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# Combined Medical Malpractice Professional Indemnity and Public and Products Liability Insurance



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# Special Notices

This policy is an important document. The policy wording and schedule together set out the cover provided, the amount insured and the terms and conditions of your insurance. Please read it carefully and keep it in a safe place.

BMS Risk Solutions Pty Ltd [NZBN 9429046428141] is a Coverholder for certain underwriters at Lloyd's. In these notices a reference to "**we**", "**our**" or "**us**" means to the insurers named in the **schedule**. BMS Risk Solutions Pty Ltd has the authority to bind this group policy on their behalf for OTNZ-WNA (NZBN 9429043322275). References to "**you**" or "**your**" in these notices means Eligible Members of Occupational Therapy New Zealand Whakaora Ngangahau Aotearoa Inc – OTNZ-WNA. The information contained in this section is general information only and does not form part of your contract with **us**.

## Your Duty of Disclosure

Before **you** enter into a contract of general insurance with **us**, **you** have a duty, under the Insurance Contracts Act 1984, to disclose to **us** every matter which **you** know, or could reasonably be expected to know, is relevant to **our** decision whether to accept the risk of the insurance and, if so, on what terms. **You** have the same duty to disclose those matters to **us** before you renew, extend, vary or reinstate a contract of insurance.

Your duty however does not require disclosure of a matter:

- that diminishes the risk to be undertaken by **us**
- that is common knowledge
- that **we** know, or in the ordinary course of business as an insurer, ought to know
- as to which compliance with your duty is waived by **us**.

## Non-Disclosure

If **you** fail to comply with **your** duty of disclosure, **we** may be entitled to reduce **our** liability under the contract in respect of a claim or may cancel the contract. If **your** non-disclosure is fraudulent, **we** may also have the option of avoiding the contract from the beginning.

## Claims Made Policy

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

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

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

## Privacy

BMS Risk Solutions Pty Ltd (BMS) is committed to protecting the privacy of the personal information you provide us. BMS collects, uses and retains your personal information in accordance with the National Privacy Principles.

We need to collect the personal information on the applicable online questionnaire or proposal form to consider your application for insurance and to determine the premium (if **your** application is accepted) when **you** are applying for, changing or renewing an insurance policy with **us**. This information will also be used if you lodge a claim under **your** policy. We may also need to request additional information from you in connection with **your** application or a claim. If **you** do not provide us with this information, or any additional information **we** request, **we** may not be able to process **your** application or offer **you** insurance cover or respond to any claim.

We may disclose the personal information we collect:

- To **our** relevant employees involved in delivering our services;
- If **your** insurance broker collects this form from **you**, to that broker;
- To facilitators such as legal firms, professional experts such as accountants, actuaries, engineers and technology experts;
- To the insurance companies with whom we transact business;
- To the Lloyd's Syndicates we represent (which are located in the United Kingdom);
- To insurance reference bureau or credit reference bureau;
- To reinsurers or reinsurance brokers (which may include reinsurers located outside of New Zealand).

Where **we** do disclose the information as above the recipient may hold the information in accordance with its own privacy statement / policies. Those may include, by way of example, disclosing the information to and storage of that information by its associated entities, which may be located overseas. **We** may also be required to provide **your** personal information to others for purposes of public safety and law enforcement and if required by law or by a law enforcement body to do so.

**You** may request access to **your** personal information, and where necessary, correct any errors in this information (some restrictions and costs may apply). If **you** would like to access a copy of your personal information or you wish to correct or update your personal information, please also contact us on 0800 999 267.

By completing and returning an online questionnaire, proposal form and/or providing **us** with any additional information in connection with **your** application, **you** agree to us using and disclosing your information as set out above. This consent to the use and disclosure of your personal information remains valid unless you alter or revoke it by giving us written notice.

From time to time, **we** may use **your** personal information to send **you** details of new insurance products or other insurance related information that may be of interest to **you**. If you do not wish to receive such information, please advise us on 0800 999 267.

## Resolving Complaints & Disputes

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

BMS Risk Solutions Pty Ltd  
Email: [otnz-wna@bmsgroup.com](mailto:otnz-wna@bmsgroup.com)  
Tel: 0800 999 267

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

### **Lloyd's Underwriters' General Representative in New Zealand**

PO Box 5639, Wellington 6145  
Email: [IDRNewZealand@lloyds.com](mailto:IDRNewZealand@lloyds.com)  
Tel: 04 472 7582

Where Lloyd's Underwriters' General Representative receives a complaint, this will be acknowledged within five working days of receipt.

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

Lloyd's Underwriters' General Representative will assist the liaison with the policyholder and any relevant coverholder if required.

Lloyd's Australia will give the policyholder the name and contact details of the person handling the complaint.

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

Lloyd's Australia will send the policyholder a final response within 10 working days if they have all the necessary information. In the event Lloyd's Australia cannot resolve the matter within two months they will give you the reasons why and advise you of your right to elevate the matter to the Insurance and Financial Services Ombudsman (IFSO) ([www.ifso.nz](http://www.ifso.nz)).

## The Fair Insurance Code

This policy is not subject to the protections provided by the Insurance Council of New Zealand Fair Insurance Code.

# Your Policy

## Introduction

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

## 1. Cover

### A. Cover for civil liability and malpractice

We agree to cover **you** against all sums which **you** shall become legally liable to pay as **compensation** for civil liability, including claimant's costs, for any **claim** made against **you** during the **period of insurance** arising from the **practice of your profession** or **malpractice** within the **territorial limits**.

### Defence costs and expenses

We will also pay **defence costs and expenses** incurred with **our** prior written consent, to investigate, defend or settle a **claim** covered under this policy, subject to payment of the **deductible**.

### B. Public Liability

We agree to cover **you** against all sums which **you** shall become legally liable to pay as **compensation** in respect of any **claim** for:

1. **personal injury**;
2. **property damage**;

arising out of an **occurrence** and happening in the course of **your business**.

Provided always that:

1. such **personal injury** or **property damage** occurs within the **territorial limits** of this Policy and results in a **claim** first made against **you** and notified to **us** during the **period of insurance**;
2. there shall be no liability under this Insuring Clause 1.B for any **claim** made against **you** for **personal injury** or **property damage** sustained or alleged to have been sustained prior to the **retroactive date** (if any) specified in the **Schedule**.

### C. Products Liability

We agree to cover **you** against all sums which **you** shall become legally liable to pay as **compensation** in respect of any **claim**:

1. **personal injury**;
2. **property damage**,

arising out of an **occurrence** and happening in connection with **your products**.

Provided always that:

1. such **personal injury** or **property damage** occurs within the **territorial limits** of this Policy and results in a **Claim** first made against **you** and notified to **us** during the **period of insurance**;
2. there shall be no liability under this Insuring Clause 1.C for any **Claim** made against **you** for **personal injury** or **property damage** sustained or alleged to have been sustained prior to the **retroactive date** (if any) specified in the **schedule**.

#### How much we will pay

1. The most **we** will pay for any one **claim** or request for cover and in the aggregate for all **claims** and requests for cover during the **period of insurance**, is the **limit of indemnity** per **member**;
2. Any **sub-limit of indemnity** that applies to cover is the most **we** will pay for that cover in the aggregate for requests for cover during the **period of insurance** per **member**; and the **sub-limit of indemnity** will apply in place of the **limit of indemnity**;
3. The **limit of indemnity** and **sub-limit of indemnity** are exclusive of the **deductible**;
4. The **limit of indemnity** is inclusive of **defence costs and expenses**;
5. Nothing in this policy operates to increase the **limit of indemnity** or **sub-limit of indemnity**;
6. All **claims** or requests for cover under this policy which arise from, or are attributable to, a single act, error, omission, or occurrence or series of similar or related single acts, errors, omissions or occurrences will be treated under this policy as one claim or one request for cover.
7. If any loss gives rise to liability under more than one section, **our** total liability for all losses, **claims** or a series consequent upon or attributable to one source or original cause, shall not exceed the single greatest **limit of indemnity** or **sub-limit of indemnity** available under the sections providing cover.

#### Deductible

**Our** total liability applies over and above any **deductible**, as set out in the **schedule**.

## 2. Schedule

<b>Policy Number</b>	OB201082A/OTNZ
<b>UMR</b>	B1284OB201082A
<b>Insured</b>	Eligible New Zealand Members of Occupational Therapy New Zealand Whakaora Ngangahau Aotearoa Inc – OTNZ-WNA
<b>Policy type</b>	Combined Medical Malpractice Professional Indemnity and Public & Products Liability Insurance Policy.
<b>Professional Service</b>	The provision of professional services in relation to OTNZ-WNA's objectives or purpose and/or an approved modality as prescribed by OTNZ-WNA for which the member has been approved
<b>Policy Period</b>	From: 30 June 2020 New Zealand Standard Time To: 30 June 2021 New Zealand Standard Time
<b>Limit of indemnity</b>	<p>Civil Liability and Malpractice: The maximum for any one claim and for all claims in the aggregate in the period of insurance is: OPTION 1: \$1,000,000, per <b>OTNZ-WNA member</b>. OPTION 2: \$2,000,000, per <b>OTNZ-WNA member</b>.</p> <p>Public &amp; Products Liability: The maximum for any one claim and for all claims in the aggregate in the period of insurance is: OPTION 1: \$1,000,000, per <b>OTNZ-WNA member</b>. OPTION 2: \$2,000,000, per <b>OTNZ-WNA member</b>.</p> <p>This limit of indemnity is subject to the sub-limits of indemnity as set out in the policy.</p>
<b>Reinstatements</b>	Three included in respect of clauses 1.A, 1.B and 1.C only and by reason of exhaustion (or partial exhaustion) due to indemnity for compensation in respect of any <b>claim</b> covered under this policy and <b>defence costs</b> only. Notwithstanding any reinstatement <b>our</b> liability for any single claim will not exceed the <b>limit of indemnity</b> . <b>Our</b> aggregate liability will not exceed the sum of three times the <b>limit of indemnity</b> .
<b>Retroactive date</b>	Unlimited – full coverage to apply.
<b>Deductible</b>	NIL.
<b>Run-Off Cover</b>	Unlimited – declarations of retired members are made each year by OTNZ-WNA.
<b>Territorial Limits</b>	Worldwide – excluding USA and its protectorates.
<b>Jurisdiction</b>	New Zealand.
<b>Policy Wording</b>	Combined Medical Malpractice Professional Indemnity and Public & Products Liability Wording NZ- OTNZ-WNA 01.19V1 - NZ
<b>Insurer</b>	Certain Underwriters at Lloyd's of London.



### 3. Automatic extensions to your cover – Part A

#### Cover A: Civil Liability & Malpractice

**Breach of confidentiality**

**We will cover you** in respect of **your** civil liability for any **claim** first made against **you** during the **period of insurance** for compensation arising from any breach of confidentiality including any breach or alleged breach of **privacy and health records legislation** arising as a result of **your business**.

The most **we** will pay **you** under this section is the limit shown in the schedule as the **limit of indemnity** each and every claim and in the aggregate in any one **period of insurance**, however, this extension does not apply to any costs or expenses **you** incur in replacing, reinstating, rectifying or erasing any personal data.

**Breach of intellectual property**

**We will cover you** against **your** civil liability for compensation arising from any **claim** first made against **you** during the **period of insurance** for any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism in connection with **your business**.

The most **we** will pay **you** under this section is \$100,000 **sub-limit of indemnity** each and every **claim** and in the aggregate in any one **period of insurance**.

**Coroners inquests**

**We agree to provide costs you** incur arising out of the representation at any Coroner’s enquiry following the death of any patient of **yours** and which **you** are legally required to attend arising out of **your business** during the **period of insurance**.

The most **we** will pay **you** under this section is \$1,000,000 **sub-limit of indemnity** each and every **claim** and in the aggregate in any one **period of insurance**.

**Court attendance costs**

**We agree to provide court attendance costs you** incur where **you** are legally compelled to attend a civil proceeding as a witness in a **claim** covered by this policy during the **period of insurance**.

The most **we** will pay **you** under this section is \$250 per day and up to a maximum of \$10,000, any one **period of insurance**.

**Continuous Cover**

Subject to the terms conditions and exclusions of this policy **we** will pay **your** civil liability arising out of any circumstance giving rise to a **claim** first made against **you** during the **period of insurance**, or **your defence costs and expenses** for any circumstance giving rise to an inquiry first commenced during the **period of insurance**, which circumstance ought to have been notified to **us** under a prior policy but wasn’t provided:

- a. that **you** have been continuously insured by **us** since the date when the circumstance should have been notified; and
- b. the failure to notify **us** was not deliberate or fraudulent.

**We will have the discretion to apply to this claim the limit of indemnity and the excess under the prior policy in place when the circumstance should have been notified.**

## Defamation

**We** will cover **you** in respect of **your** civil liability for any **claim** for compensation arising from unintentional defamation, libel or slander as a result of **your business** but only where, upon **our** reasonable request, **you** issue an apology or expression of regret. **We** will not indemnify **you** in respect of any **claim** for defamation, libel or slander should **you** refuse such request by **us**.

The most **we** will pay **you** under this section is the limit shown in the **schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

## Dishonesty of your practice staff

**We** will cover **you** in respect of **your** civil liability for any **claim** for compensation arising from the dishonesty of **your** employees or self-employed freelancers directly contracted to **you** and working under **your** supervision in connection with **your business**, but only where **you** did not commit, condone or ignore any such dishonesty and where **you** **immediately** take all reasonable steps to prevent further loss once **you** are aware of the dishonesty.

**We** will also cover **you** against **your** own direct financial loss where there was a clear intention by **your** employees or self-employed freelancers directly contracted to **you** and working under **your** supervision in connection with **your business** to cause **you** loss or damage and to obtain a personal financial gain over and above any salary, bonus or commission.

The most **we** will pay **you** under this section is the limit shown in the **schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

## Good Samaritan acts

**We** will cover **you** for any **claim** made against **you** for any **personal injury**, mental injury, illness, disease or death of any patient arising as a result of a **Good Samaritan act**.

The most **we** will pay **you** under this section is the limit shown in the **schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

## Loss of documents

Notwithstanding the **Documents** exclusion, if there has been damage to **documents**, **we** will cover **you** against all reasonable costs and expenses **you** incur in replacing and restoring such **documents** relating to **your business** provided that:

- a. such loss or damage is sustained during the **period of insurance** while the **documents** are either in transit or in **your** custody or that of any person to whom **you** have entrusted the **documents** in the course of the normal conduct of **your business**;
- b. where the **documents** are in paper format, **you** ensure that adequate systems are in place for their storage and protection and **you** have taken reasonable steps to ensure that where applicable, copies of such documents are scanned and stored in an electronic format;
- c. where the **documents** are in electronic format, **you**, or any person to whom **you** have entrusted the **documents**, has in place sufficient and proper procedures for the security and daily back-up of such **documents**; and
- d. the amount of any **claim** under this section shall be supported by invoices or accounts which shall be subject to approval by **us** or a competent person nominated by **us**.

The most **we** will pay **you** under this section is the limit shown in the **schedule** as the **limit of indemnity** and is applicable to any one **period of insurance** and excludes any **claims** arising out of any infringement of the Australian Privacy Act 1988 or any superseding, amending or replacement legislation or local equivalent.

## Public relations expenses

We agree to pay reasonable fees, costs, and expenses incurred by **you** for the appointment of a public relations consultant for the sole purpose of protecting **your** reputation that has been brought into question as a direct result of a **claim** covered by this **policy**, provided always that:

- a. **you** notify **us** on first becoming aware of **your** reputation being brought into question and **you** provide full written details outlining the circumstances surrounding the event; and
- b. **we** have given prior written consent to retain the services of such public relations consultant.

The most **we** will pay **you** under this section is \$50,000 **sub-limit of indemnity** each and every **claim** and in the aggregate in any one **period of insurance**.

## Regulatory legal expenses

We agree to pay costs of representing **you** at any properly constituted investigation, where you were first notified of the investigation during the **period of insurance** and where such investigation arises directly in connection with the **practice of your profession or malpractice**.

The most **we** will pay **you** under this section is the limit shown in the **schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**. We will pay such costs where they are incurred with **our** prior written consent.

## Criminal defence costs cover

We agree to cover **your defence costs and expenses** incurred with **our** prior written consent in defending criminal actions, suits or proceedings commenced against **you** during the **period of insurance** and notified to **us** in writing, for penal offences in respect of charges, arising out of **your business**.

However, **we** will not cover **you** for any liability including **defence costs and expenses** arising directly or indirectly, caused by, arising from, contributed by or in any way relating to any allegation or **claim** involving **abuse**.

The most **we** will pay **you** under this section is \$1,000,000 **sub-limit of indemnity**, each and every **claim** and in the aggregate.

## Abuse

Notwithstanding the Abuse exclusion, **we** agree to cover **you** only for **defence costs and expenses**, but excluding salaries or loss of income, **you** incur in defending **claims** made against **you** for allegations of abuse arising from the **practice of your profession or malpractice** and where notice of such **claim** is first received by **you** during the **period of insurance**.

The most **we** will pay **you** under this section is \$150,000 **sub-limit of indemnity** each and every **claim** and in the aggregate and is applicable to any one **period of insurance**. **We** shall not be required to indemnify **you** where **you** have perpetrated any act of abuse or where **you** have by any act or omission condoned such act. If it is found by way of admission by **you**, judgment or adjudication that **you** did commit or condone any act of abuse, then we will be entitled to repayment of any **defence costs or expenses** paid under this extension.

**Your work as a subcontractor or agent work**

**We will cover you** where **you** perform **your business** as a subcontractor or agent of an employer or principal.

The most **we** will pay **you** under this section is the limit shown in the **schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

**Student cover**

**We will cover you** for any **claim** made against **you** during the **period of insurance**, arising from the **practice of your profession** or **malpractice** performed by any student but only where they were performing such **business** on **your** behalf and under **your** full supervision.

The most **we** will pay **you** under this section is the limit shown in the **schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

**Punitive or exemplary damage cover**

Notwithstanding the **Fines and penalties** exclusion, **we** will cover **you** for any **claim** made against **you** during the **period of insurance** in connection with **your business**, for punitive or exemplary damages or for damages that are a multiple of compensatory damages. **We** will cover **you** in respect of **your** liability for such damages, provided always that any such **claim** made against **you** is in conjunction with a **claim** for compensatory damages.

The most **we** will pay **you** under this section is \$100,000 **sub-limit** of indemnity, each and every **claim** and in the aggregate, however no indemnity shall be provided where such damages are deemed to be uninsurable as a matter of law in the jurisdiction in which such damages are awarded.

**Joint venture liability**

**We will cover you** for any **claim** arising from **your** participation in a joint venture in connection with **your business** provided that **your** fee declaration in the online questionnaire includes your proportion of fees from the joint venture.

The most **we** will pay **you** under this section is the limit shown in the **schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

**Principals' prior business**

**We** agree to indemnify directors, partners or principals of the **insured** for any **claim** made against them and otherwise covered under the insuring clauses or extensions to cover under this policy, arising out of the conduct by such director, partner or principal of a prior **business** in respect of the same professional service as is insured under this policy, provided that such **claim** is first made against such director, partner or principal during the **period of insurance**.

The most **we** will pay **you** under this section is the limit shown in the **schedule** as the **limit of indemnity** and is applicable to any one **period of insurance**.

**Practice entity and practice staff cover**

We will cover **your practice entity** and **practice staff** for **claims** made against them arising from **your business**, provided that:

- a. **practice staff** are acting under **your** supervision or instruction or under the supervision or instruction of another qualified **member** employed by you subject to that **member** being an OTNZ-WNA **member** at the time of the **incident**;
- b. the **claim** would be covered by the policy as if it had been made against **you**; and
- c. **your practice entity** and **practice staff** do all of the things that **you** would have been required to do if the **claim** had been made against **you**.

The most **we** will pay **you** under this section is the limit shown in the schedule as the **limit of indemnity** and is applicable to any one **period of insurance**.

**Actions of others**

We will cover **you** in respect of **claims** made against **you** in the **period of insurance** in relation to any liability incurred by **you** to the extent of **your** liability, arising as a result of any care, treatment, advice, services or goods provided in respect of **your business** by a consultant, contractor or any other person or entity. This section does not operate to indemnify any such consultant, contractor or any other person or entity.

This cover is subject to **you** ensuring within the **period of insurance**, that any contractor who is a **healthcare professional**:

- a. holds the requisite qualifications, registration, authorisations, licences; and
- b. holds current professional indemnity insurance covering the types of healthcare they provide.

**You** must maintain accurate records and obtain copies of such qualifications, registrations, authorisations, licences and insurances mentioned above in the **period of insurance** and retain these records and copies for at least 7 years from the expiry date of this policy.

The most **we** will pay **you** under this section is the limit shown in the schedule as the **limit of indemnity** and is applicable to any one **period of insurance**.

**Contractual liability**

We will cover **you** in respect of **claims** made against **you** in the **period of insurance** in relation to contractual liability in connection with **your business**. This clause does not operate to cover any liability assumed by contract, waiver, guarantee or warranty, unless liability would have attached in the absence of such contract, waiver, guarantee or warranty.

The most **we** will pay **you** under this section is the limit shown in the schedule as the **limit of indemnity** and is applicable to any one **period of insurance**.

**Cover for innocent parties**

Notwithstanding the **Fraud and dishonesty** exclusion, **we** will cover all innocent parties insured under this policy who did not commit, contribute to, or condone the act, error or omission or had no prior knowledge of the act, error or omission. This clause does not operate to cover any party who allegedly committed or condoned the act, error or omission.

### Additional insureds cover

Cover under this policy is extended to cover the following, subject to all of the definitions, terms, conditions, **limit of indemnity** and any **sub-limit of indemnity, deductibles** and exclusions of this policy:

- a. in the event that **you** die or become incompetent, **your** estate, heir or legal representatives;
- b. volunteers that **you** engage in **your** business; and
- c. students who are **members** and studying in their final year of their degree and that **you** engage in **your business**;

and only:

- i. to the same extent that **you** would have been covered by this policy; and
- ii. if they are not acting in their capacity as a **healthcare professional**.

The most **we** will pay **you** under this section is the limit shown in the schedule as the **limit of indemnity** and is applicable to any one **period of insurance**.

### Breaches of consumer protection laws

**We** will cover **you** in respect of **claims** made against **you** in the **period of insurance** in relation to actual or alleged breaches of New Zealand consumer protection legislation in connection with **your business**.

### Out of country cover

Notwithstanding the **territorial limits** shown on the **schedule**, **we** agree to extend cover when **you** perform **your business** outside of the **territorial limits** on a temporary basis up to a maximum of 90 days in any one **period of insurance**, however, the jurisdictional limits will remain as stated in the **schedule**.

### Cyber risk coverage

**We** will cover you in respect of the reasonable and necessary costs and expenses that **you** incur with **our** prior written consent if, during the **policy period**, a **hacker** damages, destroys or alters **your website or computer system**. Such costs and expenses are to be payable to repair or replace the affected part of the **website or computer system** to the same or equivalent standard and with the same contents or as near as reasonably possible as immediately before such **website or computer system** was damaged, destroyed or altered.

Exclusions applicable to cyber risk coverage:

The coverage under this extension does not apply to any claim arising directly or indirectly out of or in connection with:

- a. any **virus**, worm, logic bomb or trojan horse written or created by any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date;
- b. any self replicating or malicious code that was not specifically targeted to any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date system;
- c. the infringement of any patent;
- d. the use or provision of any games, or any gaming, gambling, lottery or auctioneering facilities or services;

- e. the failure or interruption of the service provider by an internet service provider or any telecommunications or other utility provider;
- f. any pornographic, sexually explicit or obscene material unless arising directly from the activities of a **hacker**;
- g. **your** liability under any contract which is greater than the liability that you would have at law without the contract;
- h. **your** supply, manufacture, sale, installation or maintenance of any product;
- i. any statement that **you** knew or ought reasonably to have known was defamatory at the time of publication;
- j. any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date;
- k. any trading loss or trading liability including those arising from the loss of any client, account or business;
- l. any liability arising from any user generated content;
- m. any claim, including arbitration, brought outside Canada. This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts;
- n. fines and contractual penalties, punitive or exemplary damages;
- o. any act, breach, omission or infringement that **you** deliberately, dishonestly or recklessly committed, condoned or ignored;
- p. any prior pending litigation, known **claims** or known occurrences which may give rise to a claim;
- q. where the **hacker** is a current or former **employee** of **you**;
- r. where the **hacker** is a person or entity retained by **you** to inspect, design, install, maintain, repair or replace your computer system or website.

Conditions applicable to cyber risk coverage:

**We** will not make any payment under this Endorsement if **you** have failed to:

- a. take reasonable steps to use, maintain and upgrade any program which protects against computer **viruses** or any unauthorised use of or access to **your computer system**, electronic link or **website**; and/or
- b. make backup copies of any data, file or program at reasonably frequent intervals of no less than weekly basis; and/or
- c. cancel any user name, password or other security protection after **you** knew or had reasonable grounds to suspect that it had been made available to any unauthorised person or parties.

Definitions applicable to cyber risk coverage:

The following definitions are applicable to this extension only:

- a. **Computer system** means **your** own computer network, including any third party software programs and portable media/computer devices.
- b. **Employee** means any natural person who is (or was, in the case of former **employee**) in **your** regular service in the ordinary course of **your business**. **Employee** shall include any independent contractor while under a personal services contract with **you** and under **your** supervision, direction or control.
- c. **Hacker** means anyone who specifically targets **you** and gains access to **your website** via the internet or other external electronic link, solely by electronically circumventing the security systems in place to protect against such access.
- d. **Programme** means a set of instructions written in a computer language that tells a computer how to process data or interact with ancillary equipment.
- e. **Virus** means programmes that are secretly introduced without **your** permission or knowledge including but not limited to malware, worms, trojans, rootkits, spyware, dishonest adware, crimeware and other malicious unwanted software.
- f. **Website** means any website(s) where **you** have full control over the content and which **you** operate for the promotion of **your own business**.

Limit of liability applicable to cyber risk coverage:

The most **we** will pay **you** under this section is \$50,000 each and every claim and in the aggregate in any one **policy period** inclusive of **defence costs and expenses** which shall be part of and not in addition to the **limit of liability** stated in the **certificate**.

#### Extended notification period

If this insurance is not renewed or is cancelled for any reason other than non-payment of **premium** then **you** have until such time that **you** effect another insurance policy equivalent to the cancelled or non-renewed policy or ninety (90) days commencing on the day immediately following the expiry of this policy, whichever is the lesser period, during which to notify us of any **claims** first made against **you** during the **period of insurance**, provided that this extension:

- a. does not reinstate or increase the **limit of indemnity** or extend the **period of insurance**; and
- b. will only apply to acts, errors or omissions committed or alleged to have been committed by **you** before the end of the period of insurance or the cancellation date of this policy where this policy has been cancelled.



## 4. Automatic extensions to your cover – Part B

### Cover B: Public Liability

#### Car Parking

We will indemnify **you** against all sums which **you** shall become legally liable to pay for **compensation** in respect of **your** obligations as a tenant under any lease agreement to a lessor for actions, suits and demands in respect of:

1. **personal injury; or**
2. **property damage;**

provided that the **personal injury** or **property damage** arises directly or indirectly out of or is caused by or in connection with the use of any vehicle in **your** physical or legal control and the injury or damage occurs while that vehicle is in a car park owned by or operated by **you**.

This Additional Extension does not cover any liability:

- i. arising out of or connected with the use of any vehicle belonging to **you**; arising out of or connected with the use of any vehicle used by **you** or on **your** behalf independently of **your** operations as a car park owner or operator; or
- ii. arising directly or indirectly out of or caused by or in connection with the servicing, repairing or maintenance of any vehicle.

Indemnity under this Additional Extension will only apply in respect of any amount in excess of that provided by any other policy of insurance held by a person other than **you** for the benefit of the Insured.

#### Tenant's Liability

We will indemnify **you** against all sums which **you** shall become legally liable to pay for **compensation** in respect of **your** obligations as a tenant under any lease agreement to a lessor for actions, suits and demands in respect of:

1. **personal injury; or**
2. **property damage;**

provided that such **personal injury** or **property damage** results from an **occurrence** arising from the use by **you**, **your** invitees, sub tenants or licensees of a building at **your** business address/es or of passenger or goods elevators or escalators installed there.

## 5. Run off cover extension

### Run off cover

In the event that during the **period of insurance you** permanently retire or permanently cease for some other reason (including death) to conduct the professional services described in the **schedule** then provided that the **limit of indemnity** has not been exhausted as at the date of death or permanent cessation of professional services, the insurance cover provided under the policy will continue from such date for:

- a. the period specified in the **schedule**. Such cover shall be subject to the **limit of indemnity** less all amounts paid and/or to be paid by **us** in respect of any **claim** first made and notified or circumstance or **incident** likely to give rise to a **claim** notified during the **period of insurance**

provided always that **you**:

- a. notify **us** of the permanent cessation of professional services before expiry of the **period of insurance**; and
- b. provide **us** with a completed and signed declaration requesting run-off cover under this extension, in a form to be provided by **us**, confirming:
  - i. have not had any registration or membership with any association or governing body related to the professional services cancelled, withdrawn, revoked or suspended as a result of misconduct during the **period of insurance**; and
  - ii. have not been subject to disciplinary or criminal inquiry, conviction or penalty in relation to the provision of professional services during the **period of insurance**; and
  - iii. **have** not notified any **claim**, circumstances or **incident** during the **period of insurance**; and
  - iv. are not aware of any **claim**, circumstances or **incident** that has not been notified to **us**.

**We** will not be liable to indemnify **you** in respect of any act, error or omission occurring after the cessation of business.

If at any time during the run off period identified in the **schedule you** resume any form of work, paid or unpaid, which would have attracted cover under this policy, then this run off extension is deemed to be cancelled from the date of resumption of such work.

## 6. What we do not cover – General Exclusions

We will not pay for any claim made under this policy including any **defence costs and expenses or compensation**, directly or indirectly, caused by, arising from or contributed to by

<b>Abuse</b>	Any <b>claim</b> arising from actual or alleged <b>abuse</b> , unless <b>you</b> seek cover under the <b>Abuse</b> extension, but our liability will be limited to the <b>sub-limit of indemnity</b> stated.
<b>Advice, design and specification</b>	The provision of advice, design or specification where <b>you</b> manufacture, design, construct, erect, install or supply materials or equipment. This exclusion shall not apply in respect of advice, design or specification for products that are specifically manufactured or designed by you in the course of <b>your business</b> , and <b>you</b> had no knowledge, or had reason to suspect at the time when the <b>product</b> passed from <b>your</b> control and physical custody of the existence of any defect or deficiency.
<b>Asbestos</b>	Any <b>claim</b> directly or indirectly based upon, attributable to, or in consequence of asbestos, asbestos fibres or derivatives of asbestos in whatever form or quantity.
<b>Assumed duty or obligation</b>	Any <b>claim</b> arising out of a specific liability assumed by <b>you</b> under any contract which goes beyond the duty to use such skill and care as is usual in the exercise of <b>your business</b> unless our prior written agreement has been obtained and such specific liability is endorsed upon the policy and where applicable, with your acceptance of any additional terms and conditions <b>we</b> have imposed.
<b>Personal injury elsewhere</b>	Any <b>claim</b> arising from <b>personal injury</b> , mental injury, illness, disease or death to any person or loss of or damage to tangible property of any person unless arising out of the <b>practice of your profession or malpractice</b> .
<b>Public Liability</b>	Any <b>claim</b> for <b>personal injury</b> that is covered by the Accident Compensation Commission (ACC).
<b>Breach of Registration, unregistered practise or lack of qualifications</b>	The <b>practice of your profession</b> where You: <ol style="list-style-type: none"><li>are in breach of terms, conditions, undertakings or limitations on Your registration or qualifications; or</li><li>were not registered and were required to be registered; or</li><li>have not completed the recognised training or lack the qualification to practice.</li></ol>
<b>Business interruption</b>	Any <b>claim</b> arising from any trading loss or trading liability including that arising from the loss of any client, account or <b>business</b> .
<b>Clinical trials</b>	Any <b>claim</b> arising from <b>your</b> involvement in <b>clinical trials</b> .
<b>Cyber liability</b>	Any <b>claim</b> arising from <b>cyber liability</b> unless <b>you</b> seek cover under the cyber risk coverage endorsement, but our liability will be limited to the <b>sub-limit of liability</b> stated.
<b>Debt/financial obligation</b>	Any debt or financial obligation incurred by <b>you</b> whether or not in connection with <b>your business</b> .
<b>Directors and officers</b>	Any <b>claim</b> made against any director or officer or employee of <b>yours</b> where such <b>claim</b> is made solely by reason their holding the position of director or officer or employee and having acted in that capacity.

<b>Discrimination</b>	Any <b>claim</b> arising from actual or alleged discrimination.
<b>Documents</b>	Loss or damage to <b>documents</b> caused by: <ul style="list-style-type: none"> <li>a. riot or civil commotion;</li> <li>b. fading, mould, vermin, pest infestation, wear, tear or any other gradually operating cause;</li> <li>c. any computer virus;</li> <li>d. interference with electronically stored data by any person who is not a current principal, partner, director or <b>employee</b> of <b>yours</b> except where otherwise covered under the cyber risk coverage endorsement.</li> </ul>
<b>Employers liability</b>	Any <b>claim</b> by any person for <b>personal injury</b> , mental injury, illness, disease or death incurred, contracted or occurring whilst in the course of employment with <b>you</b> and for which any compensation is available under any Workers' Compensation Scheme and or similar legislation unless such <b>personal injury</b> , mental injury, illness or death is caused by any negligent act, error or omission by you in the performance of <b>your business</b> and where such <b>employee</b> was in the capacity of a client.
<b>Euthanasia</b>	Euthanasia.
<b>Fines and penalties</b>	Any award of punitive or exemplary damages, or any fines or penalties, whether contractual, or other similar.
<b>Fraud and dishonesty</b>	Any <b>claim</b> directly or indirectly caused or contributed to by a violation of any law, dishonest, fraudulent or criminal act by <b>you</b> , or any deliberate or reckless act which could with reasonable foresight result in a <b>claim</b> for damages. This does not apply to any <b>claim</b> covered under <a href="#">Dishonesty of Employees</a> but <b>we</b> will not in any event provide cover to any party who directly or indirectly commits, condones or ignores any dishonesty.
<b>Gender reassignment</b>	The performance or provision of any gender reassignment work.
<b>Hepatitis, HIV or Aids</b>	Any <b>claim</b> arising from Hepatitis Non A or any condition directly or indirectly caused by, or associated with, the human immunodeficiency syndrome (HIV) initially named as either HTLV III or LAV or the mutants, derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome (AIDS) or AIDS related complex (ARC) or any syndrome or condition of a similar kind howsoever it may be named.
<b>Insolvency, bankruptcy or liquidation</b>	Any <b>claim</b> directly or indirectly based upon, attributable to, or in consequence of <b>your</b> insolvency, bankruptcy or liquidation. This also applies to <b>your</b> subcontractors or freelancers whose work has been disclosed to and accepted by <b>us</b> .
<b>Industrial action</b>	Any delays, strikes, industrial action or labor disturbances.
<b>Intoxication</b>	Any <b>claim</b> for <b>business you</b> performed whilst under the influence of intoxicants or narcotics.
<b>Jurisdiction</b>	Any <b>claim</b> brought or any judgement, award, or settlement made outside New Zealand.
<b>Land, buildings, animal, aircraft, motor vehicles and watercraft</b>	Any <b>claim</b> arising from the possession, ownership or use of any land or building, any animal, any aircraft, watercraft or any motor vehicle.

<b>Loss of profits</b>	Any <b>claim</b> arising from <b>your</b> lost profit or liability for GST or its equivalent.
<b>Maternity and obstetrics</b>	The performance or provision of any maternity and/or obstetric services, however, this exclusion shall not apply to any procedures or services carried out in respect of <b>your business</b> where <b>you</b> are registered (where required to be registered) or have completed the recognised training or qualification to do so.
<b>Nuclear, chemical and biological</b>	Any <b>claim</b> directly or indirectly caused by, contributed to, or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
<b>Organ transplant</b>	The performance or provision of any organ transplant work.
<b>Other indemnity</b>	Any claim which is the subject of indemnity or assistance provided by any other insurer.
<b>Pension and securities</b>	Any <b>claim</b> arising from <b>your</b> operation or administration of any pension or employee benefit scheme or trust fund or the purchase or any dealing in stocks, shares or other securities or the misuse of any information relating to them or for <b>your</b> breach of any legislation or regulation relating to these activities.
<b>Pollutant removal</b>	Any <b>claim</b> for the costs of removing, nullifying or cleaning-up seeping, polluting or contaminating substances.
<b>Pollution</b>	Any <b>claim</b> arising from personal injury or <b>personal injury</b> or loss of or damage to, or loss of the use of property directly or indirectly caused by seepage, subsidence, pollution or contamination.
<b>Prior or pending acts</b>	Any <b>claim</b> or circumstance or <b>incident</b> or any matter arising out of the <b>practice of your profession</b> or <b>malpractice</b> , negligence, breach of a duty of care or any liability covered which <b>you</b> were or should have been aware of occurring prior to the inception date of this policy (or <b>retroactive date</b> , if stated in <b>your schedule</b> ) if you knew or could have reasonably foreseen that such civil liability, <b>malpractice</b> , negligence, breach of a duty of care or any liability covered might be expected to form the basis of a claim.
<b>Products supplied</b>	Any <b>claim</b> arising out of the manufacture, or the construction, alteration, formulation, repackaging, repair, servicing or treating of any product supplied sold, used or supplied by or distributed by <b>you</b> in the course of <b>your business</b> (including containers, labelling instructions or packaging) and any claim arising out of the failure of any products supplied to fulfil the purpose for which it was designed, or to perform as specified, warranted or guaranteed once such product has ceased to be under <b>your</b> custody or control. The exclusion shall not apply to the <b>products</b> that are specifically manufactured, materially altered or formulated by <b>you</b> in the course of <b>your business</b> (rather than just sold, used, supplied by or distributed by <b>you</b> ), and <b>you</b> had no knowledge, of or had reason to suspect at the time when the <b>product</b> passed from <b>your</b> control and physical custody of the existence of any defect or deficiency.
<b>Property damage</b>	Damage to property: <ul style="list-style-type: none"> <li>a. belonging to <b>you</b> ; or</li> <li>b. in <b>your</b> custody or under <b>your</b> control, other than personal effects (including vehicles and their contents) of any of <b>your</b> visitors, directors, partners; or</li> <li>c. being that part of any property on which <b>you</b> are or has been working, where the damage arises out of such work.</li> </ul>

<b>Property owners liability</b>	Any defect in or use of any buildings, premises or land owned or occupied by <b>you</b> .
<b>Related parties</b>	Any <b>claim</b> brought by any party falling within the definition of <b>you</b> or any party with a financial, executive or managerial interest in <b>you</b> , including any parent company or any party in which you have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a <b>claim</b> based on a liability to an independent third party directly arising out of the performance of <b>your business</b> .
<b>Return of fees</b>	Any fees claimed back by a client of <b>yours</b> or which have been refunded to a client of <b>yours</b> owing to or allegedly owing to non-performance of <b>your</b> contractual or other obligations to that client.
<b>Sanctions</b>	<b>We shall</b> not be deemed to provide cover and no (re)insurer shall be liable to pay any <b>claim</b> or provide any benefit under this policy to the extent that the provision of such cover, payment of such <b>claim</b> or provision of such benefit would expose <b>us</b> or 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.
<b>Substance abuse</b>	<b>You</b> being under the influence of intoxicants or narcotics.
<b>Suspended licence</b>	Any <b>claim</b> arising from the performance of <b>your business</b> during any period that your licence to practice was suspended by any regulatory or governing body.
<b>Tax, restraint of trade and anti-trust</b>	Any <b>claim</b> arising from <b>your</b> breach of any taxation competition, restraint of trade or anti-trust legislation or regulation.
<b>Territorial limits</b>	Any work or activities undertaken by <b>you</b> outside the territorial limits save in respect of <b>good samaritan acts</b> where cover is worldwide.
<b>Terrorism and riot</b>	Any <b>terrorism</b> regardless of any other cause or event contributing to any liability or any action taken in controlling, preventing or suppressing <b>terrorism</b> , or riot.
<b>Trading debts</b>	Any <b>claim</b> directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by <b>you</b> or any guarantee given by <b>you</b> for a debt.
<b>United States of America</b>	Any <b>claim</b> directly or indirectly based upon, attributable to, or in any respect arising in the United States of America including its territories and possessions. Further, any judgement, award, payment or settlement made within countries which operate under the laws of the United States of America including its territories and possessions (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part).
<b>War</b>	Any legal liability of whatsoever nature directly or indirectly caused by or contributed to or arising from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority including any action taken in controlling, preventing, suppressing or in any way relating to the above.

## 7. Additional Exclusions Applying to Certain Professions

### Occupational therapy

Where **you** are carrying out 'occupational therapy' professional services, the following shall apply.

**We** will not pay for any claim made under this policy including any **defence costs and expenses** or **compensation**, directly or indirectly, caused by, arising from or contributed to by:

#### General Anaesthesia

Except where performed in a hospital, any operation or procedure carried out under general anaesthesia.

#### Unregistered Practitioners

Professional Services performed by **you** where **you** are not registered appropriately qualified or certified to perform the professional services, where such registration, qualification or certification of the Professional Services are required by law, local registration boards or by a national body. Not applicable to supervised students or supervised work experience personnel where otherwise covered under this policy.

# 8. How to notify us of a claim or incident

## What you need to tell us

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

- a. a patient suffering a major complication; or
- b. there is an error made, causing harm; or
- c. an adverse outcome results in significant anger in **your** patient or their family; or **you** receive a letter from a solicitor indicating dissatisfaction or requesting a patient record; or
- d. **you** are concerned that an **incident** has occurred (including a **complaint**, investigation or inquiry) which **you** think may lead to a **claim**; or
- e. any other circumstance has taken place which is likely to give rise to a claim under this policy.

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

To report an **incident, claim** or circumstance likely to give rise to a claim **you** must notify **us** in writing or on the BMS dedicated OTNZ-WNA Insurance hotline 0800 999 267 or email [OTNZ-WNA@bmsgroup.com](mailto:OTNZ-WNA@bmsgroup.com):

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

## Telling us about prosecutions, inquiries, complaints or investigations

**You** must notify **us** in writing as soon as possible of any matter that will lead **you** to request cover under this policy including (but not limited to) any prosecution, inquiry, inquest, investigation or **complaint**, judgment, appeal, dispute that may be covered by this policy which relates to **your business**.

If **you** do not notify **us** of the matters set out above as soon as possible, **you** may not be covered under the policy and **your** right to any cover may be significantly reduced by **us**.

## How we handle claims, complaints and other matters

**You** agree that **we** are entitled to have the conduct of any **claim, complaint** or matter covered under this policy including its investigation, pursuit, defence, avoidance, reduction or settlement and we may do so in **your** name. **We** may defend or settle a **claim, complaint** or any matter as **we** think fit.



### No admissions without our consent

**You must** not make any admission of liability, offer or compromise in relation to any **claim, complaint** or matter covered by this policy without **our** prior written consent.

### You must be reasonable in relation to settlement

**You must** not act unreasonably in rejecting a settlement or an offer of settlement, which the **lawyer or we** recommend to **you**. **You** may defend any **claim, complaint** or matter which **we** believe should be settled but we will not pay any more in relation to that claim, complaint or matter than we would have been required to pay if it had been settled or resolved as we believed it could or should have been.

### We may decide not to continue

**We** may decide not to incur any further **defence costs and expenses** for pursuing, defending or responding to a **claim, a complaint**, matter or prosecution if **we** believe that there are no reasonable grounds for pursuing, defending or responding to the **claim, complaint**, matter or prosecution. **We** will take account of the **lawyer's** advice in making that decision.

If **we** do that, **we** will notify **you** in writing. **We** will pay the **defence costs and expenses** incurred prior to the date on which **we** write to **you** notifying **you** of **our** decision. **You** may continue pursuing, defending or responding to the **claim, complaint**, matter or prosecution at **your** own cost.

If **we** subsequently decide to assist **you**, **we** will appoint the **lawyer** to act on **our** behalf. After **we** cease paying the **defence costs and expenses**, **we** will only pay **you** thereafter for **defence costs and expenses** (not including the GST component if you are registered for GST) that **you** have incurred if **you** are successful in pursuing, defending or responding to a **complaint**, matter or prosecution.

### Your duty to cooperate

You must cooperate with **us** or the lawyer, where instructed, in resolving the matter in a satisfactory, timely and cost-effective way. In particular, you must:

- a. give **us** or the lawyer a full and truthful account of the relevant facts;
- b. give **us** or the lawyer any relevant information or documents in your possession that they ask for;
- c. obtain any other relevant information or documents that you can;
- d. execute any documents **we** or the **lawyer** reasonably ask **you** to execute; and
- e. attend any meetings the **lawyer** reasonably asks **you** to attend. **You** agree at **your** expense to give **us, our** investigators and the **lawyer** all information, documents and assistance **we** reasonably require, and fully cooperate with **us, our** investigators and the **lawyer**.

### We are not liable if you do not cooperate

**We** will not be liable for **defence costs and expenses** if **you** do not give **us** or the **lawyer** adequate instructions, or **you** do not follow the advice of the **lawyer** or **you** cause a delay which, in our or the **lawyer's** reasonable opinion, prejudices the outcome of the case.

## Appointing lawyers and experts

We will appoint the **lawyer** or **expert**. When **we** appoint the **lawyer** or **expert**, **we** do so in **our** own capacity and not as an agent for **you**. The **lawyer** or **expert** appointed by **us** supplies services to **us** and not to **you** for the purposes of the Goods and Services Tax (GST). **We** are entitled to claim a GST input tax credit on services supplied by the **lawyer** or the **expert**.

## Allocation

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

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

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

## Appeals

### How to appeal

If **you** are dissatisfied with any decision made in a **claim**, **complaint** or matter against **you** by a court or other decision making body and wish to appeal against that decision, **you** must seek **our** consent to the appeal within seven (7) business days after the date of the decision, or such shorter period as may be reasonable having regard to the time limit for an appeal.

The application must be in writing and must fully set out the reasons for bringing an appeal. **We** will inform **you** in writing if **we** consent to the appeal. If **we** do not consent to the bringing of an appeal, **you** may conduct the appeal at **your** own expense.

If **we** wish to appeal against any decision made in a **claim**, **complaint** or matter against **you** by a court or other decision making body, **you** must reasonably cooperate with **us** in the bringing of such an appeal.

### Appeals without our consent

If **you** appeal from a decision in a **claim**, **complaint** or matter without **our** consent:

- a. after **we** cease paying the **defence costs and expenses**, **we** will only pay **you** thereafter for **defence costs and expenses** (not including the GST component if **you** are registered for GST) that **you** have incurred if **you** are successful in the appeal, and;

if the appeal is successful and **you** are entitled to a refund of any money that **we** paid to the claimant, then **we** are entitled to recover that amount after deduction of the costs **you** have incurred.

## Queens Council Clause

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

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

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

## Claims acceptance

The acceptance of a **claim, complaint**, matter or any cover by **us** under this policy can be subsequently withdrawn if facts come to **our** attention that trigger or satisfy a policy exclusion or the policy does not cover the **claim, complaint** or matter.

## 9. Conditions

These conditions apply to **your** policy.

### Additional insureds

If more than one insured is named in the **schedule**, unless otherwise stated, **our** total aggregate liability under this policy will not exceed the single **limit of indemnity** shown in the **schedule** for the total of all named insureds. **You** agree that where there is more than one insured named in the **schedule** the first of them is authorised to receive all notices and agree any amendments to the policy.

### Cervical spine manipulation

Where **you** carry out cervical spine manipulation procedures **you** shall at all material times have:

- a. been aware of and have followed the applicable guidance applicable to cervical spine manipulation including the 'Australian Physiotherapy Association - Clinical Guidelines: Assessing Vertebrobasilar Insufficiency in the Management of Cervical Spine Disorders', and been aware of and considered the symptoms associated with vertebrobasilar insufficiency prior to and in carrying out the procedures;
- b. have made the patient aware of the risks associated with cervical spine manipulation procedures prior to carrying out the procedures and obtained a signed consent from the patient acknowledging they are aware of the risks.

### Compliance with statute

Where any term or condition of this policy conflicts with any applicable and governing statute or regulation, the statute or regulation shall prevail and shall apply, but only to the extent necessary to achieve compliance therewith.

### Deductible

Unless otherwise stated, **you** must pay the **deductible** shown in the **schedule** for each **claim**, including **defence costs and expenses**.

### Fraudulent claims

If any **claim** be in any respect fraudulent or if any fraudulent means or devices be used by **you** or anyone acting on **your** behalf to obtain any benefit under this policy, or if any loss hereunder be occasioned by the wilful act or with the connivance of any insured, **we**, without prejudice to any other right(s) **you** might have under this policy, shall be entitled to refuse to pay such **claim**.

### Limit of indemnity

**Our** total aggregate liability during the **period of insurance** for **claims** and **defence costs and expenses** is the **limit of indemnity** shown in the **schedule**, for any one **claim**, or all **claims** arising out of or in connection with the same originating cause or source, or all losses for which cover is available, arising out of or in connection with the same originating cause or source.

### Loss prevention

**You must** not do anything recklessly or wilfully that might give rise to a **claim, complaint** or matter under this policy. **You must** take all reasonable care to avoid or reduce the chance of any **claim, complaint** or matter being made against **you**. **You must** not do, or fail to do anything which **you** know or should reasonably be expected to know will result in any **claim, complaint, or matter** being made against **you**.

## Misrepresentation and non-disclosure

If **you**:

- a. failed to disclose any matter which **you** were under a duty to disclose to **us**: or
- b. made a misrepresentation to **us** before this policy was entered into and if **we** would not have entered into this policy for the same premium and on the same terms and conditions expressed in this policy but for the failure to disclose or the misrepresentation, then:
  - i. **our** liability in respect of any **claim** will be reduced to an amount to place **us** in the same position in which **we** would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made: or
  - ii. if the non-disclosure or misrepresentation was fraudulent, **we** may avoid this policy.

## Non-imputation

Where this insurance is arranged in the joint names of more than one insured, as described in the **schedule**, it is declared and agreed that:

- a. each insured shall be covered as if it made its own proposal for this insurance;
- b. any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each insured;
- c. any knowledge possessed by any insured shall not be imputed to the other insured(s).

## Payment of deductible

When a **deductible** applies to **your** request for indemnity the following applies:

- a. **You** shall bear the amount of the **deductible** at **your** own risk;
- b. where **we** have paid all or any part of any **deductible** in respect of a request for cover on **your** behalf, **you** must reimburse **us** all or any part of the **deductible you** owe **us** within 14 days from the date **we** request payment from **you**;
- c. in the event that **you** fail to reimburse **us** in response to a request under (b) above, the sum requested shall, at the expiration of 14 days after the request, become a debt due and payable by **you** to **us**;
- d. in the event that **you** fail to reimburse **us** in response to a request under (b) above, and if such failure leads to an increase in costs or liability, **our** liability under the policy shall not exceed the amount for which the **claim** or matter could have been settled up to the date of **your** failure or refusal to reimburse all or part of the **deductible**.

## Payment of premium

**You** will not be covered for any period for which **OTNZ-WNA** does not pay the **premium**.

## Policy cancellation

**OTNZ-WNA** may cancel this policy at any time by notice in writing in which case **we** will refund the **premium** on a pro rata basis less two (2) months **premium** (does not include government charges or levies). If an affected **member** has notified an **incident** or any other circumstance or a **claim** during the **period of insurance** there will be no pro rata refund.

**Policy cancellation**  
(Continued)

**We** may cancel this policy at any time by giving **OTNZ-WNA** seven (7) business days' notice in writing:

- a. if **OTNZ-WNA** has not paid the **premium** within thirty (30) business days of the **period of insurance** commencing; or
- b. for any other reason available to **us** under the Contract and Commercial Law Act 2017.

If **we** give notice to cancel the policy then **we** must give that notice to **OTNZ-WNA** personally or send it by certified mail at the last address of which **OTNZ-WNA** notified **us**. Unless **OTNZ-WNA** proves otherwise, it will be treated as if **OTNZ-WNA** received the notice when it would have arrived in the ordinary course of the post.

**Record keeping**

**You** shall at all times maintain accurate descriptive records of all professional services and equipment used in procedures, which shall be available for inspection and use by **us** or **our** duly appointed representatives, and you shall retain these records for a period of at least ten years from the date of treatment and, in the case of a minor, for a period of at least seven years after that minor attains the age of majority.

**Rights of third parties**

This policy is not intended to confer any enforceable rights upon any other person, whether or not an interest of such person is acknowledged by **us**.

**Risk management**

**We** are entitled to undertake a practice audit, peer review, risk analysis or other investigation of **your** practice when, in **our** reasonable opinion, such action is required. **Your** cooperation in any such action is a condition of **your** policy. If **you** do not cooperate in such action, **we** may cancel **your** policy by giving **you** seven (7) business days' notice in writing.

**Subrogation and other insurance**

If **we** make a payment under this policy **we** are subrogated to all **your** rights of contribution, indemnity or recovery without the need for **your** consent. **You** agree not to surrender any right to, or settle any claim for, contribution, indemnity or recovery without our prior written consent.

**Use of instruments**

In the performance of **your business**, **you** shall at all times handle, use, sterilise and store any tool or implement which is intended to penetrate tissue or be in contact with bodily fluid, in accordance with the manufacturer's instructions.

## 10. Governing law and jurisdiction

### Governing law and jurisdiction

Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of New Zealand. The parties to this policy will submit to the exclusive jurisdiction of the courts of New Zealand.

### Interpretation

In this policy:

- a. reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy;
- b. if any term, condition, exclusion or endorsement or part is found to be invalid or unenforceable the remainder shall be in full force and effect;
- c. headings are for reference only and shall not be considered when determining the meaning of this policy.

## 11. Definitions

For the purposes of this policy the following words have special meaning:

Word	Specific meaning
<b>Abuse</b>	Any direct or indirect act or failure to act that intentionally harms or injures a third party. For the purposes of this policy, <b>abuse</b> shall include any form of physical, sexual and psychological harm or injury arising in the course of <b>your business</b> .
<b>Business</b>	Professional services performed by <b>you</b> as stated in the online questionnaire, proposal or declaration and as shown in the schedule described as 'Professional Services'.
<b>Bodily injury</b>	<ol style="list-style-type: none"> <li>1. Bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/ or mental injury, including loss of consortium resulting therefrom;</li> <li>2. The effects of false arrest, false imprisonment, wrongful detention, wrongful entry or wrongful eviction, malicious prosecution; and</li> <li>3. The effects of libel, slander, defamation of character or invasion of privacy; and</li> <li>4. The effects of assault and battery not committed by or at <b>your</b> direction, unless committed for the purpose of preventing or eliminating danger to persons or property.</li> </ol>
<b>Claim</b>	<p>Any:</p> <ol style="list-style-type: none"> <li>a. written or verbal notice of demand for <b>compensation</b> made by a third party against <b>you</b>; or</li> <li>b. writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third or similar party notice served upon you arising out of any actual or alleged breach of <b>your business</b>.</li> </ol>
<b>Clinical trials</b>	Any organized study or test that uses human or animal subjects to develop effectiveness or safety data for a designated treatment, procedure or product.
<b>Compensation</b>	<p>Any amount paid or payable at law (including but not limited to amounts owing or liability incurred in respect of or arising out of a claim for recovery or contribution made pursuant to any legislation) by <b>you</b> in respect of any <b>claim</b> for <b>personal injury</b> or <b>property damage</b>.</p> <p>Provided that <b>compensation</b> is only payable in respect of an <b>occurrence</b> to which this policy applies.</p>
<b>Complaint</b>	An allegation of unlawful or actionable conduct or an allegation of misconduct or unsatisfactory conduct.



<b>Cyber liability</b>	<p>Any <b>claim</b> or loss or damage liability or expense directly or indirectly or in any manner whatsoever arising out of, caused by or contributed by or connected with:</p> <ol style="list-style-type: none"> <li>a. failure of any programme, instruction or data, for use in any computer or other electronic processing device, equipment or system, to function in the way expected or intended;</li> <li>b. transmission or receipt of any virus programme or code that causes loss or damage to any computer system or prevents or impairs its proper function or performance;</li> <li>d. the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.</li> </ol>
<b>Deductible</b>	The amount set out in the policy schedule, which is the amount that <b>you</b> shall bear at your own risk in respect of each <b>claim</b> or request for cover under the policy. The <b>limit of indemnity</b> and <b>sub limit of indemnity</b> only apply after the deductible has been exhausted.
<b>Defence costs and expenses</b>	All costs, fees and expenses incurred with <b>our</b> prior written agreement in the defense, investigation, mitigation or settlement of a <b>claim, incident, complaint</b> or prosecution.
<b>Documents</b>	Shall include any deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material. However, this shall not include any bearer bonds or coupons, stamps, bit-coins, bank or currency notes or any other negotiable instruments.
<b>Expert</b>	A person including but not limited to: an accountant, an actuary, an expert witness, a witness as to fact, or any person required to assist <b>us</b> in any matter covered under this policy.
<b>Good Samaritan act</b>	Any treatment administered by you at the scene of a medical emergency, accident or disaster where you were present following such medical emergency, accident or disaster by chance, but excluding any assistance provided for any payment in any form.
<b>Health care professional</b>	A person who provides healthcare who is a medical or dental practitioner or is registered to provide healthcare in accordance with the laws of New Zealand.
<b>OTNZ-WNA</b>	Occupational Therapy New Zealand Whakaora Ngangahau Aotearoa Inc.
<b>Incident</b>	Any act, error or omission by you, which adversely affects a patient; or an unexpected complication or injury occurring to a patient under your care as a result of the <b>practice of your profession</b> and which may give rise to a <b>claim</b> .
<b>Lawyer</b>	A legal practitioner or other person instructed by <b>us</b> .
<b>Limit of indemnity</b>	The limit of liability under this policy as stated in the schedule.
<b>Malpractice</b>	Any <b>personal injury</b> , mental injury, illness, disease or death of any patient caused by any negligent act, error or omission committed by <b>you</b> arising from the <b>practice of your profession</b> .

<b>Member(s)</b>	Eligible Member of Occupational Therapy New Zealand Whakaora Ngangahau Aotearoa Inc – OTNZ-WNA.
<b>Occurrence</b>	An event, including continuous or repeated exposure to conditions, which results in <b>personal injury</b> or <b>property damage</b> , neither expected nor intended from <b>your</b> standpoint.
<b>Period of insurance</b>	The period specified in the policy schedule.
<b>Personal Injury</b>	Any <b>bodily injury</b> that is not brought about by or contributed to by the rendering of, or failure to render medical services in the conduct of your <b>professional services</b> .
<b>Practice entity</b>	Any corporate entity that is in the business of providing professional services in relation to OTNZ-WNA's objectives or purpose and/or an approved modality as prescribed by OTNZ-WNA which is wholly controlled or wholly owned by OTNZ-WNA members or a partnership in which all partners who are practising are OTNZ-WNA members.
<b>Practice staff</b>	An employee working in <b>your</b> practice, other than a medical practitioner, who is supervised or instructed in their activities by <b>you</b> or another qualified member employed by <b>you</b> , subject to that <b>member</b> being an <b>OTNZ-WNA</b> member or holding their own professional indemnity insurance at the time of the <b>incident</b> .
<b>Practice of your profession</b>	Any role, whether remunerated or not, where <b>you</b> use <b>your</b> skills and knowledge to: <ul style="list-style-type: none"> <li>(a) provide direct clinical care to a patient;</li> <li>(b) conduct a medical examination, provide a medical report or medical opinion at the request of a third party, or</li> <li>(c) provide education or conduct research, give a presentation or address, publish an article in a newspaper, newsletter or journal to the extent that it provides healthcare information or healthcare advice,</li> <li>(d) act in an administrative capacity</li> </ul> in connection with <b>your business</b> .
<b>Premium</b>	The premium specified in the <b>schedule</b> .
<b>Privacy &amp; health records legislation</b>	The Privacy Act 1993, Health (Retention of Health Information) Regulations 1996, Health Information Privacy Code 1994, and the Health Act 1956.
<b>Products</b>	Any property after it has left <b>your</b> custody or control which has been designed, specified, formulated, manufactured, constructed, installed, treated, serviced, altered or materially altered by <b>you</b> or on <b>your</b> behalf in the course of <b>your business</b> . Any food or drink supplied by or on <b>your</b> behalf primarily to <b>your</b> employees as a staff benefit is not a <b>product</b> .

<b>Property Damage</b>	<ol style="list-style-type: none"> <li>1. Physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom; and/or</li> <li>2. Loss of use of tangible property which has not been physically damaged, destroyed or lost, provided that such loss of use is caused by or arises out of physical damage of other tangible property.</li> </ol>
<b>Queens Council</b>	A barrister in active practice who is entitled to use the post-nominals QC in any one or more superior court.
<b>Retroactive date</b>	The date specified in the <b>schedule</b> from which <b>we</b> will cover <b>business you</b> performed but only where such <b>business</b> was disclosed to and accepted by <b>us</b> .
<b>Schedule</b>	The current schedule to this policy.
<b>Sub-limit of indemnity</b>	A limit of indemnity in respect of an additional cover under this policy which is in place of and not in addition to the <b>limit of indemnity</b> .
<b>Terrorism</b>	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) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or business and/or to put the public, or any section of the public, in fear.
<b>Territorial limits</b>	The territorial limits stated in the <b>schedule</b> .
<b>We, our, us</b>	The insurers named in the <b>schedule</b> .
<b>You, your</b>	Eligible Member of Occupational Therapy New Zealand Whakaora Ngangahau Aotearoa Inc – OTNZ-WNA