

NEW ZEALAND MEDICAL INDEMNITY INSURANCE MEDICAL PRACTICE POLICY

Whereas the entity or persons named in the Schedule (hereinafter *the Named Insured*) has made to New Zealand Medical Indemnity Insurance Limited (hereinafter *the Company*) a proposal containing particulars and statements which it is hereby agreed are the basis of this contract and are to be considered as incorporated herein, in consideration of payment of the agreed premium the Company hereby agrees to provide insurance to the **Insured** subject to the limitations, terms and conditions hereinafter provided or endorsed under this New Zealand Medical Indemnity Insurance Policy (hereinafter *the Policy*).

Section A: The Insuring Clauses

- A.1 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C), and to the Limits of Indemnity, and subject also to the Company's prior receipt of the agreed premium, the Company shall indemnify the Insured in respect of any legal liability for damages or compensation the Insured may be adjudged to have arising out of any **Claim**.
- A.2 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C), and to the Limits of Indemnity, and subject also to the Company's prior receipt of the agreed premium, the Company shall indemnify the Insured for **Legal Expenses** incurred with the Company's consent (provided that the Company's consent shall not be withheld unreasonably or arbitrarily) in obtaining legal advice and/or legal representation arising out of or related to:
- 2.1 Any Claim and/or in defending any Claim;
 - 2.2 Any criminal investigation, inquiry, or civil or criminal proceeding (including any appeal therefrom), and any threat or intimation of or related to a criminal investigation, inquiry, or civil or criminal proceeding, arising out of or related to any Claim;
 - 2.3 Any investigation, inquiry or proceeding undertaken by any Medical Board, Medical Council of New Zealand, Tribunal, Committee of Inquiry, Court Martial, Accident Compensation Corporation, Coroner, Privacy Commissioner, Health and Disability Commissioner, Health New Zealand, or

the like, (including any appeal therefrom, or any judicial review thereof, subject to the consent of the Company), arising out of or related to any Claim.

A.3 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C), and to the Limits of Indemnity, and subject also to the Company's prior receipt of the agreed premium, the Company shall reimburse the Insured for:

3.1 All reasonable costs of travel and accommodation incurred by the Insured; and

3.2 Any loss of earnings suffered by the Insured and established to the reasonable satisfaction of the Company;

arising by reason of it being reasonably necessary for the Insured to attend any investigation, inquiry, or proceeding undertaken by any Medical Board, Medical Council of New Zealand, Tribunal, Committee of Inquiry, Court Martial, Accident Compensation Corporation, Coroner's Court, Privacy Commissioner, Health and Disability Commissioner, Health New Zealand, or the like, (including any appeal therefrom, or any judicial review thereof, subject to the consent of the Company) arising out of or related to any Claim, provided that the maximum reimbursement available under this Clause A.3. shall be limited to \$1,000 per day or part day, and to \$15,000 in total any one Claim and in the aggregate in any one **Period of Insurance**.

A.4 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C), and to the Limits of Indemnity, and subject also to the Company's prior receipt of the agreed premium, the Company shall reimburse costs to a maximum of \$20,000 any one Claim and in the aggregate in any one Period of Insurance payable by the Insured in satisfaction of any award of costs made by any court, tribunal, or the like, in respect of any proceeding for which cover is provided under Section A hereof.

A.5 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C), and to the Limits of Indemnity, and subject also to the Company's prior receipt of the agreed premium, the Company shall reimburse the Insured for any monetary obligation the Insured may assume pursuant to a settlement agreement entered into by the Insured and made with the Company's consent and arising out of or related to any Claim.

- A.6 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C), and to the Limits of Indemnity, and subject also to the Company's prior receipt of the agreed premium, the Company shall indemnify the Insured in respect of any Claim for punitive or exemplary damages for which the Insured is held liable arising out of any personal injury which occurred in New Zealand that was a personal injury for which coverage is determined to exist under the Accident Compensation Act 2001, provided that-
- 6.1 The personal injury was caused by an act, error, omission or conduct in New Zealand in the performance on behalf of the Named Insured of the duties or functions of any employee or contractor of the Named Insured in providing **Health Care or Disability Services** for the patients of the Named Insured;
 - 6.2 Any punitive or exemplary damages arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment, or sexual abuse are excluded;
 - 6.3 Any punitive or exemplary damages awarded by any court, tribunal, or the like, situated outside New Zealand are excluded;
 - 6.4 Defence costs in respect of any Claim for punitive or exemplary damages brought in any court, tribunal, or the like, situated outside New Zealand are excluded;
 - 6.5 The indemnity provided under this Section A.6 is limited to the maximum sum of \$250,000 any one Claim and in the aggregate in any one Period of Insurance.
- A.7 The maximum amount the Company shall be liable to pay to or on behalf of the Insured under Section A of this Policy in respect of any one Claim and in the aggregate during any one Period of Insurance shall not exceed the Limits of Indemnity provided in the Schedule to this Policy.

Section B: General Exclusions and Limitations

- B.1 This Policy shall not indemnify the Insured in respect of:
- 1.1 Any Claim brought about or contributed to by the dishonest, fraudulent, criminal, malicious, deceitful, or wilful act, omission or conduct of the

Insured, or any principal, partner, director, officer, employee, contractor, or agent of the Named Insured, save that this General Exclusion B.1.1.1. shall not apply to the defence of manslaughter proceedings which arise from the performance on behalf of the Named Insured of the duties or functions of any employee or contractor of the Named Insured in providing Health Care or Disability Services for the patients of the Named Insured ;

- 1.2 Any Claim arising from material published or broadcast by whatever medium or media by the Insured, or on the Insured's behalf, or to which the Insured or any employee or contractor of the Named Insured has contributed;
- 1.3 Any Claim made prior to the commencement of the Period of Insurance, or any claim or circumstance, which could reasonably be expected to give rise to a Claim of which the Insured or any principal, partner, director, officer, employee, contractor, or agent of the Named Insured was aware or ought reasonably to have been aware at the commencement of the Period of Insurance, regardless of whether the Insured notified the Claim or circumstance to an insurer under any policy of insurance;
- 1.4 Any litigation in existence at the commencement of the Period of Insurance;
- 1.5 Any Claim directly or indirectly arising out of any act, error, omission, or conduct of the Insured or any employee or contractor of the Named Insured:
 - (a) in the United States of America and/or Canada or their territories or protectorates;
 - (b) in any other country or territory other than New Zealand, except with the written agreement of the Company (which agreement the Company may withhold at its absolute and unfettered discretion);
- 1.6 Any investigation, inquiry, complaint, Claim, or proceeding against or concerning the Insured or any employee or contractor of the Named Insured:

- (a) in the United States of America and/or Canada or their territories and protectorates;
 - (b) in any other country or territory other than New Zealand, except with the written agreement of the Company (which agreement, the Company may withhold at its absolute and unfettered discretion);
- 1.7 Any Claim in respect of which and to such extent that the Insured is entitled to indemnity under any other insurance, or would be so entitled had this insurance not been effected;
- 1.8 Any loss or destruction of, or damage to, any property whatsoever, or any loss or damage of whatsoever nature (including but not limited to consequential loss or damage) resulting or arising therefrom;
- 1.9 Any Claim made against the Named Insured or any principal, partner, director, officer, employee, contractor, or agent of the Named Insured, arising directly or indirectly from the insolvency, bankruptcy or liquidation of the Named Insured, or any business or commercial activity in which the Named Insured is involved (save to the extent of the performance or functions of the Named Insured as a provider of Health Care or Disability Services, or arising from or related to the performance on behalf of the Named Insured of the duties or functions of any employee or contractor of the Named Insured in the course of providing Health Care or Disability Services for the patients of the Named Insured);
- 1.10 Any Claim or liability in relation to or arising out of any Employment Relationship Problem to which the Insured is a party, or in relation to or arising out of the interpretation, application, or operation of any employment agreement or of any independent contract or agreement to which the Insured is a party;
- 1.11 Any Claim against the Insured in respect of or related to an intentional or reckless breach of confidentiality, or privacy, or copyright, trademark, design, patent, or any other form of intellectual property;
- 1.12 Any Claim arising directly or indirectly from the ownership, possession or use by or on behalf of the Insured of any land, building, automobile, aircraft, watercraft, vessel or other mechanically propelled vehicle;

- 1.13 Any Claim arising directly or indirectly from any liability or obligation assumed by the Named Insured under a contract which would not have arisen in the absence of such contract, other than a contract with a patient to provide Health Care or Disability Services to that patient;
- 1.14 Any liability the Insured may have to pay any fine, penalty, tax, or any award of aggravated damages, any award of punitive or exemplary damages, save to the extent covered under clause A.6 of this Policy.
- 1.15 Any Claim by way of damages or otherwise, for a refund of professional fees paid to the Named Insured, or any Claim that the Named Insured is not entitled to professional fees.
- 1.16 Any Claim brought about by, or arising as a consequence of, any failure of an employee, contractor, or agent of the Named Insured to comply (without reasonable justification), with the provisions of the Medical Council of New Zealand publication (as amended from time to time) *Sexual Boundaries in the Doctor/ Patient Relationship-A Resource for Doctors*, or with any other relevant professional guideline or statement regarding sexual boundaries with patients.
- 1.17 Notwithstanding any provision to the contrary within this Policy or any endorsement or exclusion thereof, this insurance excludes any Claim for loss, damage, death, injury, illness, cost, or expense of whatsoever nature directly or indirectly caused by, arising 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, damage, or liability.

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 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.

This exclusion also excludes any Claim for loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly

caused by, arising from or in connection with any action taken to control, prevent, suppress an Act of Terrorism or which in any other way is related to an Act of Terrorism.

- B.2 For the avoidance of doubt, this Policy shall not provide indemnity of any kind whatsoever:
- (a) To any person who is not:
 - (i) The **Named Insured**; or
 - (ii) A person included in the definition of **Insured** contained in Section D of this policy; or
 - (b) For any claim or matter which does not constitute a **Claim** as that term is defined in Section D of this Policy.

Section C: General Conditions

- C.1 As a condition precedent to the right to be indemnified under this Policy the Insured shall give to the Company immediate notice in writing:
- 1.1 Of any Claim made against the Insured; and
 - 1.2 Of the receipt from any person of an intimation to hold the Insured responsible or legally liable for any act error omission or conduct of the Insured or of any employee or contractor of the Named Insured or of the consequences thereof; and
 - 1.3 Of any circumstance of which the Insured shall become aware which may reasonably be expected to give rise to a Claim under this Policy.

For the avoidance of doubt the Company shall have no liability under this Policy to indemnify the Insured for or in respect of any cost or expense incurred by or on behalf of the Insured before the receipt by the Company of the notice required by this General Condition C.1.

- C.2 If any Claim made under this Policy shall be in any respect false, fraudulent or deceitful or if any false fraudulent or deceitful means or devices shall be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit

under this Policy, or if any material particular of the Claim provided by the Insured to the Company shall be false or misleading:

- 2.1 The Insured's right to indemnity or reimbursement in respect of such Claim shall be forfeited absolutely; and
 - 2.2 The Company shall be entitled to recover from the Insured the total amount of any payments it has already made or expenses it has already incurred in respect of the Claim, (including any costs incurred by the Company in recovering or seeking to recover such payments or expenses)
- C.3 If, after having accepted a Claim under Section A of this Policy, the Company should discover that the Claim was brought about or contributed to by the dishonest, fraudulent, criminal, malicious, deceitful, or wilful act, omission or conduct of the Insured, or of any principal, partner, director, officer, employee, contractor, or agent of the Named Insured, the Company shall be entitled to recover from the Insured the total amount of any payments it has already made or expenses it has already incurred in respect of the Claim, (including any costs incurred by the Company in recovering or seeking to recover such payments or expenses).
- C.4 If, after having accepted a Claim under Section A of this Policy, the Company becomes aware of circumstances that could reasonably be expected to have resulted in declinature of the Claim or part of the Claim had such circumstances been known to the Company at the time of such acceptance, the Company shall be entitled to withdraw cover from the Insured with respect to the accepted Claim or part of the accepted Claim (as the case may be), and the Company shall be entitled to recover from the Insured the total amount of any payments it has already made or expenses it has already incurred in respect of the Claim, (including any costs incurred by the Company in recovering or seeking to recovery such payments or expenses).
- C.5 Upon receipt of notice given in accordance with General Condition C.1 the Company may take such action as it considers appropriate to protect the Insured's position in respect of any Claim or potential Claim and such action by the Company shall not be regarded in any way as prejudicing the position of the Insured and shall not constitute an admission of the Insured's entitlement to indemnity or reimbursement hereunder.

- C.6 The Insured shall use due diligence and do and concur in doing all things reasonably practicable to assist the Company to respond to or defend any Claim and otherwise to avoid or to diminish the cost of any Claim to the Company. Without limitation and in a timely manner the Insured shall disclose voluntarily to the Company all information in the Insured's power or control which may be relevant to any Claim or its defence and shall do all things and provide all information reasonably requested by the Company or its legal counsel in relation thereto, and as between the Insured and the Company, the Insured hereby waives any legal privilege which would otherwise apply to such information.
- C.7 Where the Company appoints legal counsel to assist or represent the Insured:
- 7.1 Counsel so appointed shall be at liberty to report directly to the Company any information which counsel obtains or receives in the course of their retainer for the Insured including but not limited to information which may be of relevance to the provision or scope of the Insured's indemnity cover.
 - 7.2 By accepting this insurance, the Insured authorises counsel so appointed to disclose such information to the Company, and as between the Insured and the Company the Insured hereby waives any legal privilege which would otherwise apply to such information.
 - 7.3 All communications between the Company and counsel so appointed are confidential and legally privileged.
- C. 8 The Insured shall not admit liability for or settle any Claim, and the Insured shall not incur any costs or expenses in connection therewith, without the written consent of the Company.
- C.9 When arranging, amending or renewing this Policy, the Named Insured has a legal duty of full disclosure to the Company of all facts and circumstances which may be material to the risk. The Named Insured must inform the Company of everything within its knowledge or within the knowledge of its principals, partners, directors, officers, employees, contractors, or agents that a prudent insurer could reasonably be expected to take into account in:
- (a) deciding whether to accept or decline the insurance; and

- (b) determining the amount of the premium, or other terms and conditions of the insurance including the excess.

If the Named Insured should breach this duty, the Company may decline to pay all or part of any Claim, and/or it may cancel the Policy with immediate effect.

- C.10 The Company shall be entitled to take over and to conduct in the name of the Insured the defence or settlement of any Claim. Nevertheless, neither the Insured nor the Company shall be required to contest or initiate any legal proceedings in respect of any Claim against the Insured unless an independent legal counsel (to be mutually agreed upon by the Insured and the Company or, failing such agreement, to be appointed by the Company) shall recommend that such proceedings should be contested or initiated.
- C.11 It is hereby agreed that if any payment is made by the Company under this Policy in respect of a Claim, the Company is thereupon subrogated to all of the Insured's rights in relation thereto, and it may take over and defend the Claim in the name of the Insured, in which case the Insured shall do all things and execute all documents reasonably required to enable the Company to do so.
- C.12 If the Insured shall refuse to consent to any settlement of a Claim reasonably recommended by the Company and shall elect to contest, defend, or otherwise continue or initiate any legal proceeding in connection therewith, any liability of the Company under this Policy shall not exceed the amount for which the proceeding could have been so settled, plus the costs and expenses incurred up to the date of such refusal.
- C.13 Where the Insured's breach of or non-compliance with any of the General Conditions of this Policy results in prejudice to the handling and/or settlement of any Claim which in all other respects qualifies to be indemnified under this Policy, the indemnity or reimbursement provided by this Policy in respect of such Claim shall be reduced to such sum as would have been payable by the Company in the absence of such prejudice.
- C.14 This insurance is for the term shown in the Schedule to this Policy. The decision as to whether or not to offer to renew the Policy for a further term shall be at the sole and unfettered discretion of the Company.
- C.15 If, at the time of making a Claim hereunder, the Insured is entitled to indemnity or reimbursement in respect of the same Claim pursuant to another contract of insurance, the Company shall be liable to indemnify the Insured only to the

extent that the Claim exceeds the sum which is payable under such other contract of insurance.

C.16 This Policy may be cancelled:

- (a) at any time by the Named Insured giving written notice of cancellation to the Company; or
- (b) by the Company giving 30 days written notice to the Named Insured of the date from which the cancellation is to take effect.

After cancellation of the Policy, the Named Insured is entitled to a *pro rata* refund of any premium paid for the Period of Insurance.

C.17 Claims made and payable under this Policy are inclusive of any Goods and Services Tax (GST) payable (if any) under the Goods and Services Tax Act 1985 and/or under the equivalent legislation in any other jurisdiction specified in the Schedule.

C.18 This Policy shall be subject to and governed by the laws of New Zealand, and the courts of New Zealand shall have exclusive jurisdiction in any dispute arising hereunder.

C.19 The Company retains the right, at its complete and unfettered discretion, to amend the Terms and Conditions of this Policy at any time, provided that any such amendment shall not apply to the current Period of Insurance.

Section D: Definitions and Notices

D.1 In this Policy, unless the context otherwise requires:

Claim means any claim first made and notified to the Company during the Period of Insurance by or on behalf of the Insured under Section A and in accordance with General Condition C.1 arising from:

- (a) Any act, error, omission, or conduct in the performance of the Named Insured's duties, functions, or responsibilities as a provider of Health Care or Disability Services; or

- (b) Any liability or obligation of the Named Insured as an Employing Authority arising under or in connection with section 72 of the Health and Disability Commissioner Act 1994; or
- (c) Any act, error, omission, or conduct of an employee or contractor of the Named Insured:
 - (i) In the performance on behalf of the Named Insured of that person's duties or functions in providing Health Care or Disability Services for the patients of the Named Insured; or
 - (ii) In rendering voluntary medical assistance at the scene of any emergency, accident, or disaster, in New Zealand.

Employing Authority means a health care provider or a disability services provider to which section 72(1) of the Health and Disability Commissioner Act 1994 may apply.

Employment Relationship Problem means a personal grievance, a dispute, or any other problem relating to or arising out of an employment relationship or the termination of an employment relationship, or arising out of the interpretation, application or operation of any employment agreement or of any independent contract to which the Insured is a party.

Health Care or Disability Services means the diagnosis, assessment and treatment of a person for physical or mental illness or injury and activities directly related to such diagnosis, assessment and treatment.

Insured means the Named Insured and includes:

- (a) any person who is or who during the Period of Insurance becomes, a principal, partner, director, or officer of the Named Insured but only to the extent of any act, error, omission, or conduct by that person in that person's capacity as principal, partner, director, or officer of the Named Insured (as the case may be);
- (b) any person, being an employee or contractor of the Named Insured, who is or who during the Period of Insurance becomes, a member of an ethics committee or medical advisory council of the Named Insured but only to the extent of any act, error, omission, or conduct by that person in that

person's capacity as a member of an ethics committee or clinical advisory council of the Named Insured (as the case may be).

Legal Expenses means fees, expenses, and other disbursements reasonably and properly charged or incurred by legal counsel instructed by the Company to deliver all or any of the legal services provided in Section A hereof, and includes fees, expenses and other disbursements reasonably and properly charged or incurred by expert witnesses instructed by the Company in relation to any investigation, inquiry or proceeding for which cover is provided under Section A hereof.

Limits of Indemnity means the limits of the liability of the Company to indemnify or reimburse the Insured as provided in this Policy or in the Schedule to this Policy.

Named Insured means the person, persons, partnership, trust, company, corporation or other entity specified as the Insured in the Schedule.

Period of Insurance means each period of insurance as specified in General Condition C.13.

Schedule means the current schedule to this Policy.

- D.2 In this Policy, unless the context otherwise requires, a reference to any statutory or regulatory provision shall be deemed to refer to any amendment to or re-enactment or replacement of the same.
- D.3 Any written notice required to be given by this Policy or otherwise by law:
- (a) by or on behalf of the Insured to the Company, shall be given by courier to the Company's office at Building 3 Unit E 195 Main Highway Ellerslie, Auckland 1051, or in the ordinary mail to PO Box 11 369 Ellerslie, Auckland 1542, or by facsimile to (09) 579 6213, or by email to general@nzmi.co.nz;
 - (b) by or on behalf of the Company to the Named Insured, shall be given by post in the ordinary mail, or by facsimile, or by email, to the postal, facsimile, or email address of the Named Insured last notified in writing to the Company.
- D.4 Any written notice given under clause D.3 above shall be deemed to have been received by the party to whom it was addressed or directed:

- (a) in the case of notice given by post in the ordinary mail, on the fifth working day following the date of dispatch of the notice;
- (b) in the case of notice given by facsimile, at the time indicated on a record of the transmission of the facsimile;
- (c) in the case of notice given by email, at the time a record of the transmission indicates that it was received in the relevant electronic communication system, of the addressee.

Schedule

New Zealand Medical Indemnity Insurance Schedule to Medical Practice Policy

Version 1.0 1 June 2024

Named Insured:

Commencement of Insurance:

Expiry of Insurance:

Limits of Indemnity Section A:

1. Settlement and Damages (including punitive and exemplary damages) Limit:

\$1,000,000 any one Claim and \$2,000,000 in the aggregate in any one Period of Insurance.

Included within the Settlement and Damages Limit are punitive or exemplary damages in respect of a Claim under Clause A.6 of \$250,000 any one Claim and in the aggregate in any one Period of Insurance.

2. Legal Expenses Costs Limit:

\$1,000,000 any one Claim and \$2,000,000 in the aggregate in any one Period of Insurance.

In addition to the Legal Expenses Costs Limit, the Company will pay -

- 2.1 Reimbursement for loss of earnings due to attendance at hearings under clause A.3: \$1000 per day or part day to a maximum of \$15,000 in total, any one Claim and in the aggregate in any one Period of Insurance.

- 2.2 Costs under clause A.4 maximum \$20,000 any one Claim and in the aggregate in any one Period of Insurance.

Version 1.0 1 June 2024

Financial Strength Rating

New Zealand Medical Professionals Limited has been issued a Financial Strength Rating of *B+* (*Good*) and an Issuer's Credit Rating of *bbb-* (*Good*) with the outlook on both ratings assigned to 'Stable'. These ratings were issued by A.M. Best on 2 May 2024.

A.M. Best Ratings Scales

Financial Strength Ratings				Issuer Credit Ratings			
A++, A+	Superior	C, C-	Weak	aaa	Exceptional	b	Marginal
A, A-	Excellent	D	Poor	aa	Superior	ccc	Weak
B++, B+	Good	E	Under Regular Supervision	a	Excellent	cc	Very Weak
B, B-	Fair	F	In liquidation	bbb	Good	c	Poor
C++, C+	Marginal	S	Suspended	bb	Fair		