons or book debts; or
- ii. documents of aesthetic, historic, scientific or social value for past, present or future generations.

## Claim

means:

- a. a writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter-claim or third party or similar party notice served on You seeking compensatory damages and costs; or
- b. a written or verbal demand for compensatory damages and costs made by a third party against You.

## Cover, Covers, Covered

means the indemnity provided under this Policy.

## Defence Costs

means the necessary and reasonable legal costs and expenses incurred by Us or by You with Our prior written consent in the investigation, defence or settlement of a Claim Covered under this Policy or in respect of the Cover provided under any of the additional benefits Covered under this Policy.

Any legal costs incurred by Us or by You in determining whether there is Cover provided to You under this Policy will not form part of Defence Costs.

## Electronic Data

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

### Employee

means a natural person who has at any time entered into a contract of service or apprenticeship with You and/or for whom You are required by virtue of workers' compensation or similar legislation to effect workers' compensation insurance cover.

### Endorsement

means a written notification that details changes to Your Cover under this Policy.

### Excess

means the amount of money stated in the Schedule or elsewhere in this Policy that You must pay or bear as the first payment in respect of any claim under this Policy.

Where the Excess is stated as being 'costs exclusive' We will not apply the Excess to Your own Defence Costs but You will be required to pay the Excess amount in respect of any payment of compensation and/or the claimant's own legal costs and expenses.

Where the Excess is stated as being 'costs inclusive' You will be required to pay the Excess amount in respect of any payment of compensation, the claimant's legal costs and expenses and Your own Defence Costs.

### Good Samaritan Acts

means the rendering of or failure to render first aid and assistance in an emergency situation or accident to stabilise an injured person or to prepare the injured person for transfer to a medical facility or other place and where You are in attendance as a bystander or passer-by and where there is no expectation of payment or other reward for the rendering of that first aid or assistance.

### GST and GST Act

means goods and services tax as defined within the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).

Input Tax Credit has the same meaning as that in the GST Act.

### Hovercraft

means any vessel, craft or device which uses a cushion of air provided by a downward thrust to travel over water and land.

### Incidental Contract

means:

- a. any written rental agreement, lease or licence of real property not requiring an obligation to insure such property or to be liable at law regardless of fault; or
- b. any written contract with any entity responsible for the supply of electricity, fuel, gas, water, sewerage, waste removal

services or telecommunications other than those contracts in connection with work done for such entities by You.

### Inquiry

means:

an official investigation, examination, inquiry or prosecution, directly relating to an act, error, omission or conduct by You in Your provision of the Professional Services:

- a. brought by a registration board, statutory regulatory authority, tribunal or any disciplinary committee of an association or professional body of which You are a member;
- b. arising from a complaint made against You by a third party to any court, statutory health authority or agency, registration board or a professional association or body of which You are a member; or
- c. brought by way of coronial inquiry or royal commission;

**but does not include** any investigation, examination, inquiry or prosecution in respect of Your liability to pay any tax, levy or duty payable by You to any statutory or government authority.

### Inquiry Legal Costs

means the necessary and reasonable legal costs and expenses incurred by You or on Your behalf with Our prior written consent in the investigation, defence or settlement of any Inquiry:

**but does not include:**

- i. Your regular or overtime wages, salary, fees, profit or any fixed or variable expense incurred in the normal course of Your business operations; or
- ii. any amounts payable as compensation or third party legal costs and expenses.

### Known Circumstances

means any fact or circumstance which:

- a. You were aware of prior to the Period of Cover and which You knew or ought reasonably to have known may give rise to a Claim or Inquiry;
- b. a reasonable person in Your position should have been aware of prior to the Period of Cover and which You knew or ought reasonably to have known may give rise to a Claim or Inquiry; or
- c. has been disclosed or reported to Us or any other insurer under any insurance policy prior to the Period of Cover.

### Known Claims

means any Claim or Inquiry:

- a. first made or served on You, threatened or intimidated against You prior to the Period of Cover; and/or
- b. disclosed or reported to Us or any other insurer under any insurance policy prior to the Period of Cover.

### Limit of Liability

means the maximum amount We will pay under each of Sections:

- > Professional Indemnity; or
- > Public and Products Liability;

of this Policy as stated in the Schedule inclusive of all additional amounts provided for in any relevant additional benefit under any such Section.

### Locum Pharmacist

means You acting under a contract for service in the provision of:

- a. work as a pharmacist; or
- b. Non-Pharmacist Services;

in a community or hospital pharmacy.

### Medical Practitioner

means any person who provides services which may only be provided by a duly qualified and registered medical practitioner pursuant to any legislation in Australia which provides for the registration or licensing of medical practitioners.

### Medicare Benefits Fraud

means a fraudulent or dishonest refund demand made against Medicare, the Pharmaceutical Benefits Scheme or any other government programs administered by Medicare Australia.

### Money

means coin, bank notes, currency notes, cheques, credit card sales vouchers, securities, postal orders, money orders, negotiable and non-negotiable securities and other like documents of value such as phone cards and/or stored value cards, unused postage and revenue stamps, public transport tickets, private transport tickets (excluding airline tickets), lottery tickets, authorised gift vouchers, discount vouchers from external parties and contents of franking machines and includes cash boxes, alarm bags or any other portable container used to convey money which is owned by You:

**but does not include** Money while in the possession of or carried by professional money carriers, professional carriers or common carriers.

### Non-Pharmacist Services

means:

- a. the following services for which You are appropriately qualified and where required under Australian law registered with the Australian Health Practitioner Regulation Agency or any other regulatory body:
  - beauty therapy advice and treatment including ear piercing **but excluding** Botox, microdermabrasion, acid peels and any form of body piercing other than ear piercing;
  - nursing services limited to audiometric testing, child nursing services, general nursing advice, general podiatric advice including advice with respect to mobility equipment, advice on the use of medical equipment;
  - complementary medicine advice and services limited to acupuncture, homeopathy, naturopathy;
- b. photo digital image processing, passport photo facilities; and
- c. health fund agency services, banking facility via ATM, bill paying facility.

### Occurrence

means an event or series of events which results in Bodily Injury or Property Damage neither expected nor intended by You:

### Provided that:

all Bodily Injury or Property Damage attributable to continuous or repeated exposure to substantially the same general conditions will be deemed to be one Occurrence.

### Period of Cover

means the period of time stated in the Schedule for which We agree to provide You with Cover under this Policy as stated in the Schedule unless this Policy is cancelled in which event the Period of Cover will end on the effective date of the cancellation.

### Policy

means:

- a. the Policy wording;
- b. the Schedule; and
- c. any Endorsement.

### Pollutant

means any solid, liquid, bacterial, viral, gaseous or thermal irritant or contaminant including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste includes material to be recycled, reconditioned or reclaimed.

### Premium

means the payment You make to Us for this Policy or for an alteration to this Policy and includes all applicable government or statutory taxes and charges including GST.

### Professional Services

means the professional business services provided by You, as stated below, whether such services are provided for a fee or not:

- a. pharmacist or Non-Pharmacist Services under a contract of service;
- b. Locum Pharmacist;
- c. Accredited Pharmacist in the provision of a:
  - Home Medicines Review; or
  - Residential Medication Management Review;
- d. Approved QUM Service Provider;
- e. in respect of additional benefit 'Teaching, Publications, Expert Opinion Reports', the provision of any lecturing, mentoring, teaching or training services by You including the provision of any expert opinion reports, articles or other publications written by You:
  - under a contract of service; or
  - under a contract for service but only where these services are provided for or on behalf of a government, statutory or regulatory body or any teaching institution;
- f. advice on regulatory matters, professional standards, accreditation requirements and best practice methods relating to the pharmacy industry but only where such advice is provided for or on behalf of a government, statutory or regulatory body; or
- g. pharmacist acting as a Credentialed Diabetes Educator.

### Property Damage

means:

- a. physical damage to or loss of or destruction of real or tangible property including any resulting loss of use of that property; or
- b. loss of use of real or tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an Occurrence:

**but does not include** damage to or destruction of or loss of use of Electronic Data.

### Retroactive Date

means the retroactive date stated in the Schedule for any applicable Section of this Policy.

### Schedule

means the Schedule issued by Us containing details of Cover specific to You including but not limited to Your Policy number, the Period of Cover, details of the Cover, Limits of Liability and other limits of Your Cover and any Excesses You must pay and which attaches to and forms part of this Policy.

### 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.

### Tool of Trade

means any Vehicle which has any tool or plant forming part of or attached to the Vehicle or used in connection with any Vehicle while such tool or plant is in operation for the purpose of the Business.

### Vehicle

means any type of machine on wheels, on skis or on self-laid tracks designed to be moved other than by manual or animal power and includes any trailer while attached to a Vehicle:

**but does not include** motorised wheelchairs, electric wheelchairs, electric scooters, bicycles or Vehicles not requiring registration or compulsory third party insurance by virtue of any legislation.

### Volunteer Services

means the services of a pharmacist or Non-Pharmacist Services provided by You for which You:

- a. do not receive a fee, remuneration or reward (other than reimbursement of reasonable expenses); and
- b. are not prevented by local law from providing.

### Watercraft

means any vessel, craft or thing made or intended to float on or in, or travel on or through, water other than model boats.

### We, Us, Our

means Guild Insurance Limited, ABN 55 004 538 863 and AFS Licence No. 233791, of Level 13, 171 Collins St, Melbourne Victoria 3000.

### You, Your, Insured

means nominated members of Pharmaceutical Defence Limited including pharmacy students.

### Your Products

means goods sold, supplied, delivered or distributed by You in the normal course of Your Business after they have ceased to be in Your possession or legal control:

**but does not include** goods manufactured by You unless prepared by You for sale, supply or distribution in the normal course of Your Business including their labels, packaging, containers, and any directions, instructions or advice provided or not provided.







For more information contact PDL

phone **1300 854 838**

web **[pdl.org.au](http://pdl.org.au)**

email **[info@pdl.org.au](mailto:info@pdl.org.au)**

**Who is the Insurer?**

This Policy is issued by Guild Insurance Limited ABN 55 004 538 863, AFS Licence No. 233791 of 171 Collins Street, Melbourne, Victoria 3000. Effective date: 31 December 2018.

GLD2896 Non-Proprietor Pharmacists Liabilities Insurance Master Policy 04/2019.

