

NEW ZEALAND MEDICAL PROFESSIONALS INDEMNITY SMO POLICY

Whereas the person named in the Schedule (hereinafter **the Insured**) has made to New Zealand Medical Professionals 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 Professionals Indemnity Policy (hereinafter **the Policy**).

Section A: The Insurance

- A.1 Subject to the General Exclusions and Limitations (Section B) and the General Conditions (Section C) below and to the Limits of Indemnity the Company shall indemnify the Insured in respect of any Claim first made by the Insured during the Period of Insurance, or in accordance with the provisions of A8, 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 *bona fide* performance of the Insured's medical duties or functions in the course of the Insured's employment or profession as a Registered Medical Practitioner (an **Indemnity Claim**);
- A.2 Subject to the General Exclusions and Limitations (Section B) and the General Conditions (Section C) below and to the Limits of Indemnity the Company shall indemnify the Insured in respect of any Claim first made by the Insured during the Period of Insurance, or in accordance with the provisions of A8, 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 Indemnity Claim and/or in defending any Indemnity 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 *bona fide* 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 *bona fide* 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, District Health Board, or the like.

A.3. Subject to the General Exclusions and Limitations (Section B) and the General Conditions (Section C) below and to the Limits of Indemnity, the Company shall reimburse the Insured in respect of any Claim first made by the Insured during the Period of Insurance, or in accordance with the provisions of A8, and notified to the Company:

- 3.1 for all reasonable costs of travel and accommodation incurred by the Insured; and
- 3.2 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, District Health Board, or the like, provided that the maximum reimbursement available under Clause A.3.2 shall be limited to \$1000 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) and the General Conditions (Section C) below and to the Limits of Indemnity, 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.5 Subject to the General Exclusions and Limitations (Section B) and the General Conditions (Section C) below and to the Limits of Indemnity, 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.6 The indemnity provided by this Policy under Section A 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 Period of Insurance. Save as provided, this Policy shall not indemnify the Insured in respect of punitive or exemplary damages.
- A.7 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.8 This Policy is extended beyond the Expiry of Insurance to indemnify any person who is no longer an Insured under this Policy by reason of that person ceasing to be a Registered Medical Practitioner (SMO) for any reason, but only in respect of Claims arising from that Insured's employment or profession as a Registered Medical Practitioner whilst the Insured was insured under this Policy.

Section B: General Exclusions and Limitations

- B.1 This Policy shall not indemnify the Insured in respect of:
- 1.1 Any Claim materially 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 *bona fide* 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 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;
 - 1.3 Any litigation in existence at the commencement of the Period of Insurance.
 - 1.4 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);
- 1.5 Any investigation, 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);
- 1.6 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;
- 1.7 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;
- 1.8 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 *bona fide* performance of the Insured's medical duties or functions in the course of the Insured's employment or profession as a Registered Medical Practitioner);
- 1.9 Any Claim or liability in relation to or arising out of any Employment Relationship Problem to which the Insured is a party;
- 1.10 Any Claim against the Insured in respect of any copyright, trademark, design or patent, or for breach of any copyright, trademark, design or patent;
- 1.11 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;

- 1.12 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;
- 1.13 Any liability the Insured may have to pay any fine penalty tax or any award of aggravated damages;
- 1.14 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.
- 1.15 Any Claim brought about by, or arising as a consequence of, any material 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*.
- 1.16 Any legal liability of whatsoever nature directly or indirectly caused by or materially contributed to, by or arising from ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, provided this exclusion shall not apply where the claim against the Insured directly or indirectly arises from or is related to the use by the Insured of radiation for medical purposes.
- 1.17 Any actual or alleged liability arising out of any Claim or Claims resulting from, arising directly or indirectly out of, in consequence of, or in any way involving the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos products and/or products containing asbestos.
- 1.18 Notwithstanding any provision to the contrary within this insurance or any endorsement thereto 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 endorsement 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 endorsement 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;
- 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;
- 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.

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; provided that this General Condition C.3 shall not apply in the case of the Insured's conviction of manslaughter arising from the *bona fide* 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 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.5 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, 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.6 The Insured shall not admit liability for or settle any Indemnity Claim, and the Insured shall not incur any costs or expenses in connection therewith, without the written consent of the Company.
- C.7 The Company shall be entitled to take over and to conduct in the name of the Insured the defence or settlement of any Indemnity Claim. Nevertheless neither the Insured nor the Company shall be required to contest any legal proceedings in respect of any Indemnity Claim against the Insured unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Company or failing such agreement to be nominated by the President for the time being of the New Zealand Law Society) shall recommend that such proceedings should be contested.
- C.8 It is hereby agreed that if any payment is made by the Company under this Policy in respect of an Indemnity Claim, the Company is thereupon subrogated to all of the Insured's rights in relation thereto, and may take over and defend the Indemnity Claim in the name of the Insured.
- C.9 If the Insured shall refuse to consent to any settlement of an Indemnity Claim reasonably recommended by the Company and shall elect to

contest, defend or otherwise continue 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.10 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.11 The Period of Insurance shall be the period starting at the beginning of the day specified in the Schedule as the Commencement of Insurance, and terminating at the end of the day specified in the Schedule as the Expiry of Insurance, at which time unless the Policy has been renewed the insurance provided by this Policy shall cease absolutely; provided that if notice of any circumstance should be given to the Company in accordance with General Condition C.1 prior to the Expiry of Insurance, any Claim arising from the circumstance thus notified after the Expiry of Insurance shall be deemed to have been made during the subsistence of this Policy.
- C.12 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.13 This Policy may be cancelled:
- (a) at any time by the Insured giving written notice of cancellation to the Company;
 - (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 not entitled to a *pro rata* refund of any premium paid for the Period of Insurance.

- C.14 The Insured shall give immediate notice in writing to the Company should the statutory registration of the Insured be cancelled, suspended or terminated.
- C.15 Indemnity Claims made and payable under this Policy are inclusive of any Goods and Services Tax (GST) payable (if any) under the Goods and Services 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.16 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.

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.

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.

Legal Expenses means fees, expenses and other disbursements reasonably and properly charged or incurred by the Solicitor and/or Barrister 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.11.

Registered Medical Practitioner means any person registered by the Medical Council of New Zealand or its legal successor, who holds a current certificate to practise 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 electronic mail to admin@nzmpi.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 electronic mail, 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 second working day following the date of despatch 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 electronic mail, 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 Professionals Indemnity Policy Schedule to SMO Policy

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 an Indemnity Claim under Clause A.5 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 an Indemnity 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:

\$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-

- 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.

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 28th March 2017.

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		