

FAMILY DAY CARE COMBINED LIABILITY INSURANCE POLICY

PRODUCT DISCLOSURE STATEMENT & POLICY WORDING

April 2023v.4.2

Contact Imalia on 1300 302 952 or cap@imalia.com.au



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1. Product Disclosure Statement (PDS)

THE PURPOSE OF THIS PDS

This Product Disclosure Statement (PDS) contains important information about the Public, Products and Professional Indemnity Policies together with extensions. This PDS sets out significant Benefits of the Policy.

It is designed to help **You** decide if the insurance is right for **You**. For full details of the Benefits, limitations, exclusions, terms and conditions of the Policy, read the Policy Wording carefully before deciding whether to purchase the insurance.

THE COVERHOLDER

Imalia Pty Ltd - ABN 41 147 857 878 (**Imalia**) holds an Australian Financial Service Licence (Licence No. 451867) and is authorised to arrange, issue and provide general advice on general insurance products to Australian residents.

ABOUT LLOYD'S

Lloyd's is the world's specialist insurance and reinsurance market, bringing together an outstanding concentration of underwriting expertise and talent. Around 80 syndicates underwrite insurance at Lloyd's, covering all classes of business. Together they interact with thousands of brokers daily to create insurance solutions for businesses in over 200 countries and territories around the world.

In Australia, Lloyd's is proud to be a member of the Insurance Council of Australia, and strives to comply with the agreement it has made under the General Insurance Code of Practice.

This Policy is underwritten by certain Underwriters at Lloyd's (the **Insurer**).

GENERAL INSURANCE CODE OF PRACTICE

The General Insurance Code of Practice outlines certain minimum standards of service that **You** should expect from insurers that have adopted the Code. If **You** would like more information on the General Insurance Code of Practice, **You** can visit the website www.codeofpractice.com.au.

YOUR DUTY OF DISCLOSURE

WHAT YOU MUST TELL US

Under the Insurance Contracts Act 1984 (Cth), the Insured has a Duty of Disclosure. The Insured is required before **You** enter into, renew, vary, extend or reinstate **Your** Policy, to tell the Insurer everything the Insured knows (or could reasonably be expected to know in the circumstances) that is relevant to the Insurers decision to offer insurance and the terms on which insurance is offered to the Insured.

This duty applies before the Insured enters into a contract with the Insurer and also before each time the Insured renews, extends, varies or reinstates the Policy.

The Insured does not have to tell the Insurer about any matter that:

- a) diminishes the risk;
- b) is of common knowledge;
- c) the Insurer already knows or ought to know in the ordinary course of our business as an Insurer; or
- d) the Insurer indicates it does not want to know.

The law requires the Insured to tell the Insurer everything the Insured knows (or could reasonably be expected to know in the circumstances) which is relevant to the Insurer's decision to offer insurance and the terms on which insurance is offered to the Insured. This duty applies before the Insured enters into a contract with the Insurer and also before each time the Insured renews, extends, varies or reinstates the Policy.

WHO NEEDS TO TELL US

It is important that **You** understand **You** are answering **Our** questions in this way for yourself and anyone else whom **You** want to be covered by the insurance.

IF YOU DO NOT TELL US

If **You** do not answer **Our** questions in this way, **We** may reduce or refuse to pay a claim, or cancel **Your** insurance.

If **You** answer the questions fraudulently, **We** may refuse to pay a claim and treat **Your** insurance as if it never existed.

HOW TO MAKE A CLAIM

It is **Our** aim to give **You** peace of mind by providing an efficient, effective and helpful claims service.

You must notify **Us** by contacting Vardanega Roberts during office hours within thirty (30) days of an event that is likely to give rise to a claim by:

Phone: 02 8035 7808

Email:

mroberts@millsoakley.com.au

Office hours are 09.00 to 17.00 (EST) Monday to Friday excluding public holidays.

If it is not possible to notify **Us** within that time, **You** must notify **Us** as soon as reasonably possible.

WHAT THE POLICY COVERS

Refer to the Policy Wording for full details of Benefits, terms, conditions and exclusions.

Public and Products Liability Cover	Personal Injury
	Property Damage
	Advertising Liability
Professional Indemnity Cover	Personal Injury
	Property Damage

WHAT THE POLICY DOESN'T COVER

Refer to the Policy Wording for full details of terms, conditions and exclusions. Specific exclusions apply to Public and Products Liability Cover and to Professional Indemnity Cover, and these are located in the relevant Policy Section. General exclusions applicable to all types of cover are located in Section 7.

CANCELLATION

You may cancel this Policy at any time by forwarding a written request to **Us** unless **You** have notified **Us** of a claim or event that may give rise to a claim. If **You** have notified **Us** of a claim or event that may give rise to a claim, the annual premium will be payable in full.

If **You** have paid the full annual premium upfront and cancel within 30 days, **We** will refund the premium in full and the policy will be cancelled ab initio provided that **You** have not provided any **Childcare**.

If **You** have paid the full annual premium upfront and cancel after 30 days, **We** will refund the pro-rata premium calculated for the unexpired **Period of Insurance**.

If **You** pay the premium in monthly instalments and cancel within 60 days, **We** will refund the premium in full and the policy will be cancelled ab initio provided that **You** have not provided any **Childcare**.

If **You** pay the premium in monthly instalments and cancel after 60 days, no further payments will be taken and coverage will cease from the date **You** cancel the policy.

Who to notify in the event of cancellation of the Policy:

Contact Imalia:

Phone - 1300 302 952

Email - cap@imalia.com.au

OVERDUE PREMIUM

Your Premium for this insurance must be paid within 30 days from the due date otherwise **You** are not entitled to make a claim and **We** may cancel Your insurance.

COSTS

The Premium payable by **You** will be stated on Your Schedule. The Premium is calculated taking into consideration a number of factors including the sums insured.

Premiums are subject to Commonwealth and State taxes and/or charges where applicable. They can include GST, stamp duty, and any other charges.

RENEWALS

Please note **Your** Policy duration is set out on **Your** Policy Schedule. When **Your** Policy is due for renewal **We** will contact **You** in writing about Your upcoming Policy renewal. **We** will do so at least twenty one (21) days before **Your** Policy ends. In the unlikely event that **We** do not wish to invite renewal **We** will still write to **You** confirming why **We** do not wish to invite renewal at least twenty one (21) days before **Your** Policy ends.

LANGUAGE

Unless otherwise agreed in writing the language of **Your** Policy and any communication throughout the duration of the Policy will be in English.

DISPUTE RESOLUTION PROCESS

Our aim is to provide the highest service to **Our** Australian policyholders and, to this end, **We** have developed the following procedures for the fair handling of complaints from Lloyd's policyholders.

How can we help You?

There are established procedures for dealing with complaints and disputes regarding Your policy or claim.

Complaints

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Imalia Pty Ltd in the first instance:

Complaints Officer-Carole-Anne Priest
Imalia Pty Ltd
cap@imalia.com.au
0438630315

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

EXTERNAL DISPUTE RESOLUTION

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

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

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

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

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

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

How much will this procedure cost You?

This service is free of charge to policyholders.

Claims

In the event of a claim arising under this Insurance immediate notice should be given to:

Carole-Anne Priest

Imalia Pty Ltd

cap@imalia.com.au

or

Mike Roberts

Mills Oakley

mroberts@millsoakley.com.au

PRIVACY STATEMENT

The data privacy statement set out below refers to **Our** data privacy policy in dealing with **Your** information and processing of **Your** insurance policy, this may differ from the data privacy policy of **Your** broker as set out on their website.

In this Privacy Statement the use of “**We**”, “**Us**” and “**Our**” means the Insurer and Imalia unless specified otherwise.

We are committed to protecting **Your** privacy.

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. **We** are bound by the Privacy Act 1988 (Cth), when collecting and handling **Your** personal information. **We** have developed a privacy policy which explains what sort of personal information **We** hold about **You** and what **We** do with it.

We will only collect personal information from or about **You** for the purpose of assessing **Your** application for insurance and administering **Your** insurance policy, including any claims **You** make or claims made against **You**. We will only use and disclose **Your** personal information for a purpose **You** would reasonably expect.

We may need to disclose personal information including confidential medical information relating to **You**, assistant and relief educators, and children in your or their care to **Your** service, other entities within **Our** group, reinsurers (who may be located overseas), insurance intermediaries, insurance reference bureaux, credit reference agencies, **Our** advisers, **Our** agents, **Our** administrators and those involved in the claims handling process (including assessors, investigators, our lawyers and others), for the purpose of assisting **Us** and them in providing relevant services and products, or the purpose of recovery or litigation. **We** may disclose personal information to people listed as co-insured on **Your** policy and to family members or agents authorised by **You**. Disclosures may also be made to government, law enforcement, dispute resolution, statutory or regulatory bodies, or as required by law. **We** will request **Your** consent to any other purpose.

By providing **Your** personal information to **Us**, **You** consent to **Us** making the disclosures set out above which require consent. This consent to the use and disclosure of **Your** personal information remains valid unless **You** alter or revoke it by giving **Us** written notice. Without **Your** personal information **We** may not be able to issue insurance cover to **You** or process **Your** claim.

You also have the opportunity to find out what personal information **We** hold about **You** and, when necessary, correct any errors in this information. Generally, **We** will do this without restriction or charge. For further information about **Our** privacy policy or to access or correct **Your** personal information, please contact **Us** at the following address:

Imalia Pty Ltd
Level 18, Suite 1802, 45 Clarence Street Sydney NSW 2000
T 1300 302 952
Email; help@imalia.com.au

If **You** believe that we have interfered with **Your** privacy in **Our** handling of **Your** personal information **You** may lodge a complaint by contacting **Us**. **We** will attempt to resolve **Your** complaint in accordance with **Our** Privacy Complaints Handling Procedure.

If **You** are not satisfied with the resolution of **Your** complaint or with the way that **We** have handled **Your** complaint through the Privacy Complaints Procedure, **You** may be able to refer the matter to the Office of the Australian Information Commissioner. If **You** would like more information about **Our** Privacy Complaints Procedure please contact **Us**.

SERVICE OF SUIT CLAUSE (AUSTRALIA)

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia
Suite 1603
Level 16
1 Macquarie Place
Sydney NSW 2000
- (iii) who has authority to accept service on the Underwriters' behalf;
if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

LMA3160
17/05/21

POLICY WORDING – COMBINED LIABILITY

2. DEFINITIONS

For the purpose of the Policy, the following important definitions apply when used in this Policy Wording. Any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear capitalised;

- 2.1. **Abuse** means any act involving molestation, harassment, bullying or any other form of physical, sexual or mental abuse of a victim by a **Perpetrator**. **Abuse** does not include treatment or nursing malpractice or any error or omission in the provision of nursing or care or treatment.
- 2.2. **Act of Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- 2.3. **Advertising Injury** means Injury arising out of:
 - 2.3.1. libel, slander or defamation, or
 - 2.3.2. any infringement of copyright or passing off of title or slogan; or
 - 2.3.3. unfair competition, piracy, idea misappropriation contrary to an implied contract; or
 - 2.3.4. invasion of privacy;
 committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of **Your** advertising activities.
- 2.4. **Aircraft** means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 2.5. **Approved** means approved in writing.
- 2.6. **Asbestos** means that group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite or that group of man-made mineral fibres that comprise mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres and includes **Asbestos Products** and **Products** containing **Asbestos**.
- 2.7. **Business** means the business shown in the Schedule and includes the ownership and/or tenancy of premises used for the business and includes repair and maintenance of those premises, and includes first aid and safety services.
- 2.8. **Childcare** means the rendering of supervision, education and related care services to children who have been placed under **Your** supervision.
- 2.9. **Claim** means any originating process (including in a legal proceeding or arbitration), cross claim or counter claim or third party claiming compensation against and served on a **Named Insured**.

All Claims which arise out of or are attributable to or are in any way connected with a single source or originating cause shall be deemed to be one Claim.
- 2.10 **Criminal Defence, Investigation Costs and Expenses** means legal costs and other expenses incurred by **You** or on **Your** behalf arising out of any Criminal proceedings, legally compellable attendance by

- You** at any official investigation, examination or enquiry in relation to the conduct of **Your** profession where such investigation, examination or enquiry may lead to a recommendation in respect of liability or proceedings which would be the subject of a claim covered by this Policy provided the costs and other expenses are incurred with our consent.
- 2.11 **Crisis** means **You** lose **Your** ability to operate to optimum capacity and/or suffer bad publicity which is out of **Your** control and where **You** can demonstrate it has the real potential of reducing **Your** consolidated annual revenue by more than 30% if left unmanaged;
 - 2.12. **Crisis Loss** means the reasonable and necessary fees, costs and expenses paid by **You** for an external **Crisis** management consultant for a period not exceeding 30 calendar days after the **Crisis** first happens to mitigate the effects of the **Crisis** on **Your** consolidated annual revenue.
 - 2.13. **Education and Care Services National Law and Education and Care Services Regulation(s)** means the Laws, Acts or Regulations pertaining to the provision of **Childcare**.
 - 2.14. **Educator** means a person approved by the **Service** to provide **Childcare**.
 - 2.15. **Educator Assistant** means a person approved in writing by the Service to provide assistance to the **Educator**.
 - 2.16. **Excess** means the amount which **You** must pay towards any claim (inclusive of Costs and Expenses) under this Policy which will be deducted before any amount is paid to **You** or paid on **Your** behalf.
 - 2.17. **Hovercraft** means any vessel or craft or thing made or intended to float on or in or travel on or through the atmosphere or water, on a cushion of air provided by a downward blast.
 - 2.18. **Limit of Liability** means the amounts shown in the Schedule for which **You** have chosen to insure.
 - 2.19. **Named Insured** means the person(s) specified in the Schedule.
 - 2.20. **Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** or **Advertising Injury** neither expected nor intended from **Your** standpoint. All **Personal Injury** or **Property Damage** or **Advertising Injury** arising out of continuous or repeated exposure to substantially the same general conditions, shall be construed to arise out of one Occurrence.
 - 2.21. **Period of Insurance** means the period of insurance shown in the current Schedule.
 - 2.22. **Perpetrator** means a person or group of people acting in collusion who commit an act or series of acts of **Abuse**.
 - 2.23. **Personal Injury** means
 - 2.23.1 death, bodily injury, sickness or disease to any person, disability, shock, mental anguish or mental injury;
 - 2.23.2 arrest, wrongful detention, false imprisonment or malicious prosecution, wrongful entry or eviction or other invasion of the right of privacy;
 - 2.23.3 libel, slander, defamation of character or invasion of the right of privacy, unless arising out of Advertising Injury;
 - 2.23.4 assault and battery committed by **You** or at **Your** direction provided the assault or battery is committed for the purpose of preventing or eliminating danger to persons or property.
 - 2.24 **Product** means anything (after it has ceased to be in **Your** possession or under **Your** control) manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, altered, serviced, repaired, sold, treated, handled, supplied or distributed by **You** or by others trading under **Your** name, including any container thereof (other than a **Vehicle**) in the course of the **Business**.
 - 2.25 **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

- 2.26 **Property Damage** means physical damage to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical injury that caused it. Damage also means loss of use of tangible property that is not physically damaged, provided such loss of use is caused by physical damage to some other tangible property which first happens during the **Period of Insurance**.
- 2.27 **Relief Educator** means a person approved in writing by the **Service** to provide **Childcare** when the **Educator** is not available to provide **Childcare**.
- 2.28 **Retroactive Date** means the earlier of the following:
- (a) The inception date of this policy as shown in the Schedule; or
 - (b) The inception date of the first Professional Indemnity policy purchased by **You** but only where **You** can demonstrate that **You** have been continually indemnified without interruption subsequent to such date and always subject to the **Retroactive Date** being no earlier than 10 years prior to the inception date of this policy.
- 2.29 **Service** means a **Childcare** service or co-ordination unit approved by the Australian Government.
- 2.30 **Vehicle** means any type of machine on wheels or on self-laid tracks made or intended to be propelled other than by manual or animal power, including attachments designed to be drawn by any such machine.
- 2.31 **Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through water.
- 2.32 **Work, Health and Safety Regulations Legislation** means the laws and regulations of Australia and each State and Territory of Australia that govern work, health and safety.
- 2.33 **You/Your** means each of the following to the extent set forth below:
- 2.33.1 the **Named Insured**;
 - 2.33.2 the **Educators** specified in the Schedule;
 - 2.33.3 the **Relief Educators** specified in the Schedule;
 - 2.33.4 the **Educator Assistants**;
 - 2.33.5 persons providing emergency **Childcare** when the **Educator** is unable to provide **Childcare** due to an unforeseen event;
 - 2.33.6 any director, executive officer, employee, partner or shareholder of the **Business** or the **Named Insured** but only while acting within the scope of their duties in such capacity;
 - 2.33.7 any principal in respect of the liability of such principal arising out of the performance by **Named Insured** of any contract or agreement for the performance of work for such principal but subject always to the terms, conditions, exclusions and **Limit of Liability** provided in this Policy. For the purpose of this definition principal shall mean anyone for whom the **Named Insured** performs work whether voluntary or otherwise;
 - 2.33.8 any person approved by the service for work experience, volunteer worker, but only whilst acting within the scope of their duties in such capacity whilst engaged in activities for the **Named Insured**;
 - 2.33.9 the legal personal representative of any person entitled to indemnity under *definition 2.33* in circumstances giving rise to indemnity under this Policy;
 - 2.33.10 any property owners, body corporates, tenants of rented properties from which **You** operate the **Business**;
 - 2.33.11 the owners of common property at premises from which **You** operate the **Business**.

2.33.12 the Australian Government Department/s responsible for the funding and/or licensing of approved and/or regulated childcare services but only in respect of the **Named Insured's Business** or the conduct of the **Named Insured** in their profession and then subject always to the terms, conditions, exclusions and Limit of Liability provided in this Policy.

2.34 **We/Us/Our** means the Insurer

3 PUBLIC AND PRODUCTS LIABILITY COVER

We will pay to **You** or on **Your** behalf all amounts which **You** shall become legally liable to pay for compensation in respect of **Personal Injury** or **Property Damage** or **Advertising Liability** happening during the **Period of Insurance** caused by an **Occurrence** in connection with the **Business**.

We will not pay more than the **Limit of Liability** stated in the current Schedule for any one claim or series of claims arising from one **Occurrence**.

Our total aggregate liability for any one **Period of Insurance** for all claims arising from **Your Product(s)** shall not exceed the **Limit of Liability** in the Schedule.

COSTS AND EXPENSES

In addition to the stated **Limit of Liability**, **We** will:

- a) defend any suit against **You** claiming compensation for **Personal Injury** or **Property Damage** or **Advertising Liability** and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; **We** may investigate, negotiate and settle any claim or suit as **We** deem expedient; **We** shall not be obliged to pay any claim or judgement or to defend any suit after **Our Limit of Liability** has been exhausted by payment of judgments or settlements;
- b) pay all expenses incurred by **Us**, all **Your** legal costs incurred with **Our** written consent and all interest accruing after any such judgement as does not exceed **Our Limit of Liability** thereon;
- c) reimburse **You** for all reasonable expenses, other than loss of earnings, incurred with **Our** consent;
- d) pay expenses incurred by **You** for first aid to others at the time of any **Personal Injury** for which **You** are liable.

If a payment exceeding **Our Limit of Liability** has to be made to dispose of a claim, **Our** liability to pay Additional Payments in connection therewith shall be limited to such proportion of the Additional Payments as the **Limit of Liability** bears to the amount paid to dispose of the claim.

Our maximum liability to pay Costs and Expenses under this Policy is \$5,000,000 or the amount equal to the Limit of Liability whichever is the lesser.

EXCESS

Where an **Excess** is specified in the Schedule, **You** shall bear this amount of each and every claim (for the purpose of this clause the term claim includes Costs and Expenses.)

EXCLUSIONS

We shall not be liable for claims:

1. Advertising Injury

arising out of or in connection with Advertising Injury:

- a) resulting from statements made at **Your** direction with knowledge that such statements are false.
- b) resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract.
- c) resulting from any incorrect description of **Product(s)** or services.
- d) resulting from any mistake in advertised price of **Product(s)** or services.
- e) failure of **Your Products** or services to conform with advertised performance, quality, fitness or durability.
- f) incurred by **You** if **Your** principal occupation or business is advertising, broadcasting, publishing or telecasting.
- g) resulting from alleging sexual, racial or other harassment and/or sexual molestation, and/or sexual, and/or racial and/or disability, and/or sexual orientation, and/or religious and/or age discrimination or victimisation, or discrimination or victimisation of any other kind.
- h) resulting from, attributable to, or based upon any fact or circumstance known to the **Named Insured** prior to the **Period of Insurance**.

2. Contractual Liability

arising out of or in connection with liability assumed by You under any contract or agreement except to the extent that such liability would have been implied by law. This Exclusion shall not apply to:

- a) the written contracts designated in the current Schedule
- b) liability assumed by **You** under a warranty of fitness or quality as regards **Your Product(s)**.
- c) liability assumed by the **You** under any lease of real or personal property other than a provision which obliges **You** to effect insurance or provide indemnities in respect of the subject matter of that contract.
- d) any written contract made or entered into with any public authority for the supply of water, gas, electricity or telephone services, except a contract made or entered into with such authority for work done or to be done for such authority.

3. Employee(s)

arising out of or in connection with liability imposed:

- a) by any workers' compensation law,
- b) by the provision of any legislation, industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination or contract of employment or workplace agreement.

Provided that if **You** are:

- a) required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such personal injury, or

- b) not required to so insure or otherwise fund such liability by reason only that the personal injury is to a person who is not a worker (including deemed workers) or employee for the purposes of the relevant worker's compensation law or the personal injury is not an injury which is subject to such law

then this Policy Section will respond to the extent that **Your** liability would not be covered under such fund, scheme, policy of insurance or self-insurance arrangement had **You** complied with **Your** obligations pursuant to such law.

4. **Erection and Alteration to Buildings**

arising out of or in connection with the erection, demolition of and/or alteration or addition to buildings or structures by **You** or on **Your** behalf except where the completion value of such work does not exceed \$20,000.

5. **Property Damage to:**

Property owned by or leased or rented to **You** or property in **Your** physical or legal control.

This exclusion shall not apply to liability for Property Damage to:

- a) Property in **Your** physical or legal control up to a maximum of \$100,000 or up to the amount stated in the Policy Schedule, any one **Occurrence** and in the aggregate during any one **Period of Insurance**. However, **We** shall not be liable for **Property Damage** to that part of any property upon which **You** are or have been working where such **Property Damage** arises from such work.
- b) Premises from which **You** conduct the **Business** which are leased or rented to **You** up to a maximum of \$5,000 any one **Occurrence** and in the aggregate during any one **Period of Insurance**.
- c) property belonging to employee(s) of the **Named Insured**.
- d) Vehicle(s) (not belonging to or used by or on **Your** behalf) in **Your** physical or legal control where such **Property Damage** occurs whilst any such **Vehicle** is in a car park owned or operated by **You**, provided that **You** do not own or operate a car park for reward as part of **Your Business**. Provided that where cover is not excluded **You** shall bear an **Excess** of \$1,000 in respect of such **Property Damage** or such other amount as is specified in the Schedule.

6. **Cover afforded under Professional Indemnity**

arising out of or in connection with Personal Injury or Property Damage if indemnity is or would otherwise be afforded under the Professional Indemnity cover section of this Policy.

7. **Professional Indemnity**

arising out of or in connection with the rendering of or failure to render professional advice or service by **You** or Medical Persons or any error or omission connected therewith. For the purpose of this exclusion Medical Persons means qualified medical practitioners, dentists, nurses and any other allied health care professionals and personnel trained in health care.

4 PROFESSIONAL INDEMNITY COVER

We will pay to **You** or on **Your** behalf all amounts which **You** shall become legally liable to pay for compensation in respect of **Personal Injury** or **Property Damage** happening during the **Period of Insurance** caused by an **Occurrence** and arising from **Childcare** in the conduct of **Your** profession.

We will not pay more than the **Limit of Liability** stated in the current Schedule for Professional Indemnity for any one claim or series of claims arising from one **Occurrence**.

COSTS AND EXPENSES

In addition to the stated **Limit of Liability**, **We** will:

- a) defend any suit against **You** claiming compensation for **Personal Injury** or **Property Damage** and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; **We** may investigate, negotiate and settle any claim or suit as **We** deem expedient; **We** shall not be obliged to pay any claim or judgement or to defend any suit after **Our Limit of Liability** has been exhausted by payment of judgements or settlements;
- b) pay all expenses incurred by **Us**, all **Your** legal costs incurred with **Our** consent and all interest accruing after any such judgement as does not exceed **Our Limit of Liability** thereon;
- c) reimburse **You** for all reasonable expenses, other than loss of earnings, incurred with **Our** consent;
- d) pay expenses incurred by **You** for first aid to others at the time of any **Personal Injury** for which **You** are entitled to compensation.

If a payment exceeding **Our Limit of Liability** has to be made to dispose of a claim, **Our** liability to pay Additional Payments in connection therewith shall be limited to such proportion of the Additional Payments as the **Limit of Liability** bears to the amount paid to dispose of the claim.

Our maximum liability to pay Costs and Expenses under this Policy is \$5,000,000 or the amount equal to the Limit of Liability whichever is the lesser.

EXCESS

Where an **Excess** is specified in the Schedule, **You** shall bear this amount of each and every claim (for the purpose of this clause the term claim includes Costs and Expenses.)

EXCLUSIONS

We shall not be liable for claims:

1. Contractual Liability

arising out of or in connection with liability assumed by **You** under any contract or agreement except to the extent that such liability would have been implied by law.

2. Medical Persons

arising out of or in connection with the rendering of or failure to render professional advice or service by any Medical Persons or any error or omission connected therewith. For the purpose of this exclusion Medical Persons means qualified medical practitioners, dentists, nurses and any other allied health care professionals and personnel trained in health care other than first aid attendants.

3. Cover afforded under Public and Product(s) Liability Cover

arising out of **Personal Injury** or **Property Damage** if indemnity is or would otherwise be afforded under the Public and Products Liability cover section of this Policy.

5 POLICY EXTENSIONS

We will cover **You** (if **You** are a person, corporation or entity specified in 2.33.1, 2.33.2, 2.33.3, 2.33.4, 2.33.5, 2.33.6) for each Policy Extension listed below subject to the Conditions, Definitions, Exclusions (General and Specific) and **Excess** and any other term of this Policy (unless otherwise stated). The inclusion of any Policy Extension shall not increase the **Limit of Liability**.

ABUSE EXTENSION

This Extension only applies to a breach of professional duty whether a duty is owed in contract or otherwise, in respect of an incident or series of incidents of **Abuse** whenever or wherever committed or alleged to have been committed in connection with **Your Business** during the **Period of Insurance** and within the Territorial Limits.

We will pay those sums that **You** become legally obligated to pay as damages (including all legal costs and expenses for which **You** shall become legally liable to the claimant) up to but not exceeding the abuse sublimit stated below for each and every **Perpetrator**.

If a claim for damages arising from an incident(s) of **Abuse** is first made against **You** during the **Period of Insurance**, then all subsequent claims arising from any incident(s) of **Abuse** by that **Perpetrator** shall attach against the abusesublimit stated below.

Our total liability under this Extension will not exceed \$10,000,000 each and every **Perpetrator** during the **Period of Insurance**.

CONDITIONS

You shall, as a condition of this Extension, ensure full compliance with all statutory legislation and requirements for dealing with minors. Defence costs will be part of and not in addition to the **Abuse** sublimit. Defence costs shall be subject to the **Excess**.

You shall bear the **Excess** (inclusive of costs and expenses) of any one claim. For the purpose of determining the **Excess** applicable to any indemnity provided under this Extension, it is expressly agreed that a separate **Excess** will apply to each and every individual claimant.

You must give notice in writing to **Us** as soon as is reasonably practicable upon becoming aware of any fact or circumstance that may give rise to a claim or claims.

EXCLUSION FOR ABUSE EXTENSION

We will not be liable to pay any claim for compensation, damages, legal costs or any other cover under this policy pursuant to this extension if **You** at any stage prior to the provision of any **Childcare** to the victim of the **Abuse** became aware of circumstances indicating the propensity or proclivity of each and every **Perpetrator** to commit an act of **Abuse**.

The General Exclusions in this policy wording set out below also apply to this Extension.

CRIMINAL DEFENCE COSTS, CORONIAL ENQUIRIES & OFFICIAL INVESTIGATIONS

If an **Occurrence** which is or would be covered by either the Public and Products Liability cover or the Professional Indemnity cover causes **You** to incur **Criminal Defence, Investigation Costs and Expenses** in connection with a prosecution or official investigation, examination or enquiry **We** will to pay such **Criminal Defence, Investigation Costs and Expenses**.

PROVIDED ALWAYS THAT:

- a) **We** shall be entitled, at **Our** discretion, to appoint legal representation to represent **You** in the investigation, examination or enquiry;
- b) the investigation, examination or enquiry, or notice of intended investigation, examination or enquiry is notified to **Us** within 14 days of **You** becoming aware of such notice or intended investigation;
- c) in the event that a claim for payment of **Criminal Defence, Investigation Costs and Expenses** is withdrawn or indemnity under this Policy is subsequently withdrawn or denied, **We** shall cease to advance **Investigation Costs and Expenses** and **You** must refund any **Investigation Costs and Expenses** advanced by **Us** to the extent that **We** are satisfied that **You** were not entitled to such **Investigation Costs and Expenses** for any reason, including, but not limited to, the application of General Exclusion 6.19 – Fraud, Deliberate or Malicious Acts, unless **We** agree in writing to waive recovery of such **Criminal Defence, Investigation Costs and Expenses**; and
- d) **Our** total liability in respect of **Criminal Defence Investigation Costs and Expenses** for all claims made under this Policy Extension shall not exceed \$200,000.

For the purpose of this Policy Extension, an official investigation, examination or enquiry includes an investigation, examination or enquiry by way of a Royal Commission or Coronial Enquiry or conducted by a regulatory authority such as the Australian Securities and Investments Commission or Childcare Regulator or enquiry conducted by a parliament or any disciplinary committee of any association or professional body of which **You** are a member.

CRISIS COVER

We will pay **You** for any **Crisis Loss** which **You** (specified in definitions 2.33.1, 2.33.2, 2.33.3, 2.33.4, 2.33.5, 2.33.6) incur by reason of a **Crisis** and the **Occurrence** is or would be covered by either the Public and Products Liability cover or the Professional Indemnity cover causes the **Crisis**;

Our total liability for all claims under this extension shall not exceed \$25,000, in the aggregate.

The inclusion of this Policy Extension shall not increase the **Limit of Liability**.

EMERGENCY FIRST AID/ GOOD SAMARITAN ACT

The Professional Indemnity cover is extended to include the rendering of emergency first aid assistance by any of **You**, provided that **We** will not be liable where the employee(s) was acting at the time under a contract of employment with any employer other than **You** as defined in 2.33.1, 2.33.2, 2.33.3, 2.33.6, (for the purpose of this extension emergency first aid assistance shall mean assisting at the scene of a medical emergency, accident or disaster by **Your** employee(s) present either by chance, or in response to an S.O.S. call following a disaster or accident whilst at or in transit to or from the address of the premises where **You** provide **Childcare**.

EVENTS AND FUND RAISING

The Policy is extended to include attendance at events including fundraising events, where the daily attendance to such events and/or fundraising events does not exceed 500.

EXCURSIONS

The Policy is extended to include excursions, playgroups, or training organised attended, and/or supervised by **You**, in the course of your **Business** provided that:

- the excursion is limited to no more than eight hours duration in any twenty-four hour period and not requiring an overnight stay
- Children remain always within **Your** direct supervision
- The cover provided in this extension does not apply to parents or other relatives or volunteers who also attend, unless **You** caused or contributed to any loss or injury they sustained.

FINES AND PENALTIES

If **You** (specified in definitions 2.33.1, 2.33.2, 2.33.3, 2.33.4, 2.33.6) incur a Fine or Penalty which would otherwise be excluded by reason of Exclusion 'Fines and Penalties' as a result of an actual or alleged breach of any **Work, Health and Safety Legislation** or any **Education and Care Services National Law and Education and Care Services Regulation** then:

- a) **We** agree to pay **You** or on **Your** behalf such Fine or Penalty and Court Costs ordered against **You** and;
- b) any costs and expenses incurred with **Our** written consent in the defence or settlement of any Fine or Penalty covered by this Extension.

PROVIDED ALWAYS THAT:

- a) The fines and Penalties cover only covers Claims first made against **You** and notified to **Us** during the Period of Insurance.
- b) **You** notify **Us** in accordance with the notification provision on page 4 of this Policy within 14 days of **You** becoming aware of circumstances that **You** know or ought to have known that **You** have breached or it has been alleged that **You** have breached, such Work, Health and Safety Legislation or Education and Care Services National Law and Education and Care Services Regulation.
- c) If **You** are notified that you are to be investigated or interviewed by an investigator or regulator **You** should contact Vardanega Roberts solicitors on 02 9261 3844 or lawyers@vrlaw.com.au and immediately forward details of the notification or investigation, so that a claim can be made and an assessment of whether legal assistance is required.
- d) If **You** are called before an enquiry or tribunal **You** must not agree to a penalty without first notifying of a claim in accordance with the notification procedure on page 4 of this Policy at least 14 days prior to any attendance before any enquiry or tribunal.
- e) the act, error or omission giving rise to the Fine or Penalty did not arise from an intentional, wilful, reckless, or deliberate act, error, or omission; and
- f) The limit of liability arising from any **Fines and Penalties** is limited to \$50,000 for any one claim or series of claims arising out of one incident, investigation or penalty or series of incidents, investigations or penalties and in the aggregate for all claims and is subject to an excess which is calculated at 10% of the Fine and or Penalty including Court costs ordered against you in each and every claim.

The inclusion of this Policy Extension shall not increase the **Limit of Liability**.

RETROACTIVE COVER

We will extend this Policy to indemnify **You** under coverage afforded under Public and Products Liability cover and Professional Indemnity cover for any **Occurrence** happening during the period between the **Retroactive Date** and the inception date of this policy as specified in the Schedule.

This additional cover will not increase the **Limit of Liability**.

This additional cover only covers **Claims** first made against **You** and notified to **Us** during the **Period of Insurance**.

Coverage is further subject to:

- a) coverage by this Policy shall be no broader than the claims made policy of insurance immediately prior to this policy and will also be subject to the terms, conditions and exclusions of this Policy;
- b) the limit of liability available to **You** during the period of insurance the Personal Injury or Property Damage happened.
- c) the limit of liability arising from any actual or alleged **Abuse** is limited to \$1,000,000 any one claim and in the aggregate for all claims and subject to a \$5,000 excess each and every claim.

For the purpose of any retroactive cover we will not be liable for claims directly or indirectly based upon attributable to or in consequence of:

- a) any notice given under a previous policy of insurance of any incidents, facts or circumstances which may give rise to a claim.
- b) any incidents, facts or circumstances which were known or ought reasonably to have been known by **You** prior to the **Period of Insurance** and had the potential to give rise to a claim under this optional extension.

6 GENERAL EXCLUSIONS

The following General Exclusions apply to all standard cover AND all Extensions of cover provided by this policy.

We shall not be liable for claims:

2.24. Abuse

- 2.24.1. in respect of an incident(s) of **Abuse** for which cover in any amount exists under the terms of another policy or would exist if this policy had not been effected.
- 2.24.2. for any liability arising from any facts and/or circumstances, of which **You** had become aware prior to the commencement of the **Period of Insurance**, which a reasonable person in **Your** position would have considered as facts and/or circumstances which may give rise to a claim or claims under the **Abuse Extension**.
- 2.24.3. to cover defence costs or to provide any personal indemnity coverage to any actual or alleged **Perpetrator(s)** of **Abuse** or any attempt thereat.
- 2.24.4. for any fines or penalties, or for Defence Costs for defending any criminal proceedings involving **Abuse**
- 2.24.5. for any liability arising out of the failure to comply with procedural guidelines established by **You** concerning **Abuse**.
- 2.24.6. to indemnify **You** if **You**:
 - a) authorised or permitted **Abuse**;
 - b) disregarded knowledge of **Abuse**;
 - c) had actual or constructive knowledge of **Abuse** and failed to notify a person with specific responsibility for the protection of children or vulnerable adults from **Abuse**;
 - d) aided or contributed to or supported **Abuse**; or
 - e) aided or assisted actual or alleged Perpetrators in concealing the occurrence of **Abuse** of any person before or after the provision of Childcare
 - f) intentionally or wilfully failed to comply with any procedure, regulation or license designed to protect children or vulnerable adults.

2.25. Aircraft, Hovercraft and Watercraft

in respect of liability arising out of or caused by, through or in connection with:

- 2.25.1. the ownership, maintenance operation or use by **You** or the use on **Your** behalf of any **Aircraft** or **Hovercraft**;
- 2.25.2. the selling or manufacturing of **Aircraft** or the manufacture, assembly and or supply of any products that are used with **Your** knowledge in **Aircraft** or aerial device;
- 2.25.3. the repair, service or maintenance of **Aircraft** or **Aircraft** products or the installation of any products into **Aircraft**;
- 2.25.4. the ownership, maintenance, operation or use by **You** or on **Your** behalf of any **Watercraft**, exceeding 10 metres in length except where such **Watercraft** are owned or operated by others and used by **You** for **Business** entertainment;
- 2.25.5. any Watercraft operating in excess of 3 nautical miles offshore.

2.26. **Amusement Rides and Hazardous Activities**

arising out of or in connection with:

- 2.26.1. any person participating in trailer rides, pony rides, equestrian events or the like, motor bike rides, tractor rides, activities which involve air filled jumping castles and slides, demountable climbing walls or rock climbing or rope courses, swimming other than excursions to commercially operated swimming pools, trampoline parks, martial arts, activities at adventure parks and other activities generally regarded as adventure activities;

Provided that this Exclusion (6.3.1) shall not apply to such of the above activities that we have agreed by endorsement to this Section to cover subject always to the terms and conditions of the endorsement and the terms, conditions and exclusions of this Section and to the limit of liability specified in the Schedule

- 2.26.2. the use or ownership of mechanical amusement devices. However this exclusion shall not apply to **Your** vicarious liability arising from the hire or loan of such devices from other parties provided such other party are in control of and operate such device and furthermore that **You** have obtained a certificate of currency confirming such party has liability insurance for a minimum of \$10,000,000 any one **Occurrence**.

2.27. **Asbestos**

arising out of or in connection with any loss, or alleged loss, damage, cost, liability, expense, fine or penalty of any kind or nature whatsoever incurred by **You**, directly or indirectly, resulting from, in consequence of, or with respect to illness or sickness or death in any way relating to direct or indirect exposure to **Asbestos** or materials containing **Asbestos**.

2.28. **Assault and Battery**

arising out of or in connection with **Personal Injury** or **Property Damage** caused by or arising from assault and battery committed by **You** or at **Your** direction, unless reasonably necessary for the protection of persons or property.

2.29. **E-Commerce**

for **Personal Injury** or **Property Damage** and/or **Advertising Liability** arising directly or indirectly out of, or in any way involving **Your** internet operations or for **Property Damage** to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:

- 2.29.1. the use of any computer hardware or software;
- 2.29.2. the provision of computer or telecommunications services by **You** or on **Your** behalf;
- 2.29.3. the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus

But this exclusion does not apply to:

- Personal Injury** or **Property Damage** or **Advertising Liability** arising out of any material which is already in print in support of its product, including but not limited to product use and safety
- instructions or warnings and which is also reproduced on its site or
- liability which arises irrespective of the involvement of **Your** internet operations.

Nothing in this exclusion will be construed to extend coverage under this Policy to any liability that would not have been covered in the absence of this exclusion.

- 2.30. **Relief Educator(s)**
arising out of or in connection with the provision of **Childcare** undertaken on behalf of an **Educator(s)** unless the **Educator(s)** is a **Named Insured** specified in the Schedule.
- 2.31. **Fines and Penalties**
for punitive, aggravated or exemplary damages.
- 2.32. **Libel and Slander**
for libel and slander:
- 2.32.1. resulting from statements made prior to the commencement of the **Period of Insurance**.
 - 2.32.2. resulting from statements made at **Your** direction with knowledge that such statements are false.
 - 2.32.3. related to advertising, broadcasting, publishing or telecasting activities conducted by **You** or on **Your** behalf
- 2.33. **Loss of Use**
for loss of use of tangible property which has not been physically damaged or destroyed resulting from:
- 2.33.1. a delay in or lack of performance by or on **Your** behalf of any contract or agreement; or
 - 2.33.2. the failure of **Your Product(s)** to meet the level of performance, quality, fitness or durability
- expressly or implied warranted or represented by **You**, but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or loss or destruction of **Your Product(s)** after such **Product(s)** have been put to use by any person or organisation other than **You**.
- 2.34. **Nuclear Fuel/Weapons**
for **Personal Injury** or **Property Damage** directly or indirectly caused by or contributed to by or arising from:
- 2.34.1. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion combustion shall include any self-sustaining process of nuclear fission.
 - 2.34.2. nuclear weapons material.
- 2.35. **Pollution**
for **Personal Injury** or **Property Damage** arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water. **We** shall also not be liable to pay any costs and expenses incurred in the prevention, removal, or clean-up of such **Pollutants**.
- Exclusion 6.12 shall not apply if such discharge, dispersal, release or escape is caused by a sudden, identifiable, unexpected and unintended happening and takes place in its entirety at a specific time and place during the **Period of Insurance**.
- However, notwithstanding Exclusion 6.12 cover does not apply in respect of Pollution that causes:
- 2.35.1. **Property Damage** to premises presently or at any time previously owned or tenanted by **You**

- 2.35.2. **Property Damage** to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by **You** or otherwise in **Your** care custody or control.

2.36. **Territorial Limits for Personal Injury or Property Damage or Advertising Liability:**

- 2.36.1. occurring in the United States of America or Canada. This exclusion shall not apply to claims arising from the presence of any person who is normally resident in Australia or New Zealand and who is not undertaking manual work or a supervision of any kind in United States of America or Canada. However the **Limits of Liability** for such claims are inclusive of all costs and expenses;
- 2.36.2. caused by or arising out of **Your Product(s)** knowingly exported by **You** or **Your** agents to the United States of America or Canada;
- 2.36.3. where claims are made upon **You** outside Australia or New Zealand in any country where **You** are represented by a branch or company or firm or individual holding **Your** power of attorney;
- 2.36.4. where such claims arise out of any contract entered into by **You** under the terms of which, work is to be performed outside Australia or New Zealand.

2.37. **Terrorism**

for liability for loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this exclusion an **Act of Terrorism** means an act including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed to 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.

This exclusion also excludes loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

If **We** allege that by reason of this exclusion, any loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon **You**.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

2.38. **Tobacco or e-cigarettes**

for any injury caused directly or indirectly by the inhalation or ingestion of or exposure to tobacco or tobacco smoke or e-cigarettes or any ingredient or additive present in any articles, items or goods which contain or include tobacco;

2.39. **Vehicles**

for **Personal Injury** or **Property Damage** arising out of the ownership, maintenance, operation or use by **You** of any Vehicle:

- 2.39.1. which is registered; or
- 2.39.2. in respect of which insurance is required by virtue of any legislation.

Exclusion 6.16 shall not apply to **Personal Injury** or **Property Damage** arising from:

- a) the delivery or collection of goods to or from any **Vehicle** where such **Personal Injury** or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare.
- b) the loading or unloading of any **Vehicle**.

2.40. **War**

for **Personal Injury** or **Property Damage** arising out of or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, expropriation, confiscation, nationalisation destruction or damage to property by or under the order of any government or public or local authority.

2.41. **Drownings in Pools**

for **Personal Injury** or **Property Damage** arising out of or in consequence of drowning or partial drowning arising from failure to properly fence or secure fencing for any Pool on the premises.

2.42. **Fraudulent, Deliberate or Malicious Acts**

For liability for loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any fraudulent, deliberate or malicious acts committed by **You** or by others with your knowledge or awareness.

2.43 **CYBER and DATA TOTAL EXCLUSION ENDORSEMENT**

- 1 Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy does not apply to any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:
 - 1.1 **Cyber Act** or **Cyber Incident** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**; or
 - 1.2 loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any **Data**, including any amount pertaining to the value of such **Data**;

regardless of any other cause or event contributing concurrently or in any other sequence thereto.
- 2 In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- 3 This endorsement supersedes any other wording in the Policy or any endorsement thereto having a bearing on a **Cyber Act**, **Cyber Incident** or **Data**, and, if in conflict with such wording, replaces it.
- 4 If the Underwriters allege that by reason of this endorsement that loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

Definitions

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

- 6 **Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.
- 7 **Cyber Incident** means:
 - 7.1 any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
 - 7.2 any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.
8. **Data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.

2.44 COMMUNICABLE DISEASE EXCLUSION

1. Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
2. For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.
3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
 - 3.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
 - 3.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
 - 3.3. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

3. CONDITIONS

3.1. Cancellation

- 3.1.1. **You** may cancel this Policy at any time by forwarding a written request to **Us**. If a claim or event that may give rise to a claim has been notified prior to cancellation, no refund of premium will be provided. If a claim or event that may give rise to a claim has not been notified prior to cancellation, **We** will refund the part of the premium as detailed under the Cancellation section on page 5 of this Policy.
- 3.1.2. **We** may cancel this Policy in any of the circumstances detailed in the Insurance Contracts Act 1984. **We** will refund the pro-rata premium calculated for the unexpired **Period of Insurance**.

3.2. Claims

3.2.1 When an event occurs which could give rise to a claim **You** must:

- a) As soon as possible notify **Us** of the **Occurrence** at the contact details in the 'How to Make a Claim' section in the Product Disclosure Statement at the beginning of this policy;
- b) Within 30 days of notifying **Us**, give **Us** a statement in writing with as much detail as **You** can about the cause, description and amount of the Loss or Damage;
- c) Forward details and documentation of any claim or legal proceedings including any prosecutions by any party brought against **You** to **Us** as soon as possible after receipt;
- d) Preserve any property which may be needed as evidence in any claim against **You** and make it available for inspection by **Us** and **Our** representatives.

3.2.2. **You** shall not without **Our** consent make any admission, offer promise or payment in connection with any **Occurrence** or claim.

3.2.3. **We** shall be entitled to prosecute in **Your** name at **Our** expense and for **Our** benefit any claim that **You** have against a third party for indemnity or damages or otherwise that arises out of or in connection with an **Occurrence**.

3.2.4. **You** shall give all information and assistance as **We** may require in the prosecution defence or settlement of any claim, or in any recovery actions.

3.2.5. **We** may at any time pay **You** in respect of all claims against **You**, arising directly or indirectly from one source or original cause the amount of the **Limit of Liability** or such other amount specified in respect thereof (after deduction of any amounts already paid as compensation in respect thereof) or any lesser sum for which the claim or claims can be settled. Upon such payment **We** shall relinquish conduct or control of and be under no further liability under this Policy in connection with such claim or claims except for costs, charges and expenses:

- a) recoverable from **You** in respect of the period prior to the date of such payment;
- b) incurred by **Us**;
- c) incurred by **You** with **Our** consent prior to the date of such payment.

3.3. **Goods and Services Tax**

The amount of premium payable to **You** for the Policy includes an amount on account of the GST on the premium. When **We** pay a claim, **Your** GST status will determine the amount **We** pay. When **You** are:

- a) not registered for GST, the amount **We** pay is the sum insured/limit of indemnity or the other limits of insurance cover including GST.
- b) registered for GST, **We** will pay the sum insured/limit of indemnity or the other limits of insurance and where **You** are liable to pay an amount for GST in respect of an acquisition relevant to **Your** claim (such as services to repair a damaged item insured under the Policy) **We** will pay for the GST amount.

We will reduce the GST amount **We** pay by the amount of any Input Tax Credits to which **You** are or would be entitled if **You** made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through **Your** Business Activity Statement (BAS).

You must advise **Us** of **Your** correct Australian Business Number & Taxable Percentage. Any GST liability arising from **Your** incorrect advice is payable by **You**. Where the settlement of **Your** claim is less than the sum insured/limit of indemnity or the other limits of insurance cover, **We** will only pay an amount for GST (less **Your** entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover **Your** loss, **We** will only pay the GST relating to **Our** settlement of the claim.

We will (where relevant) pay **You** on **Your** claim by reference to the GST exclusive amount of any supply made by any business of **Yours** which is relevant to **Your** claim.

GST, Input Tax Credit, Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax), ACT 1999 and related legislation as amended from time to time.

Taxable Percentage is **Your** entitlement to an Input Tax Credit on **Your** premium as a percentage of the total GST on that premium.

3.4. **Change of Facts or Circumstances**

Notice in writing shall be given to **Us** as soon as possible of every change materially varying any of the facts or circumstances existing at the commencement of this Policy that **You** become aware of.

3.5. **Cross Liability**

Where **You/Your** (if **You** are specified in paragraphs 2.26.1 or 2.26.5) is comprised of more than one party, each of the parties shall be considered as a separate legal entity and the word **You/Your** shall apply to each party as if a separate policy had been issued to each party but nothing contained in

this Condition 7.5 shall result in an increase in the **Limit of Liability** in respect of any **Occurrence** or in the aggregate.

3.6. **Agreements**

You must not enter into an agreement with another party which excludes or reduces **Your** rights to make a claim against that party or where **You** agree to indemnify that party without **Our** written consent. If **You** do, **We** may reduce the amount of any claim **You** make under this Policy by the extent to which **Your** agreement prevents **Us** making a claim against that party under **Our** rights of subrogation.

3.7. **Inspection of Property**

We shall be permitted but not obligated to inspect **Your** property and operations at any time. Neither **Our** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for **Your** benefit or others, to determine or warrant that such property or operations are safe.

3.8. **Jurisdiction**

All disputes arising out of or under this Policy will be subject to determination by any Court of competent jurisdiction within Australia

3.9. **Other Insurance**

You must tell **Us** in writing and supply copies to **Us** as soon as possible about any other insurance which covers the risks insured by this Policy. The insurance afforded by this Policy is excess over and reduced by any other valid and collectable insurance available to **You**. Valid and collectable insurance includes any self insurance plan which would be applicable to the loss.

3.10. **Reasonable Precautions**

You shall take all reasonable precautions to:

- 3.10.1. comply with all legislation and regulations, including **Work, Health and Safety Legislation** and **Childcare Regulation(s)**
- 3.10.2. prevent **Personal Injury** and **Property Damage** or **Advertising Liability**;
- 3.10.3. prevent manufacture, sale or supply of defective **Product(s)**;
- 3.10.4. comply and ensure that **Your** employee(s), servants and agents comply with all statutory obligations, by-laws or regulations imposed by a public authority in respect thereof for the safety of persons or property;
- 3.10.5. at **Your** own expense, trace or recall or modify any of **Your Product(s)** containing any defect or deficiency of which **You** have knowledge or have reason to suspect.

3.11. **Subrogation**

- 3.11.1. **We** are entitled to pursue any claim to recover any amount paid to **You** or on **Your** behalf under this Policy in **Your** name at **Our** expense and for **Our** benefit.
- 3.11.2. **You** must give **Us** all the reasonable assistance and information that **We** require in pursuing any such claim.

3.12. **Sanctions Limitation and Exclusion Clause**

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

3.13 Fraudulent Claims

If any claim is in any respect fraudulent, or if any fraudulent means or devices are used by **You** or anyone acting on **Your** behalf to obtain any benefit under this policy, or if any loss hereunder is caused by **Your** wilful act or with **Your** cooperation, **We** are entitled to refuse to pay any such claim and may void this insurance policy.

