

NEW ZEALAND MEDICAL INDEMNITY INSURANCE SMO POLICY

Whereas the person named in the Schedule (hereinafter *the 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 Insurance

- A.1 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C) below and to the Limits of Indemnity and also subject to the Company's prior receipt of the agreed premium, the Company shall indemnify the Insured in respect of any Claim first made by the Insured during the Period of Insurance and notified to the Company in respect of any legal liability the Insured may have arising out of any act, error, omission or conduct in the performance of the Insured's medical duties or functions in the course of the Insured's employment or profession as a Registered Medical Practitioner (a *Claim*);
- A.2 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C) below and to the Limits of Indemnity and also subject to the Company's prior receipt of the agreed premium, the Company shall indemnify the Insured in respect of any Claim first made by the Insured during the Period of Insurance, and notified to the Company 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 representation in relation to:
- 2.1 Any Claim and/or in defending any Claim;
 - 2.2 Any criminal investigation inquiry or proceeding (including any appeal therefrom) and any threat or intimation of a criminal investigation inquiry or proceeding, arising out of any act, error, omission or conduct in the performance of the Insured's medical duties or functions in the

course of the Insured's employment or profession as a Registered Medical Practitioner;

- 2.3 Any investigation, inquiry or proceeding (including any appeal therefrom or any judicial review thereof) arising out of any act, error, omission, or conduct in the performance of the Insured's medical duties or functions in the course of the Insured's employment or profession as a Registered Medical Practitioner, 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.
- A.3 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C) below and to the Limits of Indemnity and also subject to the Company's prior receipt of the agreed premium, the Company shall indemnify the Insured for any liability or costs of defence for which coverage is provided under Section A hereof, arising out of section 72 of the Health and Disability Commissioner Act 1994 (or any statutory amendment or re-enactment of the section or Act).
- A.4. Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C) below and to the Limits of Indemnity and also subject to the Company's prior receipt of the agreed premium, the Company shall reimburse the Insured in respect of any Claim first made by the Insured during the Period of Insurance and notified to the Company:
- 4.1 for all reasonable costs of travel and accommodation incurred by the Insured; and
- 4.2 for 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, provided that the maximum reimbursement available under Clause A.4.2 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.5 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C) below and to the Limits of Indemnity and also subject 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 a court tribunal or the like in respect of any proceeding for which cover is provided under Section A hereof;
- A.6 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C) below and to the Limits of Indemnity and also subject to the Company's prior receipt of the agreed premium, the Company shall reimburse costs payable pursuant to a settlement agreement entered into by the Insured with the Company's consent in respect of any one Claim and in the aggregate to the maximum sum of \$100,000 in any one Period of Insurance.
- A.7 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C) below and to the Limits of Indemnity and also subject to the Company's prior receipt of the agreed premium, indemnity is provided by this Policy in respect of any claim brought against the Insured for punitive or exemplary damages as a result of personal injury happening in New Zealand that was a personal injury for which coverage is determined to exist under the Accident Compensation Act 2001 or any amending or replacing legislation. Provided that-
- 7.1 The personal injury arose from an act, error, omission or conduct in the performance of the Insured's medical duties or functions in the course of the Insured's employment or profession as a Registered Medical Practitioner;
- 7.2 Any liability for punitive or exemplary damages in respect of such personal injury arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse by the Insured is excluded;
- 7.3 Any punitive or exemplary damages awarded by any court outside New Zealand are excluded;
- 7.4 Defense costs in respect of any Claim for punitive or exemplary damages brought in any court outside New Zealand are excluded;

- 7.5 The indemnity provided by this Policy under Section A.6 in respect of punitive or exemplary damages is limited to the maximum sum of \$250,000 any one Claim and in the aggregate in any one Period of Insurance.
- A.8 **Psychologist/Counsellor Assistance Payment**
Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C) below and to the Limits of Indemnity and also subject to the Company's prior receipt of the agreed premium, in the event a Claim is accepted by the Company under this policy, the Company agrees to provide the Insured with financial assistance to access a psychologist or counsellor of the Insured's choosing provided the Company's approval is sought prior to the psychologist or counsellor being engaged. The maximum amount payable by the Company under this extension is \$1,000 any one Claim and in the aggregate in any one Period of Insurance.
- A.9 The maximum amounts the Company will pay under Section A of this Policy in respect of any one Claim and in the aggregate during any one Period of Insurance to or on behalf of the Insured shall not exceed the Limits of Indemnity provided in the Schedule to this Policy.
- A.10 Subject to the General Exclusions and Limitations (Section B), the General Conditions (Section C) below and to the Limits of Indemnity and also subject to the Company's prior receipt of the agreed premium, indemnity is provided by this Policy in respect of any Claim arising from medical assistance voluntarily administered at the scene of any emergency, accident, or disaster by the Insured.

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, save that this General Exclusion B.1.1. shall not apply to the defence of manslaughter proceedings which arise from the performance of the Insured's medical duties or functions in the course of the Insured's employment or profession as a Registered Medical Practitioner;

- 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 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 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:
 - (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, complaint, inquiry, Claim, or proceeding against or concerning the 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 Insured arising directly or indirectly from the insolvency, bankruptcy, or liquidation of the Insured, or any business or commercial activity in which the Insured is involved (save to the extent of the Insured's performance of the Insured's medical duties or functions in the course of the Insured's employment or profession as a Registered Medical Practitioner);
- 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 any intentional or reckless breach of confidentiality, or privacy, or any copyright, trademark, design or 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 Insured under a contract which would not have arisen in the absence of such contract, other than a contract with a patient to perform the duties of a Registered Medical Practitioner;
- 1.14 Any liability the Insured may have to pay any fine, penalty, tax or any award of aggravated damages;
- 1.15 Any Claim by way of damages or otherwise, for a refund of professional fees paid to the Insured, or any Claim that the Insured is not entitled to professional fees;
- 1.16 Any Claim brought about by, or arising as a consequence of, any failure 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*;

- 1.17 Notwithstanding any provision to the contrary within this insurance or any endorsement thereto or exclusion therein it is agreed that this insurance excludes loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or 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 loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

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 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 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 made or expenses it has incurred in respect of the Claim on the basis that the Claim is excluded under B.1.1 of this Policy.
- 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, the Company shall be entitled to recover from the Insured the total amount of any payments it has made or expenses it has incurred in respect of the Claim (including direct costs incurred by the Company in recovering such payments or expenses); provided that this General Condition C.3 shall not apply in the case of the Insured's conviction of manslaughter arising from the performance of the Insured's medical duties or functions in the course of the Insured's employment or profession as a Registered Medical Practitioner.
- C.4 If, after having accepted a Claim under Section A of this Policy, the Company becomes aware of circumstances that would have resulted in a declination of indemnity under this Policy, 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.
- 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 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 Indemnity 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 relevant to any Claim made by the Insured 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 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.8 When arranging, amending or renewing this policy, the Insured has a legal duty of disclosure. The Insured must tell the Company everything he, she or they know (or could reasonably be expected to know) that a prudent insurer would want to take into account in deciding:
- (a) whether to accept or decline the insurance; and
 - (b) the premium or other terms and conditions of the insurance, including the excess.
- If the Insured breaches this duty, the Company may decline to pay all or part of your claim, or your policy cover may be cancelled as if it had never existed.
- C.9 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, nominated by the Company), shall recommend that such proceedings should be contested or initiated.
- C.10 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 may take over and defend the Claim in the name of the Insured.
- C.11 If the Insured shall refuse to consent to any settlement of an 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.12 Where the Insured's breach of or non-compliance with any of the General Conditions of this Policy has resulted 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 afforded 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.13 This insurance is for the term shown in the Schedule to this Policy. The Company may offer to renew it for a further term at its sole discretion. The Company may choose not to offer to renew your policy where it considers there are reasons why it is not in its interest to do so.
- C.14 If, at the time of making a Claim hereunder, the Insured is entitled to an indemnity in respect of the same Claim pursuant to another contract of insurance the Company shall only be liable to indemnify the Insured to the extent that the Claim exceeds the sum which is payable under such other contract of insurance.
- C.15 This Policy may be cancelled:
- (a) at any time by the Insured giving written notice of cancellation to the Company; or
 - (b) by the Company giving 30 days written notice to the Insured of the date from which cancellation is to take effect.
- After cancellation of the Policy, the Insured is entitled to a *pro rata* refund of any premium paid for the Period of Insurance.
- C.16 The Insured shall give immediate notice in writing to the Company should the statutory registration of the Insured be cancelled, suspended or terminated.

- 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 (or any statutory amendment or re-enactment of the section or Act) 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. Any such amendments shall not apply to the current Period of Insurance set out in the Schedule to this Policy.

Section D: Definitions and Notices

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

Claim means any claim made by or on behalf of the Insured to the Company under Section A and in accordance with General Condition C.1 arising from the same act, error, omission or conduct.

Counsellor means a person engaging in professional practice in the fields of counselling and/or therapy that is a member of the New Zealand Association of Counsellors (NZAC).

Employment Relationship Problem means a personal grievance, a dispute, and 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.

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 Policy Schedule.

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

Psychologist means any person registered by the New Zealand Psychologists Board or its legal successor, who holds a current certificate to practice.

Registered Medical Practitioner means any person registered by the Medical Council of New Zealand or its legal successor, who holds a current certificate to practice medicine.

D.2 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 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 Insured last notified in writing to the Company.

D.3 Any written notice given under clause D.2 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.



New Zealand Medical Indemnity Insurance
Schedule to SMO Policy
Version 1.0 21 May 2024

Name:

Commencement of Insurance:

Expiry of Insurance:

Limits of Indemnity Section A:

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

\$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 is-

- 1.1 Settlement agreement entered into by the Insured with the Company's consent in respect of a Claim under Clause A.6 of \$100,000 any one Claim and in the aggregate in any one Period of Insurance.
- 1.2 Punitive or exemplary damages in respect of a Claim under Clause A.7 of \$250,000 any one Claim and in the aggregate in any one Period of Insurance.

2. Legal Expenses Costs:

\$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 with its consent-

Version 1.0 21 May 2024

- 2.1 Reimbursement for loss of earnings due to attendance at hearings under clause A.4: \$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.5: maximum \$20,000 any one Claim and in the aggregate in any one Period of Insurance.
- 2.3 Psychologist/Counsellor Assistance Payment under clause A.8: maximum \$1,000 any one Claim and in the aggregate in any one Period of Insurance.

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		

Version 1.0 21 May 2024