



# Med-E-Tech Package

Policy Wording

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# Part 1 – Important Information

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## About this Document

This is an important document that must be read carefully before making a decision in relation to this insurance (which is not compulsory). The Insurer is responsible for the content of this document.

This document can help You to:

- decide whether this insurance will meet Your needs; and
- compare it with other products You may be considering.

See the General Definitions section page for details of terms that have special meaning. In some cases, a word with special meaning may be defined in a specific part of the Policy.

## What You Need to Read and Understand

This document contains:

- this Part 1 – Important Information section which contains certain important notices, terms and other information;
- Part 2 – Policy Cover Sections which sets out the sections of cover this insurance can provide (subject to eligibility) and the other standard terms and conditions which will apply to the covers (including any applicable limits and exclusions). It includes General Definitions which set out the special meaning We give to certain words used in the Policy. Other words may be specially defined in a Policy section, term or condition.

If We issue You with a Policy, You will be given a Schedule. The Schedule sets out certain additional terms applicable to the Policy and other matters specific to You such as the cover You have been issued and the Policy Limits of Liability.

The Schedule must be read together with this document and any other documents We agree with You will form part of the Policy that We issue. Where We agree, documents other than this document and the Schedule will form part of the Policy, any such documents will be dated and will include a statement identifying them as part of the Policy.

Together they form the Policy/contract with Us. These are all important documents and should be carefully read together and kept in a safe place for future reference.

## About SURA Life Sciences

SURA Life Sciences is a trading name of SURA Technology Risks Pty Ltd ABN 84 664 644 482 (SURA Life Sciences) who is an Authorised Representative (AR No. 1301575) of SURA Pty Ltd (SURA) ABN 36 115 672 350 AFSL 294313. In issuing this Policy, SURA and its Authorised Representative SURA Technology Risks will be acting under an authority given to it by the Insurers. This means that when issuing this Policy, SURA and its Authorised Representative SURA Technology Risks will be acting as an agent for the Insurers, not for You.

### **Our contact details are:**

Level 14, 141 Walker Street  
North Sydney NSW 2060  
Telephone: (02) 9930 9500

## **About the Insurers**

This insurance is underwritten by certain Lloyd's Underwriters led by Asta Managing Agency Limited, Everest Syndicate 2786 (referred to as We, Our, Us and Insurer).

Lloyd's and Lloyd's Underwriters have been involved in the insurance of Australian risks for over 150 years. Lloyd's Underwriters are authorised to carry on general insurance business under the Insurance Act 1973 (Cth). You can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the Lloyd's Underwriters is liable by requesting them from Us. In the event of loss, each Lloyd's Underwriter (and their Executors and Administrators) is only liable for their own share of the loss. Refer to the Several Liability notice for more information on the specified Lloyd's Underwriters liability.

You should contact SURA Technology Risks in the first instance in relation to this insurance.

### **Lloyd's contact details are:**

Lloyd's Australia Limited  
PO Box R1745 Royal Exchange NSW 1225  
Telephone: (02) 8298 0700

## **Complaints and Dispute Resolution Process**

If you have any concerns or wish to make a complaint in relation to the Policy, Our services or your insurance claim, please let Us know and We will attempt to resolve your concerns in accordance with Our Internal Dispute Resolution procedure. Please contact SURA Technology Risks in the first instance:

Complaints Officer

### **SURA Technology Risks**

Level 14, 141 Walker Street  
North Sydney NSW 2060  
Telephone: (02) 9930 9500  
Email: [IDR@SURA.com.au](mailto:IDR@SURA.com.au)

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

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

### **Lloyd's Australia Limited**

PO Box R1745 Royal Exchange NSW 1225  
Telephone: (02) 8298 0700  
Email: [idraustralia@lloyds.com](mailto:idraustralia@lloyds.com)

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

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

### **Australian Financial Complaints Authority**

GPO Box 3

Melbourne VIC 3001

Telephone: 1800 931 678

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [www.afca.org.au](http://www.afca.org.au)

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

### **Service of Suit**

The Insurers accepting this insurance agree that:

- a) if a dispute arises under the Policy, the Policy will be subject to Australian law and practice and the Insurers will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b) any summons to be served upon the Insurers may be served upon:

#### **Lloyd's Underwriters' General Representative in Australia**

PO Box R1745 Royal Exchange NSW 1225

Email: [serviceofsuitaus@lloyds.com](mailto:serviceofsuitaus@lloyds.com)

who has authority to accept service on the Insurers' behalf;

- c) if a suit is instituted against any of the Insurers, all Insurers participating in the Policy will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under the Policy immediate notice should be given to SURA Technology Risks.

### **Disclaimer**

When the First Named Insured enters into the Policy they confirm and warrant that they have read the Policy documents provided to them.

### **Excess**

If You make a claim under the Policy, You may be required to pay one or more Excesses.

The descriptions of these Excesses and the circumstances in which they are applied are explained in this document, the Schedule and other documents forming the Policy.

The amount of any Excess(es) applicable to the Policy will be provided to the Insured before they agree to enter into a Policy with Us.

If You don't pay the Excess(es) to Us or as We direct, We may deduct the Excess(es) from the amount We pay in relation to any claim. Unless We expressly state otherwise, the relevant Limit of Liability We pay up to is less any applicable Excess(es).

## **When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim**

We may only ever refuse to pay or reduce the amount We pay under a claim to the extent permitted by applicable law.

Some situations in which We may refuse to pay or reduce the amount We pay under a claim under the Policy (to the extent permitted by applicable law) include (but are not limited to):

- a) when You apply for cover (this includes new business, variations, extensions, reinstatements, and renewals) and do not comply with Your Duty of Disclosure;
- b) if You do not comply with or meet a Policy term or condition or We can rely on an exclusion or other limitation (All referred to as terms when used in the Policy) – See Our rights regarding the operation of or breach of a term of the Policy;
- c) if You make a fraudulent claim – See Fraudulent claims for more detail;
- d) where You have not or are not acting in accordance with Your duty of utmost good faith under the Insurance Contracts Act 1984 (Cth) – See Duty of Utmost Good Faith for more detail.

We may also have cancellation rights in the above circumstances to the extent permitted by applicable law.

Subject to applicable law, the amount of any claim entitlement can also be affected and/or reduced by other things, including any limits (e.g. monetary or time limits) or Excess(es), any outstanding Premium and recoveries You or We might make relevant to a loss as set out in the Policy terms.

See Our rights regarding the operation of or breach of a term of the Policy for more detail.

## **Our rights regarding the operation of or breach of a term of the Policy**

We will only rely on any rights We have regarding the operation of or breach of a term of the Policy to the extent permitted by law (including Our right to refuse or reduce a claim if You do not comply with or meet a Policy term or condition or where an exclusion or other limitation applies). The law can be complex and We provide a high-level summary below of some key examples on how the Insurance Contracts Act 1984 (Cth) may affect matters depending on the circumstances. To the extent of any inconsistency the Insurance Contracts Act 1984 (Cth) will prevail.

Other laws can apply beyond the Insurance Contracts Act 1984 (Cth) such as the Corporations Act 2001 (Cth) and the Australian Securities and Investment Commissions Act 2001 (Cth) and You need to seek Your own advice regarding all relevant legal rights You may have.

## **Terms allowing Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into**

Subject to Our rights in relation to fraudulent claims explained below, by reason of section 54 of the Insurance Contracts Act 1984 (Cth), where the effect of the Policy (this includes all terms or conditions, including any exclusion or other limitation) is to allow Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into, We will exercise Our rights under the Policy as explained below.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

Under section 54, an act by You or some other person includes an omission and inaction and an act or omission that has the effect of altering the state or condition of the subject-matter of the Policy or of allowing the state or condition of that subject-matter to alter.

### **How We exercise Our rights where section 54 applies (unless there is a fraudulent claim)**

- Where:
  - the act was necessary to protect the safety of a person or to preserve property; or
  - it was not reasonably possible for You or the other person not to do the act; or
  - You prove no part of the loss that gave rise to the claim was caused by the act, We will not refuse to pay or reduce the claim by reason only of that act.
- Where the act:
  - could not reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy; or
  - could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy but You prove that some part of the loss that gave rise to the claim was not caused by the act, so far as the claim concerns that part of the loss,

We may not refuse to pay or reduce the claim by reason only of that act, but We can reduce Our liability in respect of the claim by an amount that fairly represents the extent to which Our interests were prejudiced as a result of that act.

- Otherwise, where the act could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy, We may refuse to pay the claim.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

## **Terms allowing Us to refuse or reduce a claim because of pre-existing defects or imperfections existing before the Policy was entered into**

Only where section 46 of the Insurance Contracts Act 1984 (Cth) is applicable to the Policy:

- where a claim is made in respect of a loss that occurred as a result, in whole or in part, of a defect or imperfection in a thing; and
- at the time when the contract was entered into You were not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the defect or imperfection,

We may not rely on any provision included in the Policy that has the effect of limiting or excluding Our liability under the Policy by reference to the condition, at a time before the Policy was entered into, of the thing. This does not apply if the Policy is in an excluded class to which section 46 does not apply.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

### **Fraudulent claims**

In all cases, where a claim is made fraudulently under:

- the Policy; or
- the Insurance Contracts Act 1984 (Cth) against Us by a person who is not the First Named Insured,

We may refuse payment of the claim to the extent permitted by law. Under section 56(2) of the Insurance Contracts Act 1984 (Cth) a court may, if only a minimal or insignificant part of the claim is made fraudulently and non-payment of the remainder of the claim would be harsh and unfair, order Us to pay, in relation to the claim, such amount (if any) as is just and equitable in the circumstances.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

### **Duty of Utmost Good Faith**

The following can also (where applicable) affect Our and Your rights and obligations regarding the operation of, reliance on, or breach of a term of the Policy:

- section 13 of the Insurance Contracts Act 1984 (Cth) requires each party to the Policy to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith. The obligation also extends to Third Party Beneficiaries as defined in the Act but only applies to them after the contract is entered into.
- section 14 of the Insurance Contracts Act 1984 (Cth) provides that if reliance by a party to the Policy on a provision of the Policy would be to fail to act with the utmost good faith, the party may not rely on the provision.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

### **Terms Apply to Extent Enforceable**

A term (or part of a term) of the Policy will be applied to the extent it is not unenforceable under applicable law.

### **Your Duty of Disclosure**

Before the First Named Insured enters into an insurance contract (referred to as You and Your in this notice), You have a duty to tell Us of anything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms. You have this duty until We agree to insure You.

You have the same duty before You renew, extend, vary, or reinstate an insurance contract.

You do not need to tell Us anything that:

- reduces the risk We insure You for;
- is of common knowledge;
- We know or should know as an insurer; or
- We waive Your duty to tell Us about.

### **If You do not tell Us something**

If You fail to comply with Your Duty of Disclosure, and We would not have entered into the contract, for the same premium and on the same terms and conditions, had the failure not occurred, We may, subject to applicable law:

- be entitled to cancel Your contract or reduce the amount We will pay You if You make a claim, or both; or
- if Your failure to tell Us is fraudulent, refuse to pay a claim and treat the contract as if it never existed.

Subject to applicable law or unless We state otherwise, a breach of the duty by one contracting insured affects all contracting insureds in these ways.

### **Avoiding misrepresentations**

Under the Insurance Contracts Act 1984 (Cth) if the First Named Insured (referred to as You and Your in this notice) makes a misrepresentation to Us before the insurance contract is entered into (this includes before each renewal, extension, variation, replacement or reinstatement of an insurance contract) and We would not have entered into the contract, for the same premium and on the same terms and conditions, had the misrepresentation not occurred, We may, subject to applicable law:

- be entitled to cancel Your contract or reduce the amount We will pay You if You make a claim, or both; or
- if Your misrepresentation was fraudulent, refuse to pay a claim and treat the contract as if it never existed.

Subject to applicable law or unless We state otherwise, a breach of the duty by one insured affects all insureds in these ways.

A misrepresentation includes a statement that is in any way false, misleading, dishonest or which does not fairly reflect the truth. For example, a statement of fact that is not true, a statement of opinion that is not the subject of an honestly held belief or a statement of intent that never existed at the time provided. We will not treat something as a misrepresentation merely because You failed to answer a question or gave an obviously incomplete or irrelevant answer to a question.

Refer to the Insurance Contracts Act 1984 (Cth) for full details as this is only a summary.

### **Answering Our questions**

Answers to Our questions help Us decide whether to provide this insurance and if so, on what terms. When answering Our questions:

- take reasonable care to make sure Your answers are true, honest, up to date and complete in all respects. You may breach the duty if You answer without any care as to its truth or if You only guess or suspect the truth. If in doubt, pause the application and obtain the true facts before answering; and

- if another person is answering for You, We will treat their answers as Yours. In such a case, You should check the questions have been answered correctly on Your behalf by them.

Please note that You have obligations beyond these pre contractual duty of disclosure and avoiding misrepresentation obligations once the contract is entered into, which are set out in the contract terms and applicable law.

## General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice (the Code), which is a self-regulatory code for use by all insurers. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code, please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to <https://insurancecode.org.au>.

## Goods and Services Tax (GST)

The amount payable by You for the Policy includes an amount for GST.

When We pay a claim, Your GST status will determine the amount We pay.

The amount that We are liable to pay under the Policy will be reduced by the amount of any Input Tax Credit (ITC) that You are or may be entitled to claim for the supply of goods or services indemnified by that payment.

You must advise Us of Your correct Australian Business Number (ABN) and Taxable Percentage. Taxable Percentage is Your entitlement to an ITC on Your Premium as a percentage of the total GST on that Premium. Any GST liability arising from Your incorrect advice is payable by You.

Where the settlement of a claim is less than the applicable Limit of Liability or the other limits applicable to this Policy, We will only pay the GST (less Your ITC) applicable to the settlement. This means that if these amounts are not sufficient to indemnify the whole claim, We will only pay the GST relating to Our share of the settlement for the whole claim.

We will pay the claim by reference to the GST exclusive amount of any supply made by any business of Yours which is relevant to the claim.

GST and ITC have the same meaning as given to those words or expressions in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable).

## Our Contract with the First Named Insured

Where We agree to enter into a Policy with the First Named Insured it is a contract of insurance between Us and the First Named Insured.

If We issue the First Named Insured with a Policy, they will be given a Schedule. The Schedule sets out certain additional terms applicable to the Policy and other matters specific to the Policy such as the cover issued and the Limits of Liability.

The Schedule must be read together with this document and any other documents We agree with the First Named Insured will form part of the Policy that We issue. Any new or replacement Schedule We may send the First Named Insured detailing changes to the Policy or the Period of Insurance, will become the current Schedule, which the First Named Insured should carefully read and retain.

Where We agree, documents other than this document and the Schedule will form part of the Policy (often called endorsements), any such documents will be dated and will include a statement identifying them as part of the Policy.

Together they form the First Named Insured's Policy/contract with Us. These are all important documents and should be carefully read together and kept in a safe place for future reference.

The Policy also extends cover to certain persons or entities who are not contracting parties but are entitled to access cover by reason of section 48 of the Insurance Contracts Act 1984 (Cth) as Third Party Beneficiaries.

They are persons other than the First Named Insured set out in the definition of You, Your, Insured in the General Definitions section.

No insurance is provided in relation to the interest of any persons not specified as being entitled to benefit under the Policy under the definition of You, Your, Insured.

For details on the rights and obligations of such Third Party Beneficiaries see Third Party Interests on page 16.

## Privacy Statement

In this Privacy Statement the use of We, Our or Us means SURA Technology Risks and the Insurers unless specified otherwise.

In this Privacy Statement the use of personal information includes sensitive information.

We are committed to protecting the privacy of the personal information You provide to Us.

The Privacy Act 1988 contains the Australian Privacy Principles which require Us to tell You that We collect, handle, store and disclose Your personal and sensitive information for the specific purpose of:

- deciding whether to issue a policy,
- determining the terms and conditions of the Policy,
- compiling data to help develop and identify other products and services that may interest clients, and
- handling claims.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) whether the information or opinion is true or not;
- b) whether the information or opinion is recorded in a material form or not.

Sensitive information includes, amongst other things, information about an individual's racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

You have given Us Your consent to collect, use and disclose Your personal and sensitive information in order to provide You with the relevant services and/or products.

When You give Us personal information about other individuals, We rely on You to have made or make the individual aware that You will or may provide their personal information to Us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant personal information to Us.

We will protect Your information using physical, technical, and administrative security measures to reduce the risks of loss, misuse, unauthorised access, disclosure and alteration. Some of the safeguards that We use are firewalls and data encryption, physical access controls to Our data centres, and information access authorisation controls.

We disclose personal information to other parties and service providers whom We believe are necessary to assist Us and them in providing the relevant services and/or products. For example, in handling claims, We may have to disclose Your personal and other information to other parties and service providers such as Our claim management partner, other insurers, reinsurers, loss adjusters, external claims data collectors, investigators and agents, facilitators, assessors or other parties as required by law. We limit the use and disclosure of any personal information provided by Us to them to the specific purpose for which We supplied it.

We may disclose Your personal information to Our insurers, reinsurers, related entities and service providers overseas where it is reasonably necessary for, or directly related to, the functions, services or activities We provide to You. When We transfer Your information to other countries, including countries which may not have data protection laws that provide the same level of protection that exists in Australia, We will protect the information as described in this Privacy Policy.

If You do not provide the personal information requested and/or do not provide Us with Your consent to the use and disclosure of Your personal information as set out in this Privacy Statement, Your insurance application may not be accepted, or We may not be able to administer the Policy, or You may be in breach of Your duty of disclosure, the consequences of which are set out under the heading Your Duty of Disclosure in this document.

We will notify You as soon as possible if Your personal information is involved in a data breach that is likely to result in serious harm to You.

If You would like a copy of Our Privacy Policies, would like to seek access to or correct Your personal information, opt out of receiving materials We send, complain about a breach of Our privacy or You have any query on how Your personal information is collected or used, or any other query relating to Our Privacy Policies, please contact Us.

## Sanctions

We shall not provide cover and We shall not be liable to pay any claim or provide any benefit under the Policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us, Our parent company or Our ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the Commonwealth of Australia, United Kingdom or the United States of America.

## Several Liability

The liability of an Insurer under this contract is several and not joint with other Insurers party to the Policy. An Insurer is liable only for the proportion of liability it has underwritten.

An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer. Nor is an Insurer otherwise responsible for any liability of any other insurer that may underwrite the Policy.

The proportion of liability under the Policy underwritten by an Insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the Lloyd's Underwriters of the syndicate taken together) is shown in the Schedule.

In the case of a Lloyd's syndicate, each Lloyd's Underwriter of the syndicate (rather than the syndicate itself) is an Insurer.

Each Lloyd's Underwriter has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the Lloyd's Underwriters of the syndicate taken together). The liability of each Lloyd's Underwriter of the syndicate is several and not joint with any other Lloyd's Underwriter.

A Lloyd's Underwriter is liable only for that Lloyd's Underwriter's proportion.

A Lloyd's Underwriter is not jointly liable for any other Lloyd's Underwriter's proportion. Nor is a Lloyd's Underwriter otherwise responsible for any liability of any other Insurer that may underwrite this contract. The business address of each Lloyd's Underwriter is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each Lloyd's Underwriter of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various parts in this clause to this contract in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

The Insurers named hereon bind themselves each and for their own part and not one for another.

Each Insurer's liability under this contract shall not exceed that percentage or amount of the risk shown against that Insurer's name.

## Third Party Interests

The contracting insureds (the First Named Insured) are the only parties to the Policy. No insurance is provided in relation to the interest of any persons not specified as being entitled to benefit under the Policy.

The benefit of the cover under the Policy is extended automatically to Third Party Beneficiaries. They are not contracting parties and only access the benefit of cover by reason of the operation of section 48 of the Insurance Contracts Act 1984 (Cth). The following sets out how the Policy operates in relation to such persons (subject always to the operation of applicable law).

Access to cover only applies from the time they become a Third Party Beneficiary and ends when they are no longer a Third Party Beneficiary.

Nothing in the Policy is intended to give any such Third Party Beneficiaries any right to enforce any term of the Policy which that person would not have had but for the Insurance Contracts Act 1984 (Cth). Their rights and obligations are subject to the operation of the Insurance Contracts Act 1984 (Cth) as it applies to such persons and other applicable law.

They:

- have, in relation to their claim, the same obligations to Us as they would have if they were the First Named Insured; and
- may discharge the First Named Insured's obligations in relation to the loss, damage or liability.

We also have the same defences to an action by such persons as We would have in an action by the First Named Insured including, but not limited to, defences relating to the First Named Insured's conduct (whether the conduct occurred before or after the contract was entered into). Any exclusions applying to the First Named Insured also apply to a Third Party Beneficiary claiming under the Policy.

Such persons have no right to cancel or vary the Policy or its cover – only the First Named Insured (as the contracting party) and We can do this. If We cancel or vary the Policy or its cover, We do not need to obtain such persons' consent to do so.

We also do not provide any notices in relation to this insurance to such persons as they are not a contracting party to the Policy. We only send notices to the First Named Insured who We have contractual obligations to under the Policy.

Neither We nor the First Named Insured hold anything on trust for, or for the benefit or on behalf of any such persons under this insurance arrangement.

The First Named Insured:

- does not act on Our behalf in relation to the insurance;
- is not authorised by Us to provide any financial product advice, recommendations or opinions about the insurance.

## Policy Interpretation

Headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:

- a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, successors, re-enactments and replacements thereof;
- a word importing the singular includes the plural (and vice versa);
- a word indicating a gender includes every other gender;

- the words include, including, for example, particularly or such as or equivalent are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- any examples provided are subject always to the Policy terms and applicable law; and
- a reference to \$ or dollar is to Australian currency.

# Part 2 – Policy Cover Sections

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## General Definitions

Some key words and terms used in the Policy have a special meaning that appear below when the word starts with a capital letter in this document. Other words may be specially defined to have a meaning when used in relation to a Policy section, term or condition.

**Advertising Injury** means:

- a) infringement of copyrighted advertising materials, titles or slogans; or
- b) misappropriation of advertising ideas or style of doing business; or
- c) oral, broadcast, telecast or written publication of material that slanders or libels a person or disparages a person's goods, products or services; or
- d) oral, broadcast, telecast or written publication of material that violates an individual's right of privacy, in the course of advertising Your Goods, Medtech Products or Medtech Services, however Advertising Injury shall not include or provide any indemnity for:
  - i. the oral, broadcast, telecast or written publication of material whose first publication took place before the inception of the Period of Insurance; or
  - ii. the failure of Goods, Medtech Products or services to conform with advertised quality or performance; or
  - iii. the incorrect description or mistake in advertised price of Goods, Medtech Products or services sold, offered for sale or advertised; or
  - iv. the infringement of registered trademarks, patents, registered designs, service marks or trade names (other than infringement of copyrighted advertising materials, titles or slogans); or
  - v. the breach of contract (other than liability for unauthorised misappropriation of advertising ideas based upon breach or alleged breach of an implied contract); or
  - vi. the advertising activities undertaken on behalf of another party by any First Named Insured engaged in the business of advertising or undertaken for a fee; or
  - vii. any offence committed by You whose business is advertising, broadcasting, publishing or telecasting; or
  - viii. Advertising Injury in the United States of America or Canada or any territory within their jurisdiction.

**Asbestos and Silica Risks** means:

- a) the mining, processing, manufacturing, use, testing, ownership, sale or removal of asbestos, silica, asbestos fibres, silica particles/dust or material containing asbestos or silica; or
- b) exposure to asbestos, silica, asbestos fibres, silica particles/dust or material containing asbestos or silica; or
- c) the provision of instructions, recommendations, notices, warnings, supervision or advice given, or which should have been given, in connection with asbestos, silica, asbestos fibres, silica particles/dust or structures or materials containing asbestos or silica.

**Bodily Injury** means death, injury, disease and any recognised psychiatric illness including mental anguish, emotional distress and psychological harm.

**Business** means any business conducted by You.

**Claim(s)** means:

- a) a civil proceeding; or
- b) a written demand for monetary damages or non-monetary relief; or
- c) an arbitration commenced by receipt of a written request, demand or invitation to arbitrate, or similar communication; or
- d) an invitation to enter into alternative dispute resolution; or
- e) an investigation or charge brought by any governmental or regulatory body when covered under the Policy as an extension;

including, where applicable, any appeal that subsequently follows.

**Combined Single Limit** means the amount stated in the Schedule and which shall be the maximum amount We shall pay under the sections or covers to which the combined single limit applies in the event that two (2) (or more) sections or covers under the Policy provide coverage in respect of a Claim or event.

**Computer Virus** means, but is not limited to, unauthorised computer code that is designed and intended to transmit, infect and multiply itself over one or more networks, and cause:

- a) computer code or programs to perform in an unintended manner;
- b) the deletion or corruption of electronic data or software; or
- c) the disruption or suspension of a network.

**Contractually Assumed** means a written contract or agreement in which You have assumed the liability of another person or organisation (such assumption of liability not being retrospective) in connection with Your Medtech Products or Medtech Services.

**Cyber Occurrence** means any loss, event, incident, accident or credible threat, or series of losses, events, incidents, accidents or credible threats, arising out of, consequent upon, or directly or indirectly attributable to, one source or original cause or common underlying causes being Unauthorised Access, infection by a Computer Virus, Cyber Terrorism, Denial of Service Attack, or System Failure, whether or not occurring at the same time or location.

**Cyber Media Activities** means any digital content including but not limited to, any content disseminated through Your website or social media outlet. This also includes content that is disseminated through social networks, websites and other online forums not created by You.

**Cyber Theft Unauthorised Access** means any accessing of Your Network or information stored on Your Network by an External Source, including theft of any information storage device used to store, retrieve or transport information.

**Cyber Terrorism** means any act including, but not limited to, the use of force or violence or the threat thereof, by any person or group of persons (whether acting alone or on behalf of or in connection with any organisation or government) committed for political, religious, ideological or similar purpose, including the intention to overthrow or influence any government, whether or not legally constituted, or to put the public or any section of the public in fear.

**Deep-linking** means a hypertext link to a page on a website other than the home page.

**Defence Costs and Expenses** means the reasonable and necessary fees (including but not limited to legal fees and experts' fees), charges, costs and expenses, consented to in advance by Us (such consent not to be unreasonably withheld) and incurred by You, or on Your behalf, in the investigation, adjustment, defence or appeal of any Claim which would, if the Claim is successful, be the subject of indemnity under the Policy.

Defence Costs and Expenses does not include:

- a) regular or over-time salaries, wages, fees, overhead or benefit expenses associated with You; or
- b) costs and expenses incurred:
  - i. subsequent to a plea or finding of guilt on Your part;
  - ii. where counsel (or where there is no counsel, the lawyers appointed in the defence of the prosecution) advise that there are no reasonable prospects of successfully defending the proceedings,

except when incurred solely for the purpose of making a plea in mitigation before sentencing or in making an appeal if counsel (or where there is no counsel, the lawyers appointed in the defence of the prosecution) advise that the prospects of a successful appeal following a finding of guilt are reasonable.

**Denial of Service Attack** means an attack carried out over one or more networks or the internet and specifically designed and intended to disrupt the operation of Your Network.

**Director** means where You are a company incorporated under the Corporations Act 2001 (Cth), a director of Yours as defined described in ss (a) of the definition of director under s9 of the Corporations Act 2001 (Cth) (including any amendments to, delegated legislation thereof, or successor standards or legislation (as applicable)).

**Electromagnetic Fields** means electric and/or magnetic fields produced by or associated with the generation, transmission, distribution, supply or use of electricity.

**Employee** means any person who, while engaged in working for You in connection with Your Business, is:

- a) acting in the capacity of a non-executive Director of Yours; or
- b) under a contract of service or apprenticeship with You; or
- c) not under a contract of service or apprenticeship with You but who, at Your request, is supplied to, hired or borrowed by You in connection with the Business, including but not limited to any:
  - i. drivers or operators of hired-in plant; or
  - ii. labour master or labour only sub-contractor or person supplied by them; or
  - iii. person on secondment from another company that is not insured under the Policy; or
  - iv. person participating in any Government or otherwise authorised work experience, training, study, exchange or similar scheme; or
  - v. prospective employees who are being assessed by You as to their suitability for employment; or
  - vi. self-employed person; or
  - vii. unpaid or voluntary person; or
- d) deemed to be an employee by a court that exercises jurisdiction under the law of the Commonwealth of Australia or the laws of the states or territories of Australia.

**Enforcing Authority** means any statutory authority or regulator of the Commonwealth of Australia and the states or territories of Australia responsible for implementing or enforcing environmental legislation.

**Excess** means, the amount(s) specified either in a section or in the Schedule which You shall first bear in respect of any Claims or losses, including claimants' costs and Defence Costs and Expenses, before We shall be liable to make any payment under the Policy.

The Excess does not apply to Our appointed breach response services as described in Claims – Cyber Breach Response.

The Excess(es) will be advised to the First Named Insured before they enter into a Policy with Us.

**External Source** means a person who is not Your Employee, Director, officer, Partner, trustee or independent contractor at the relevant time.

**Financially Associated Party** means:

- a) any business controlled or managed by You;
- b) any company in which You own or control more than twenty percent (20%) of the issued share capital;
- c) any person with an executive or managerial role in Your Business or who would be deemed a shadow director (as described in ss(b) of the definition of director under s9 of the Corporations Act 2001 (Cth), (and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable)), of Yours;
- d) any company that owns or controls any of Your issued share capital;
- e) any company whose issued share capital is owned or controlled by any other company or person who owns or controls any of Your issued share capital.

**First Named Insured** means the person(s), companies, organisations or other entities shown as the insured on the Schedule. They are the contracting insured(s).

**Forensic Investigation Costs** means reasonable and necessary fees, charges, costs and expenses, consented to in advance by Us (such consent not to be unreasonably withheld) and incurred by You, or on Your behalf for:

- a) a third party forensic audit or information technology consultant to investigate the cause and scope of an actual or alleged Cyber Occurrence; or
- b) retention of a cyber incident response manager to coordinate response to an actual or alleged Cyber Occurrence.

Forensic Investigation Costs do not include regular or over-time salaries, wages, fees, overhead or benefit expenses associated with You.

**Framing** means making the contents of another website viewable from Your own website.

**Goods** means tangible physical property that:

- a) has economic value; and
- b) is either held by You in Your inventory for sale or is shipped by You to Your customers via land, sea or air; and
- c) is sold or exchanged by You in trade or commerce.

**Healthtech Devices** means digital medical technologies including, but not limited to, wearable health devices, telemedicine and telehealth platforms, electronic health records, diagnostic hardware and software, remote patient monitoring systems and health apps.

**Impersonation Fraud** means an External Source purporting to be a customer, service provider, Employee or an executive of Yours whose actions lead to the transfer of Your Money, Goods or Securities.

**Insured Person** means You, and any Member, Partner, Director or Employee of Yours.

**Interrelated Claims** means any one Claim, series of Claims, or multiple Claims arising out of:

- a) an act, error, omission or a series of acts, errors or omissions; or
- b) Occurrence or Cyber Occurrence or a series of Occurrences or Cyber Occurrences.

**Legionella** means any discharge, release or escape of legionella bacteria or other airborne pathogens from water tanks, water systems, air-conditioning plants, cooling towers or property of a similar kind.

**Liquidated Damages** means a sum of money including the mechanism for calculating such sum, agreed by contract as the amount payable by You in the event of a specified breach of such contract which, at the time the sum or mechanism was agreed, represented a fair and reasonable estimate of the loss in the event of Your breach of contract.

**Limit of Liability** means the limit applicable to any relevant operative section or any sub limit of liability as shown in the Schedule or otherwise specified in the Policy as applicable.

**Lloyd's** means the society of that name incorporated by the Act of the United Kingdom known as Lloyd's Act 1871.

**Lloyd's Underwriter** means an underwriting member of Lloyd's.

**Medtech Product/s** means any technology products (including containers, labelling or instructions, provided in connection with such products) which are manufactured, sold, supplied, leased, licensed, erected, repaired, altered, treated or installed by You and which is intended for the use in the diagnosis, cure, mitigation, treatment, monitoring or prevention of injury, sickness or disease in humans or animals. Medtech Products include Healthtech Devices.

**Medtech Services** means any services provided by You in relation to Your Medtech Products and Healthtech Devices but does not include work or activities performed by You or on Your behalf or for You as an accountant, architect, surveyor, health care provider, solicitor or barrister, insurance or real estate agent or broker, or civil or structural engineer.

**Member** means one of Your co-owners or investors where You are a legally registered or incorporated limited partnership in accordance with the laws prevailing in Your country or state or territory of domicile that permits such structures.

**Mitigation Costs** means reasonable and necessary fees, costs and expenses, incurred with Our knowledge and prior consent, to mitigate a potential Claim under Section 1 – Medtech Professional Indemnity or a potential Claim following a Cyber Occurrence under Section 3 – Third Party Cyber Liability.

However, Mitigation Costs do not include fees, costs or expenses incurred to comply with any governmental or regulatory requirement which does not directly result from a potential Claim.

**Money** means any of the following, but only to the extent that they exist solely in a digital or electronic format:

- a) cash, currency, bank notes, travellers cheques, registered cheques, money orders;
- b) a record of credit held in Your account by another; or
- c) a record of an amount owed to You by another.

**Network** means any information technology system owned or operated by You or by a third party service provider to whom You have outsourced the operation of such system.

**Non-Public Corporate Information** means proprietary and confidential information, including trade secrets, of a third-party entity.

**Nuclear Installation** means any installation of such class or description as may be prescribed by law, or regulations made by the relevant regulatory authority from time to time by statutory instrument, being an installation designed or adapted for:

- a) the production or use of atomic energy, or the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiation; or
- b) the storage, processing or disposal of nuclear fuel or bulk quantities of other radioactive matter which has been produced or exposed in the course of the production or use of nuclear fuel.

**Nuclear Reactor** means any plant (including any machinery, equipment or appliance, whether affixed to land or not) designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

**Occurrence** means any loss, event, incident or accident, or series of losses, events, incidents or accidents arising out of, consequent upon or directly or indirectly attributable to one source or original cause or common underlying causes, whether or not occurring at the same time or location.

An Occurrence does not include a Cyber Occurrence.

**Offshore Installation** means:

- a) any installation in the sea or tidal waters which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation;
- b) any installation in the sea or tidal waters which is intended for the storage or recovery of gas or oil;
- c) any installation in the sea or tidal waters which is intended for the generation of renewable energy using wind, tide or wave technology;
- d) any cable, pipe or system of cables or pipes in the sea or tidal waters; or
- e) any installation which is intended to provide accommodation for persons who work on or from the locations specified in a), b), c) or d) of this definition.

**Opioid** means a class of pain relieving drugs that act by binding to opioid receptors.

**Partner** means one of Your co-owners or investors where You are an unincorporated trading partnership.

**Period of Insurance** means the time during which the Policy is in existence. It:

- a) starts from the beginning of the Period of Insurance specified in the Schedule; and
- b) finishes 4:00pm on the last day of the end of that period of insurance, unless ending earlier in accordance with the Policy terms or applicable law. Each renewal results in a new contract and new period of insurance.

**Period of Restoration** means the period beginning with the date that Business operations have first been interrupted and ending on the earlier of:

- a) the date when the Business operations have been restored substantially to the level of operation that existed prior to the interruption; or
- b) three hundred and sixty five (365) days after the Business operations have first been interrupted.

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not and which is not available to the general public.

Personal Information includes, but is not limited to, an individual's name, address, telephone number, social security number, account relationships, account numbers, account balances, healthcare information and account histories.

**Personal Injury** means:

- a) false arrest, false detention, false imprisonment;
- b) malicious prosecution;
- c) invasion of privacy; or
- d) wrongful entry, wrongful eviction, interference with the right of private occupancy.

**Policy** means this document (except to the extent part of it is expressly excluded), the Schedule and any other documents We agree with the First Named Insured will form part of the policy that We issue. Together they form the First Named Insured's contract with Us. These are all important documents and should be carefully read together and kept in a safe place for future reference.

**Pollution** means the discharge, dispersal, seepage, migration, release or escape, whether permanent or transitory, of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fibres, fumes, acids, alkalis, chemicals and any other hazardous materials and waste (including material to be recycled, reconditioned or reclaimed) into or upon buildings or other structures, land, the atmosphere or any water course or body of water.

**Premium** means the premium specified in the Schedule or the tax invoice or in any other documents We agree with the First Named Insured will form part of the Policy that We issue.

Premium does not include any government taxes and charges.

**Product Recall Expense** means reasonable and necessary expenses for:

- a) any communication costs incurred to announce the recall, including but not limited to:
  - i. telephone, radio, television, newspaper and internet announcements; and
  - ii. production costs of the announcements, such as printing costs, stationary, envelopes and postage;

- b) transporting the Medtech Products from any purchaser, distributor or user to locations designated by You;
  - c) remuneration paid to Your Employees for overtime to perform the actions in points a) or b) above, and, if necessary, the cost to hire and pay additional persons other than Your regular Employees to perform those actions;
  - d) expenses incurred to properly dispose of the Medtech Products, including packaging that cannot be reused;
  - e) rental expense incurred for temporary locations used to store the Medtech Products; or
  - f) extra expenses incurred by Employees;
- as a result of a recall of Your Medtech Products.

**Reduction of Business Income** means the amount determined by Us as the difference between the net revenue (which shall not include any interest, tax, depreciation or amortization) including any net advertising revenue, You reasonably determine has been lost directly as a result of a Cyber Occurrence and the costs You would have incurred but have saved because of the interruption of Your Business. We shall base Our calculations on the amount of net revenue generated and costs incurred during each month of the twelve (12) month period immediately preceding the interruption and a reasonable projection of future revenue and costs, taking into account any material changes in market conditions.

**Regulatory Defence Costs** means reasonable and necessary fees (including but not limited to legal fees and experts' fees, charges, costs and expenses) consented to in advance by Us and incurred by You, or on Your behalf for the defence of a regulatory investigation or action. The term shall not, however, include regular or over-time salaries, wages, fees, overhead or benefit expenses associated with You, other than where incurred with Our prior written consent (such consent not to be unreasonably withheld).

**Remediation** means works or operations to treat, remove or dispose of Pollution.

**Retroactive Date** means the date stated as such in the Schedule or otherwise referred to in a section of the Policy.

**Schedule** means the numbered policy schedule, renewal schedule or endorsement schedule issued by Us in connection with the Policy for the applicable Period of Insurance.

**Securities** means negotiable and non-negotiable instruments or contracts, including the digital or electronic equivalents of these.

**Subsidiary** means a company in which the First Named Insured has a controlling interest (being the beneficial ownership of shares carrying more than 50% of votes capable of being cast), but only to the extent that the company is engaged in carrying on Your Business or activities which are substantially of the same kind or related to that Business.

**Stock** means physical and tangible stock and materials in trade, including work in progress and finished Goods, that are Your property or held in trust by You or for which You are otherwise responsible.

**System Failure** means any accidental, operational, unintentional, or negligent, act, error or omission by You or Your Employee, or by an employee of a third party providing services to You in the operation of Your Network resulting in the loss, destruction or alteration of data or disruption in the operation of Your Network.

**Sub-Contractor** means any person or entity contracted to provide Medtech Services to You or Your client pursuant to a written agreement between You and such person or entity.

**Terrorism** means any act including, but not limited to, the use of force or violence or the threat thereof, by any person or group of persons (whether acting alone or on behalf of or in connection with any organisation or government) committed for political, religious, ideological or similar purpose, including the intention to overthrow or influence any government, whether or not legally constituted, or to put the public or any section of the public in fear.

**Territorial Limits** means the territorial limit referred to in the Schedule to the Policy.

**Third Party Beneficiary/ies** means persons who are not contracting parties to the Policy but to whom the benefit of cover is extended by reason of section 48 of the Insurance Contracts Act (1984) that:

a) are expressly specified in the Policy as a person or type of person to which the benefit of cover is extended; or

b) are listed in the Schedule as Third Party Beneficiaries,

unless otherwise excluded, but only to the extent of their interest specified. See Third Party Interests clause for details on the rights and obligations of third party beneficiaries.

**Third Party Custodian** means any third party to whom You entrust Non-Public Corporate Information and Personal Information by virtue of a contract.

**Third Party Network** means any information technology system which is not owned or operated by You or by a third party service provider to whom You have outsourced the operation of such system, but does not include any:

a) buildings or structures in which any information technology system may be located; or

b) contents or property, other than computers, servers, cables and other system hardware which can be reasonably regarded as forming part of the information technology system.

**Unauthorised Access** means any accessing of Your Network or information stored on Your Network by an unauthorised person, or by an authorised person in an unauthorised manner including theft of any information storage device used to store, retrieve or transport information, but does not include any unauthorised access to any voice mail system or telephone system except under Insuring clause Telephone hacking of Section 2 – First Party Cyber.

**Waiting Period** means the period stated in the Schedule which shall be applied to each Period of Restoration and represents the number of hours Your Business operations must be interrupted before We will pay a loss or claim (other than extra expense) in accordance with Insuring clause Business interruption and extra expense of Section 2 – First Party Cyber.

**We, Our, Us / Insurer** means certain Lloyd's Underwriters acting through their agent SURA Technology Risks Pty Ltd trading as SURA Life Sciences.

**You, Your, Insured** means:

a) the First Named Insured;

b) any person who is a principal, Partner, Member, Director or Employee of the First Named Insured during the Period of Insurance;

c) any former principal, Partner, Member, Director or Employee of the First Named Insured;

- d) in the event of death, bankruptcy or legal incompetence of any principal, Partner, Member, Director or Employee of the First Named Insured, the estate or personal representatives or trustees, liquidator or trustee or assignee in bankruptcy, of such person;
- e) any Subsidiary or newly acquired or created company covered under the Extensions Applicable to all Sections Acquisitions and Formations of Companies clause;
- f) with respect to coverage Section 1 – Medtech Professional Indemnity, Section 3 – Third Party Cyber Liability, or Section 4 – Public, Medtech Products and Pollution Liability, any temporary contract labour, self-employed person or labour-only Sub-Contractors acting under contract with You and under the direction and direct supervision of You or any Subsidiary;
- g) with respect to coverage Section 4 – Public, Medtech Products and Pollution Liability only, persons or organisations that You or any Subsidiary are obligated to insure pursuant to a written contract, unless more specifically insured under the Policy;
- h) with respect to coverage Section 4 – Public, Medtech Products and Pollution Liability only, persons or organisations that lease premises to You or any Subsidiary.

# What Is Covered

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Where We agree to enter into a Policy with the First Named Insured, and subject to the applicable Limit of Liability, the Combined Single Limit and all other terms, conditions and provisions of the Policy, We shall indemnify You under the following Policy Cover Sections where these are shown as covered in the Schedule as follows:

## Section 1 – Medtech Professional Indemnity

This section of the Policy applies to Claims first made against You during the Period of Insurance and notified to Us in accordance with the Policy terms and conditions, unless stated otherwise.

### Insuring clauses

We shall indemnify You up to the Limit of Liability for:

- a) compensatory damages and claimant's legal costs;
- b) expenses that You become liable to pay, and
- c) Defence Costs and Expenses,

arising out of an act, error or omission committed by You in the course of providing Medtech Products or Medtech Services on or after the Retroactive Date, acting anywhere within the Territorial Limits, and which gives rise to a Claim first made against You during the Period of Insurance which is notified to Us in accordance with the Policy terms and conditions, in respect of:

- a) a breach of a written or verbal contract resulting from Medtech Products or Medtech Services not conforming to the agreed specifications or the failure of Medtech Products to perform the function or serve the purpose intended, including any breach of the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law (and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable)), and any resulting Claim from a written contract giving rise to Liquidated Damages;
- b) the failure of Medtech Products or Medtech Services to meet any statutory term implied into a written contract, including any breach of the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law (and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable)), concerning the quality, fitness for purpose or safety of such Medtech Products or Medtech Services;
- c) any misstatement or misrepresentation committed without malicious intent;
- d) any liability of another person or organisation that You have Contractually Assumed;
- e) any libel, slander or product disparagement committed without malicious intent;
- f) any unintentional breach of confidence, unintentional invasion of privacy, or unintentional misuse of information which is either confidential or subject to statutory restrictions on its use;
- g) any unintentional infringement of intellectual property rights, including copyright, trademark or moral rights or any act of passing off, or unintentional disclosure of trade secrets; or
- h) any civil liability not more specifically referred to in this insuring clause.

## Limit of Liability

Our liability in respect of Claims and losses is subject to the applicable Limits of Liability and Combined Single Limit as specified in the Schedule, which is the most We will pay in respect of all Claims and losses for the Period of Insurance.

Any Interrelated Claim shall be deemed to have been first made against You on the date on which the earliest such Claim was first made against You.

Defence Costs and Expenses are either payable in addition to the Limit of Liability or inclusive of the Limit of Liability as specified in the Schedule. If Defence Costs and Expenses are payable in addition to the Limit of Liability and a payment greater than the Limit of Liability has to be made for a Claim, We will pay Defence Costs and Expenses limited to the same proportion that the Limit of Liability bears to the Claim paid.

We will not be liable for any amounts in excess of the Combined Single Limit stated in the Schedule.

## Extensions

Unless stated otherwise on the Schedule, We will provide the following extensions within the cover provided under the Policy. The cover provided under these extensions is otherwise subject to the insuring clauses of this Section 1 – Medtech Professional Indemnity and all other terms, conditions, exclusions, definitions and Limit of Liability applicable to the Policy.

### Damage to documents

We shall indemnify You up to the Limit of Liability, in respect of any civil liability to pay costs and expenses for the replacement or restoration of any third party documents, which are lost or damaged while in Your care and custody and which after diligent search cannot be recovered.

Any costs and expenses require Our prior written consent, which is not to be unreasonably withheld, and must be supported by invoices and/or accounts to Our reasonable satisfaction.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

The Property damage exclusion to this section does not apply to this extension.

### Dishonesty of Employees

We shall indemnify You up to the Limit of Liability for Your liability to third parties arising out of any dishonest or fraudulent act or omission by an Employee or Sub-Contractor, which gives rise to a Claim, provided that:

- a) You will, by any reasonable means and at Our cost, seek to recover or obtain reimbursement of all such losses;
- b) no indemnity shall be provided to any person committing, condoning or ignoring such dishonest or fraudulent act or omission;
- c) You shall take any reasonable steps necessary to prevent dishonest and fraudulent acts and omissions;
- d) We shall be entitled to deduct from any payment to be made to You, or be reimbursed in respect of any payment already made to You, any amounts:
  - i. recovered or reimbursed pursuant to action taken in accordance with clause a) of this condition;

- ii. which, but for such act or omission, would be otherwise payable by You to the person committing, condoning or ignoring such act or omission;
  - iii. held by You belonging to the person committing, condoning or ignoring such act or omission;
  - iv. which but for such dishonest or fraudulent act or omission would not be the subject of a claim under this extension,
- e) nothing in this extension shall preclude Us from exercising any right of subrogation against any person committing, condoning or ignoring such dishonest or fraudulent act or omission.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### **Dishonesty – Your own losses**

We shall indemnify You up to the Limit of Liability for Your own losses if during the Period of Insurance, and in the performance of Your Medtech Services within the Territorial Limits, You discover a loss resulting directly from the dishonesty or fraud of an Employee or Sub-Contractor who has a direct contractual relationship with You arising from conduct on or after the Retroactive Date, where the Employee or Sub-Contractor has caused You loss and obtained personal gain, provided that:

- a) You will, by any reasonable means and at Our cost, seek to recover or obtain reimbursement of all such losses;
- b) no indemnity shall be provided to any person committing, condoning or ignoring such dishonest or fraudulent act or omission;
- c) You shall take any reasonable steps necessary to prevent dishonest and fraudulent acts and omissions;
- d) We shall be entitled to deduct from any payment to be made to You, or be reimbursed in respect of any payment already made to You, any amounts:
  - i. recovered or reimbursed pursuant to action taken in accordance with clause a) of this condition;
  - ii. which, but for such act or omission, would be otherwise payable by You to the person committing, condoning or ignoring such act or omission;
  - iii. held by You belonging to the person committing, condoning or ignoring such act or omission;
  - iv. which but for such dishonest or fraudulent act or omission would not be the subject of a claim under this extension,
- e) nothing in this extension shall preclude Us from exercising any right of subrogation against any person committing, condoning or ignoring such dishonest or fraudulent act or omission.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### **Mitigation Costs**

We will pay on Your behalf Mitigation Costs incurred by You as a result of action taken by You to mitigate an actual or potential Claim first made against You during the Period of Insurance provided that:

- a) We must provide Our prior written consent to the incurring of such Mitigation Costs which shall not be unreasonably withheld or delayed; and
- b) no admission of liability is made by You.

Mitigation Costs shall not include the refund of fees paid to You.

This extension is subject to the aggregate Limit of Liability, which is the maximum amount We will pay for all claims under this extension in the Period of Insurance, and Excess as specified in the Schedule.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

## Mitigation of fees

We will pay up to fifty percent (50%) of Your outstanding fees for Your performance of Medtech Services or provision of Medtech Products where You have waived those outstanding fees to avoid a Claim that would otherwise be payable under this section.

This extension is subject to an aggregate Limit of Liability, which is the maximum amount We will pay for all claims under this extension in the Period of Insurance, and Excess as specified in the Schedule.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

## Patent

We shall indemnify You for Your liability to third parties for patent disputes arising out of Medtech Products or Medtech Services supplied by You, or on Your behalf.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

This extension does not apply to any intentional breach of patent by You or on Your behalf.

## Sub-Contractors

We will cover Your legal liability for a Claim arising out of Medtech Products or Medtech Services supplied to third parties on Your behalf by independent Sub-Contractors or consultants under a written contract.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

## Exclusions

The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim.

The following exclusions apply to Section 1 – Medtech Professional Indemnity only, in addition to the General Exclusions.

We shall not be liable under this Section 1 – Medtech Professional Indemnity in respect of any Claim, loss, damage, liability, Defence Costs and Expenses, costs or expense based on, arising out of or in any way connected to:

## Bodily Injury

Bodily Injury, except for Claims for pure financial loss consequent upon Bodily Injury sustained by persons other than You or an Employee of Yours and resulting from the loss of use of:

- a) Your Medtech Product;
  - b) real property containing or incorporating Your Medtech Product; or
  - c) real property on which Your Medtech Services were performed,
- and which arises from the ownership, maintenance or use of Your Medtech Product or Medtech Service.

## Claims by a Financially Associated Party

any Financially Associated Party, except for the purposes of:

- a) Extension Dishonesty of Employees; or
- b) where the Claim emanates from an independent third party.

### **Computer system virus, software and data**

any Cyber Occurrence other than System Failure.

### **Pollution or Electromagnetic Fields**

any Pollution or Remediation, or Electromagnetic Fields or radio waves.

### **Products**

any Claim for loss insurable under Section 4 – Public, Medtech Products and Pollution Liability except for Claims arising out of a breach of professional duty owed by You in the course of Your Medtech Services to a third party.

### **Property damage**

the loss, damage, destruction or loss of use of any tangible property whatsoever, except as otherwise specifically provided in Exclusion Bodily Injury above.

### **Status as a Director, officer, Member, secretary or trustee**

any duty, capacity, performance or non-performance as a Director, officer, secretary, Member or trustee including any personal liability incurred in the course of Your Medtech Services.

## Section 2 – First Party Cyber

This section of the Policy applies to a Cyber Occurrence, or in the case of Insuring clause Cyber crime Cyber Theft Unauthorised Access, which occurs during the Period of Insurance and is notified to Us in accordance with the Policy terms and conditions, unless stated otherwise.

This section covers the reasonable and necessary expenses incurred under the insuring clauses below for a period of up to twelve (12) months from the date the Cyber Occurrence first became known to You.

### Insuring clauses

Where stated as operative in the Schedule, We will reimburse You, for loss arising from a Cyber Occurrence which occurs during the Period of Insurance within the Territorial Limits in respect of:

#### Cyber loss or damage

reasonable and necessary expenses incurred by You in the restoration of:

- a) Your Network; or
- b) information stored on Your Network; or
- c) any other data, including Your own physical documents.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

#### Business interruption and extra expense

- a) Reduction of Business Income sustained by You during a Period of Restoration due to the interruption of Your Business operations; and
- b) reasonable and necessary expenses in excess of Your normal operating expenses sustained by You during a Period of Restoration in order to resume or restore Your Business operations.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

#### Cyber crime

- a) theft or alteration of Your Money or Securities;
  - b) theft or loss of Your Goods due to the supply or delivery of Goods;
  - c) theft or loss of personal funds suffered by any senior executive officer of Yours; or
  - d) theft or alteration of the Money or Securities held by You on behalf of Your customers;
- resulting from a Cyber Theft Unauthorised Access during the Period of Insurance, but always excluding Impersonation Fraud.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

#### Cyber extortion

extortion money paid by You to a third party extortionist, with Our prior consent (such consent not to be unreasonably withheld), due to a threat by them which results in the imminent and probable danger of:

- a) loss of, or damage to, Your Network;
- b) loss of Your Money or Securities;
- c) loss, disclosure or unauthorised use of Your confidential information or the confidential information of others in Your care;
- d) defacement of Your website;

- e) damage to Your brand or reputation due to the threat or actual publishing of material on internet sites;
- f) prevention of access to Your Network; or
- g) introducing a Computer Virus into Your Network.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

#### Telephone hacking

- a) the unauthorised use of Your bandwidth; or
- b) the cost of unauthorised calls,  
by an External Source.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

#### Incident response and notification expenses

reasonable and necessary expenses approved by Us (such approval not to be unreasonably withheld), following an actual or suspected Cyber Occurrence:

- a) to comply with a security breach notice requirement under the law of any jurisdiction within the Territorial Limits (including any regulatory queries that arise from complying with those laws) and provide customer support services such as credit monitoring services, call centre costs and identity theft education and assistance costs;
- b) to notify relevant individuals of such disclosure where no such security breach law exists and provide customer support services such as credit monitoring services, call centre costs and identity theft education and assistance costs; or
- c) Forensic Investigation Costs, legal costs, and cyber risk and cyber incident advisory services for the purposes of responding to a loss that is covered under this Section 2 – First Party Cyber.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

#### Regulatory actions and fines

- a) legal liability to pay regulatory compensatory awards, civil penalties or fines but only to the extent insurable by law;
- b) Regulatory Defence Costs in respect of a criminal or civil actions or proceedings in connection with an investigation, adjustment, inquiry, formal hearing, defence or appeal of any regulatory investigation or any other similar procedure in connection with Your Business activities.

This clause excludes all legal liability more specifically covered by Insuring clause Breach of privacy actions and fines below.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

#### Breach of privacy actions and fines

- a) legal liability to pay regulatory compensatory awards, civil penalties or fines but only to the extent insurable by law and arising from the Privacy Act 1988 (Cth) or the General Data Protection Regulation (EU) 2016/679 or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable) in Australia or other similar privacy laws in other jurisdictions; or

- b) Regulatory Defence Costs in respect of criminal or civil actions or proceedings in connection with an investigation, adjustment, inquiry, formal hearing, defence or appeal arising from the Privacy Act 1988 (Cth) or the General Data Protection Regulation (EU) 2016/679 or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable) in Australia or other similar privacy laws in other jurisdictions.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### **Limit of Liability, Excess or Waiting Period**

Our liability in respect of any one Cyber Occurrence is subject to the applicable Limit of Liability and Combined Single Limit as specified in the Schedule, which is the most We will pay in respect of all Cyber Occurrences for the Period of Insurance.

The Limit of Liability under this section shall be in addition to the Excess or Waiting Period as applicable. With regards to the Insuring clause Business interruption and extra expense We shall only pay such costs incurred with Our prior consent (such consent not to be unreasonably withheld) after expiry of the Waiting Period which is stated in the Schedule.

### **Extensions**

Unless stated otherwise on the Schedule, We will provide the following extensions within the cover provided under the Policy. The cover provided under these extensions is otherwise subject to the insuring clauses of this Section 2 – First Party Cyber and all other terms, conditions, exclusions, definitions and Limit of Liability applicable to the Policy.

#### **Adulteration or contamination of stock**

We will reimburse You, for loss arising from damage as a direct result of adulteration or contamination of Stock due to changes in temperature and humidity within a controlled environment resulting from Unauthorised Access, infection by a Computer Virus, or a Denial of Service Attack to Your Network that occurs during the Period of Insurance. We shall reimburse the reasonable and necessary additional cost to repair or replace such Stock to a condition substantially the same as, but not better than or more extensive than, it was in at the time of the damage or when new, whichever is the lesser.

However, We shall not be liable under this extension for losses arising from machinery breakdown or computer breakdown which does not directly arise out of or result from Unauthorised Access, infection by a Computer Virus, or a Denial of Service Attack to Your Network.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

#### **Crisis communication expenses**

We will reimburse You for reasonable and necessary crisis communication expenses approved by Us (such approval not to be unreasonably withheld) for the purposes of responding to a Cyber Occurrence that is indemnified under the insuring clauses in Section 2 – First Party Cyber.

This extension covers reasonable and necessary crisis communication expenses incurred for a period of up to twelve (12) months from the date the Cyber Occurrence first became known to You.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

## Impersonation Fraud

We will reimburse You for loss through any digital or telecommunication system resulting from Impersonation Fraud during the Period of Insurance.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

## Loss of physical documents

We will reimburse You for reasonable and necessary expenses approved by Us (such approval not to be unreasonably withheld), including the notification expense as stated above in Insuring clause Incident response and notification expenses, for the loss of physical documents by You that leads to the loss of Personal Information or Non-Public Corporate Information.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

## Post breach remediation costs

We will reimburse You for reasonable and necessary expenses approved by Us (such approval not to be unreasonably withheld), in order to mitigate future Cyber Occurrences up to a maximum amount of fifteen percent (15%) of the Claim submitted under this cover or the Limit of Liability provided under Insuring clause Cyber loss or damage whichever is the lesser.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

## Exclusions

The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim.

The following exclusions apply to Section 2 – First Party Cyber only, in addition to the General Exclusions.

We shall not be liable under this Section 2 – First Party Cyber in respect of loss or liability arising in whole or in part, either directly or indirectly out of or from:

### Computer and Network breakdown

any breakdown of Your Network due to any cause other than Unauthorised Access, Computer Virus, Denial of Service Attack, or System Failure.

### Infrastructure interruptions or disturbances

in respect of Insuring clauses Cyber loss or damage and Business interruption and extra expense, any national or global failure, outage or disruption of core internet infrastructure, electrical grids and distribution networks and/or satellites, including a failure of core DNS root servers or IP addressing systems.

### Intellectual property rights

any loss of intellectual property rights, trade secrets or goodwill.

## Section 3 – Third Party Cyber Liability

This section of the Policy applies to Claims first made against You during the Period of Insurance and notified to Us in accordance with the Policy terms and conditions.

### Insuring clauses

Where stated as operative in the Schedule, We will indemnify You, for Claims arising from a Cyber Occurrence within the Territorial Limits stated in the Schedule, including Defence Costs and Expenses in respect of:

#### Cyber media liability

Your legal liability to third parties to pay damages in respect of defamation of any individual or commercial enterprise or product disparagement, infringement of intellectual property rights, which shall include but not be limited to, copyright, trademark, design rights, domain name rights, image rights, service mark or service name, act of passing-off, piracy or plagiarism, or improper Deep-linking or improper Framing, arising from Your Cyber Media Activities.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

#### Privacy liability and loss of documents

Your legal liability to third parties or Employees to pay damages, in respect of:

- a) a breach of an individual's right of privacy or wrongful public disclosure of Personal Information by You or a Third Party Custodian; or
- b) breach of Your privacy policy, including breach of any common law or other law governing the confidentiality, integrity or accessibility of Personal Information, including any failure of Yours to provide notice of an actual or potential wrongful disclosure of Personal Information.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

#### Breach of confidentiality liability

Your legal liability to third parties to pay damages, in respect of disclosure of Non-Public Corporate Information or trade secrets in Your custody or a Third Party Custodian, including Your failure or that of a Third Party Custodian, to provide notice of an actual or potential wrongful disclosure of Non-Public Corporate Information.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

#### Cyber security liability

Your legal liability to third parties to pay damages, in respect of Your failure to prevent a Cyber Occurrence resulting in:

- a) the inability of others to access Your Network;
- b) damage to a Third Party Network and/or loss of, or damage to, data stored on a Third Party Network;
- c) loss of, or damage to, data of others stored on Your Network or with a Third Party Custodian;
- d) loss of or damage to Money or Securities deposited with a Third Party Custodian by You;
- e) transmission of malware to a Third Party's Network;
- f) Your Network being used to carry out a Denial of Service Attack; or

- g) failure to prevent Unauthorised Access to information stored or applications hosted on Your Network or a Third Party's Network;

but always excluding System Failure.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### **Breach of payment security liability**

Your legal liability to pay damages, in respect of a breach of a written contract between You and any entity or individual that governs the storage and processing of credit card information including any breach of the PCI DSS (Payment Card Industry Data Security Standard) including any card brand assessments including fraud recoveries, operational reimbursements, non-cooperation costs and case management fees which You become legally obliged to pay to the acquiring bank or payment processor as a direct result of a payment card breach.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### **Regulatory actions and fines**

- a) legal liability to pay regulatory compensatory awards, civil penalties or fines but only to the extent insurable by law;
- b) Regulatory Defence Costs in respect of a criminal or civil actions or proceedings in connection with an investigation, adjustment, inquiry, formal hearing, defence or appeal of any regulatory investigation or any other similar procedure in connection with Your Business activities.

This clause excludes all legal liability more specifically covered by Insuring clause Breach of privacy actions and fines below.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### **Breach of privacy actions and fines**

- a) legal liability to pay regulatory compensatory awards, civil penalties or fines but only to the extent insurable by law arising from the Privacy Act 1988 (Cth) or the General Data Protection Regulation (EU) 2016/679 or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable) in Australia or other similar privacy laws in other jurisdictions; or
- b) Regulatory Defence Costs in respect of criminal or civil actions or proceedings in connection with an investigation, adjustment, inquiry, formal hearing, defence or appeal arising from the Privacy Act 1988 (Cth) or the General Data Protection Regulation (EU) 2016/679 or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable) in Australia or other similar privacy laws in other jurisdictions.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### **Contractually Assumed incident response and notification expenses**

Contractually Assumed liability for reasonable and necessary expenses approved by Us (such approval not to be unreasonably withheld):

- a) to comply with a security breach notice requirement under the law of any jurisdiction within the Territorial Limits, and provide customer support services such as credit monitoring services, call centre costs and identity theft education and assistance costs;

- b) to notify relevant individuals of such disclosure where no such security breach law exists and provide customer support services such as credit monitoring services, call centre costs and identity theft education and assistance costs; or
- c) Forensic Investigation Costs, legal costs, and cyber risk and cyber incident advisory services for the purposes of responding to a loss that is indemnified under the insuring clauses a) or b) above.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

## Limit of Liability

Our liability in respect of Claims is subject to the applicable Limit of Liability and Combined Single Limit as specified in the Schedule, which is the most We will pay in respect of all Cyber Occurrences for the Period of Insurance.

Defence Costs and Expenses, Forensic Investigation Costs and any legal costs and expenses insured under the insuring clause in Section 3 – Third Party Cyber Liability will be payable as part of and not in addition to the applicable Limit of Liability and Combined Single Limit as specified in the Schedule.

The Limits of Liability under this section shall be in addition to the Excess.

## Extensions

Unless stated otherwise on the Schedule, We will provide the following extensions within the cover provided under the Policy. The cover provided under these extensions is otherwise subject to the insuring clause of this Section 3 – Third Party Cyber Liability and all other terms, conditions, exclusions, definitions and Limit of Liability applicable to the Policy.

### Loss of physical documents

We will indemnify You for Claims first made against You for the loss of physical documents by You in respect of Personal Information or Non-Public Corporate Information. In addition, We will reimburse You for any costs and expenses as described under the Extension Incident Response and Notification Expense within Section 2 – First Party Cyber.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### Mitigation Costs

We will pay on Your behalf Mitigation Costs incurred by You as a result of action taken by You to mitigate an actual or potential Claim first made against You during the Period of Insurance provided that:

- a) We must provide Our prior written consent to the incurring of such Mitigation Costs which shall not be unreasonably withheld or delayed; and
- b) no admission of liability is made by You.

Mitigation Costs shall not include the refund of fees paid to You.

This extension is subject to the aggregate Limit of Liability, which is the maximum amount We will pay for all claims under this extension in the Period of Insurance, and Excess as specified in the Schedule.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### **Public relations expenses**

We will reimburse You for reasonable and necessary expenses approved by Us (such approval not to be unreasonably withheld) to respond to adverse or unfavourable publicity or media attention including the development of a crisis communication plan to mitigate damage to Your reputation resulting from a Claim that is indemnified under this Section 3 – Third Party Cyber Liability.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### **Exclusions**

The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim.

The following exclusions apply to Section 3 – Third Party Cyber Liability only, in addition to the General Exclusions.

We shall not be liable under this Section 3 – Third Party Cyber Liability to pay for any third party liability or Defence Costs and Expenses resulting from any Claim based upon, arising directly or indirectly from, or in consequence of:

#### **Bodily Injury**

Bodily Injury except in respect of mental anguish or emotional distress as provided for by Insuring clauses Cyber media liability or Privacy liability and loss of documents of this section.

#### **Intellectual property rights**

any intellectual property rights, trade secrets or goodwill except to the extent of the coverage provided under Insuring clauses Cyber media liability and Breach of confidentiality liability of this section.

#### **Misappropriation by an Insured**

any actual or alleged misappropriation of trade secrets by You or an Employee of Yours.

## Section 4 – Public, Medtech Products and Pollution Liability

This section of the Policy applies to an Occurrence during the Period of Insurance and notified to Us in accordance with the Policy terms and conditions, unless stated otherwise.

### Insuring clauses

We shall indemnify You in respect of:

- a) Your legal liability to third parties, including Contractually Assumed liability, to pay damages in respect of:
  - i. accidental Bodily Injury to any person not being an Insured Person;
  - ii. accidental loss or damage to the property of others;
  - iii. accidental Personal Injury;
  - iv. unintentional Advertising Injury; or
  - v. accidental physical loss of amenities, accidental nuisance, trespass or interference with any easement right of air, light, water or way,

first happening during the Period of Insurance as a result of an Occurrence within the Territorial Limits and happening in connection with Your Business, or Medtech Products;

- b) Your legal liability to pay the claimant's costs and expenses in respect of any Claim against You which has the benefit of indemnity under this Section 4 – Public, Medtech Products and Pollution Liability; or
- c) Defence Costs and Expenses in respect of the defence of any Claim which has the benefit of indemnity under this Section 4 – Public, Medtech Products and Pollution Liability.

### Limit of Liability/Defence Costs and Expenses

#### Limit of Liability

Irrespective of the number of parties entitled to indemnity, or the number of claimants, Our liability under this section, including all extensions, in respect of or arising from one Claim or a series of Claims against You arising out of one Occurrence or all Pollution which is deemed to have occurred during any one Period of Insurance shall not exceed the Limit of Liability shown in the Schedule.

A separate and distinct Limit of Liability applies to Claims arising from Medtech Products or Pollution as stated in the Schedule.

#### Defence Costs and Expenses

Defence Costs and Expenses shall be paid in addition to the Limit of Liability specified in the Schedule, except as provided below.

In respect of any Claim brought in the United States of America or Canada or any territory within their jurisdiction under this section, Defence Costs and Expenses shall be payable as part of, and not in addition to, the applicable Limits of Liability specified in the Schedule.

Except where the Limit of Liability is inclusive of Defence Costs and Expenses, if payment exceeding the Limit of Liability has to be made to dispose of a Claim Our liability to pay all Defence Costs and Expenses shall be limited to such proportion of the said Defence Costs and Expenses as the Limit of Liability bears to the total amount to be paid to dispose of the Claim.

## Extensions

Unless stated otherwise on the Schedule, We will provide the following extensions within the cover provided under the Policy. The cover provided under these extensions is otherwise subject to the insuring clause of this Section 4 – Public, Medtech Products and Pollution Liability and all other terms, conditions, exclusions, definitions and Limits of Liability applicable to the Policy.

### Contingent liability (non-owned vehicles)

We shall indemnify You in respect of Your legal liability to third parties to pay damages in respect of accidental Bodily Injury to any person and accidental damage to property arising out of the use of any motor vehicle being used in connection with Your Business, which is neither Your property nor provided by You.

However, this extension shall not apply in respect of legal liability for damages and claimant's costs and expenses for:

- a) physical loss or accidental damage to any such motor vehicle; or
- b) Bodily Injury or damage to property while such motor vehicle is being driven by any person other than an Employee; or
- c) Bodily Injury or damage to property while such motor vehicle is being driven, with Your general consent or Your representative, by any person who to Your knowledge, or such representative, does not hold a valid licence to drive such vehicle, unless such person has held and is not disqualified from holding or obtaining such a licence; or
- d) Bodily Injury or damage to property while such motor vehicle is engaged in racing, pace-making, reliability trials or speed testing; or
- e) Bodily Injury or damage to property while such motor vehicle is being used outside the Commonwealth of Australia or the states or territories of Australia.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### Inquiries

We shall indemnify You for:

- a) reasonable Defence Costs and Expenses incurred with Our written consent (such consent not to be unreasonably withheld); and
- b) prosecution costs and expenses awarded against You or any Insured Person, solely for the conduct of Your defence in respect of representation of You at:
  - a) any Coroner's Inquest or Fatal Accident Inquiry; or
  - b) any court of summary jurisdiction or an indictment in a higher court, arising out of any alleged breach of a statutory duty resulting in Bodily Injury and/or damage to tangible property, giving rise to a relevant duty of care in the course of Your Business provided that:
    - i. any alleged offence was committed or alleged to have been committed during the Period of Insurance and in the course of the Business; and
    - ii. We shall not be liable for the payment of any fine or penalty; and
    - iii. We shall not be liable where the prosecution results from Your deliberate management decision, act, or omission of Your management.

We shall not be liable under this extension for any amount in excess of the Limit of Liability stated in the Schedule and which is in the aggregate during any one Period of Insurance. This amount is included within and not additional to the applicable Limit of Liability which is the maximum amount We shall pay in respect of any one prosecution, regardless of the number of Insured Persons entitled to cover in respect of the prosecution.

### First aid expenses

We shall indemnify You for expenses incurred for first aid to others at the time of Bodily Injury caused by an Occurrence that is otherwise subject to indemnity under the Policy, other than medical expenses We are prohibited from paying under the Health Insurance Act 1973 (Cth), the Private Health Insurance Act 2007 (Cth), Private Health Insurance (Health Insurance Business) Rules as amended from time to time or the National Health Act 1953 (Cth) or any related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable).

We shall not be liable under this extension for any amount in excess of the Limit of Liability stated in the Schedule, which is in the aggregate during any one Period of Insurance.

### Motor liability

We shall indemnify any Insured Person in respect of liability arising out of or from:

- a) the use of any mechanically propelled vehicle as a tool or plant; or
- b) the loading or unloading of any mechanically propelled vehicle or trailer when carried out beyond the limits of any carriageway or thoroughfare by a person other than the driver or attendant of any such vehicle or trailer; or
- c) the movement of any mechanically propelled vehicle not owned, hired or borrowed by or leased to any Insured Person on or under any premises occupied by You where such vehicle is causing an obstruction and interfering with the performance of Your Business, provided that:
  - i. such movement shall be limited to the minimum necessary to clear the obstruction;
  - ii. the indemnity will not apply to loss of or damage to such vehicle or its contents;
  - iii. the vehicle is driven using the obstructing vehicle owner's own ignition key;
  - iv. damage to visitors' or Employees' mechanically propelled vehicles (including contents and/or accessories) while parked within any car park for which You are responsible or on any premises occupied by You provided that:
    1. such vehicle is not loaned or hired to You; or
    2. the damage to an Employee's vehicle does not arise out of the maintenance, operation or use of a vehicle by that Employee.

However, this extension shall not apply in respect of liability arising from circumstances in which it is compulsory for You to insure or provide security in respect of such vehicle as a requirement of relevant road traffic legislation.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### Overseas personal liability

We shall indemnify any Insured Person or any spouse or any child of such person in respect of their legal liability incurred in a personal capacity to third parties to pay damages in respect of accidental Bodily Injury to any person and accidental damage to property arising from personal activities, whilst temporarily outside the Commonwealth of Australia or the states or territories of Australia in connection with the Business, provided that:

- a) such persons are ordinarily resident in the Commonwealth of Australia or the states or territories of Australia; and
- b) such persons shall observe, fulfil, and be subject to the terms of the Policy so far as they can apply; and
- c) nothing in this extension shall increase Our liability to pay any amount in excess of the Limit of Liability for this section and which shall be the most We shall pay, irrespective of the operation of this clause or the number of Insured Persons to be indemnified.

However, this extension shall not apply in respect of any liability:

- a) arising out of the ownership or occupation of land or buildings; or
- b) arising from the ownership, possession, or use under Your control or of any party seeking indemnity under this extension, of any mechanically propelled vehicle, trailer, aircraft, or other aerial devices, hovercraft, or watercraft of any size; or
- c) in respect of which the party seeking indemnity under this extension is entitled to indemnity through any other means, including other insurance.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

### Product Recall Expense

We shall indemnify You for any Product Recall Expense necessary because the use of any Medtech Products or Medtech Services has resulted in Bodily Injury, death, illness or disability or physical damage to or destruction of tangible property due to:

- a) any unintentional error or deficiency in the manufacture, design or labelling of the Medtech Product; or
- b) a ruling of a government or other regulatory body requiring You to recall any Medtech Product as a result of any matters set out above.

Coverage under this extension is subject to:

- i. You first discovering during the Period of Insurance that the use of any Medtech Product has resulted in or may result in Bodily Injury, death, illness or disability or physical damage to or destruction of tangible property; and
- ii. the Bodily Injury, death, illness or disability or physical damage to or destruction of tangible property being indemnifiable under the insuring clauses of Section 4 – Public, Medtech Products and Pollution Liability coverage.

We will not be liable for any amount in excess of the Limit of Liability stated in the Schedule.

## Legionella

This section's Pollution exclusion paragraph a) shall not apply to any discharge, release or escape of Legionella, provided that all Legionella which arises out of one incident will be deemed to have occurred at the time such incident takes place.

However, this extension shall not apply in respect of any Claims which arise out of or in connection with:

- a) Bodily Injury to any Insured Person, which arises out of and in the course of their employment or engagement by You; or
- b) loss or damage to Medtech Products; or
- c) Medtech Services.

We shall not be liable under this extension for any amount in excess of the Limit of Liability stated in the Schedule, which is in the aggregate during any one Period of Insurance. This amount shall be inclusive of any Defence Costs and Expenses and any other costs or expenses payable by You.

## Pollution clean up costs

We shall indemnify You in respect of legal liability for:

- a) the cost of any Remediation legally required or ordered by any Enforcing Authority to be conducted by You; and
- b) the cost of any Remediation conducted by any Enforcing Authority and legally sought from You by that Enforcing Authority in accordance with the terms of any environmental legislation, provided that:
- c) the Pollution occurred in the Commonwealth of Australia or the states or territories of Australia and is caused by a sudden, identifiable, unintended and unexpected incident that takes place in its entirety at a specific and identified time and place during the Period of Insurance and that all Pollution, which arises out of any one incident, shall be deemed to have occurred at the time such incident takes place;

We shall not be liable for:

- i. the cost of reinstatement or reintroduction of flora or fauna;
- ii. the costs of achieving any improvement or alteration in the condition of the land, the atmosphere or any watercourse or body of water beyond that required under any relevant and applicable environmental legislation at the time any Remediation commences;
- iii. the cost to restore natural habitats or species protected under environmental legislation;
- iv. Remediation arising from pre-existing Pollution;
- v. the costs to curtail or minimise Pollution once it has occurred or for any prevention of the spread of Pollution or removal of an imminent or actual threat of environmental damage;
- vi. any costs and expenses incurred by the First Named Insured or prosecution costs and expenses awarded against You in connection with any criminal proceedings arising out of the Pollution;
- vii. any costs and expenses in respect of removal of any risk of an adverse effect on human health on Your land, premises, watercourse or body of water whether owned, leased, hired, tenanted or otherwise in Your care, custody or control;
- viii. for damage resulting from an alteration to subterranean stores of groundwater or to flow patterns or for the removal or disposal of any waste deposited by You or on Your behalf;

- ix. for damage caused deliberately or intentionally by You or where You have knowingly deviated from environmental protection rulings or where You have knowingly omitted to inspect, maintain or perform necessary repairs for which You are responsible, or caused by persons aware of the defectiveness or harmfulness of products they have placed on the market or works or other services they have performed;
  - x. any amount payable by way of compensation to third parties affected by Pollution; or
  - xi. damage which is covered by a more specific insurance policy, in which case the Policy will only provide cover in respect of some or all of so much of a loss which is not covered by the more specific insurance policy,
- d) this extension does not cover any costs, or any liability for costs, of Remediation carried out on or in order to protect any property belonging to You or in Your charge or control other than premises not belonging, leased, rented or hired to You but temporarily in Your charge for the purpose of carrying out work in connection with Your Business.

Our total liability under this extension shall not exceed the Limit of Liability stated in the Schedule in respect of any one Occurrence and in the aggregate during any one Period of Insurance.

This amount:

- i. is included within and not additional to the applicable Limit of Liability and is the maximum amount We shall pay under this extension in respect of any one Occurrence, regardless of the number of Insured Persons entitled to indemnity; and
- ii. shall be inclusive of any Defence Costs and Expenses and any other costs or expenses payable by You.

### Cyber liability

We shall indemnify You in respect of Your legal liability to third parties to pay damages in respect of accidental Bodily Injury to any person and accidental damage to property of others arising out of a Cyber Occurrence.

Our total liability under this extension shall:

- i. be reduced by any amount paid or payable by Us under any other section of this Policy; and
- ii. not exceed the Limit of Liability stated in the Schedule in respect of any one Occurrence and in the aggregate during any one Period of Insurance.

### Exclusions

The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim.

The following exclusions apply to this Section 4 – Public, Medtech Products and Pollution Liability only, in addition to the General Exclusions.

We shall not be liable under this Section 4 – Public, Medtech Products and Pollution Liability of the Policy in respect of any loss based on, arising out of or in any way connected to:

### Care, custody or control

any Occurrence based on or arising out of property damage to any property owned by You or in Your custody or control or of any of Your Employees, provided that this exclusion does not apply to:

- a) premises (including landlord's fixtures and fittings) which are leased or rented by You;
- b) premises (or their contents) not owned, leased or rented by You but temporarily occupied by You for work therein;
- c) property belonging to a visitor, patient or Employee of Yours;
- d) damage to that part of any property upon which You are or have been working if the loss or damage arises from such work; or
- e) other Property temporarily in Your physical or legal control and for which Our Limit of Liability is shown in the Schedule.

### Clean-up costs

any costs of Remediation other than as insured under any extension to this section.

### Pollution

liability which arises out of:

- a) Pollution or any request or demand to test for, monitor, clean up, assess, remove, contain, treat, detoxify or neutralise or in any way respond to the effect of Pollution, other than caused by a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place during the Period of Insurance, subject always to clause b) below.  
All Pollution which arises out of one incident will be deemed to have occurred at the time such incident takes place;
- b) Pollution or any request or demand to test for, monitor, clean up, assess, remove, contain, treat, detoxify or neutralise or in any way respond to the effect of, happening anywhere in the United States of America or Canada or any territory within their jurisdiction, or in respect of any liability arising from any Claim or action brought within and under the jurisdiction of the United States of America or Canada or any territory operating in accordance with such jurisdiction.

### Products

any Medtech Products which:

- a) are sold, supplied, erected, repaired, altered, treated or installed in or for use in or on, any aircraft, aerospace device, hovercraft or waterborne craft or for marine or aviation purposes; or
- b) are in Your possession or under Your control.

### Products and Goods supplied

for any damage to the Medtech Product itself.

### Medtech Services

any Claim for loss insurable under Section 1 – Medtech Professional Indemnity.

### Specific locations

work undertaken:

- a) on any Offshore Installation; or
- b) from the time of embarkation onto a conveyance at the point of final departure to any Offshore Installation until disembarkation onto land upon return from such Offshore Installation.

# Extensions Applicable To All Sections

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We will provide the following extensions within the cover provided and the Limit of Liability under the Policy unless otherwise stated on the Schedule. Other than as amended, cover provided under these extensions is otherwise subject to the terms, conditions, exclusions, definitions and Limit of Liability applicable to the Policy.

## Acquisitions and Formations of Companies

Where the First Named Insured (referred to in this clause as You or Your in this clause) acquires or forms a company subsequent to the inception date of this Policy and the turnover relating to such acquired or formed company does not exceed fifteen percent (15%) of the estimated turnover of the companies covered under the Policy at the inception date of the Policy, then the Policy shall include as an Insured any such acquired or formed company automatically from the date of acquisition or formation without additional Premium, provided that:

- a) the Business services carried out by such company are the same or substantially similar to Your Business; and
- b) We shall not be liable for any Claim where the acquired company is still able to claim under a previous insurance policy, or circumstances which prior to the acquisition, the acquired company was aware, or ought reasonably to have been aware might reasonably be expected to give rise to a Claim; and
- c) the Retroactive Date applicable to the Business of the new entity is deemed to be the date of acquisition (if acquired by You) or formation (if formed by You); and
- d) You control the composition of the board of Directors or control more than half the voting power at a general meeting of shareholders or hold more than half of the issued share capital, regardless of class of share; and
- e) the acquired or formed company is not domiciled or incorporated or listed in the United States of America, its territories or possessions; and
- f) the acquired or formed company does not derive in excess of twenty percent (20%) of its turnover from the United States of America, its territories or possessions; and
- g) You shall use Your best endeavours to ensure that the acquired or formed company's I.T infrastructure will be absorbed in to Your I.T. infrastructure as soon as reasonably practicable unless the acquired or formed company's I.T. infrastructure and risk management measures are at least of the same standard as Yours most recently disclosed to Us.

If all of the above criteria cannot be satisfied, We will require a detailed underwriting submission to consider inclusion of the acquired or formed company, which shall not be deemed covered until confirmed in writing by Us.

## Additional Insureds

We shall indemnify any third party as an additional Insured under this Policy, but only in respect of sums which We become legally obliged to pay (including liability for claimants' costs and expenses) as a result of a Claim arising solely out of an act, error or omission committed by You or arising solely out of accidental Bodily Injury or Damage caused by You, provided that:

- a) You contracted in writing to indemnify the third party for such a Claim prior to it first being made against them; and
- b) had the Claim been made against You, then You would be entitled to indemnity under the Policy;
- c) the additional Insured must reasonably prove that the Claim arose solely out of an act, error or omission committed by You or arose solely out of accidental Bodily Injury or damage caused by You;
- d) the additional Insured shall fully comply with all Policy conditions applicable as if they were the Insured; and
- e) We have the sole conduct and control of the Claim.

Where a third party makes a claim under this extension, it is understood and agreed that when making any Claim against You independent to this extension they shall not be covered under this extension in respect of that independent Claim.

Exclusions to this extension:

- a) any Claim arising out of the liability of others which You have assumed in a written or verbal contract; and
- b) which does not arise solely out of accidental Bodily Injury or damage caused by You.

## Continuous Cover

We shall indemnify You for Claims first notified to Us during the Period of Insurance which arise out of circumstances which, prior to the inception of the Policy, You knew, or ought to have reasonably known, might give rise to a Claim but failed to notify Us, provided that:

- a) You were and have continued to be insured under a similar policy or policies (as may be applicable to the relevant section) prior to the date of such circumstances; and
- b) You have not given notice of such circumstances under any other contract of insurance, whether underwritten by Us or by others; and
- c) You shall reasonably establish that the failure to notify did not involve any fraudulent conduct or any intent to deceive;
- d) the amount of cover available under this extension shall be limited to the lesser of the amount of cover remaining under the policy of insurance in force at the time You knew, or ought reasonably to have known, of such circumstances or Claim, or the amount of cover available under the Policy;
- e) if the cover available under the Policy is greater or wider in scope than that to which You would have been entitled under the policy of insurance in force at the time You knew, or ought reasonably to have known, of such circumstances or Claim then We shall only be liable to cover You for such amount and on such terms as would have been available to You under the policy of insurance in force at the time You knew, or ought reasonably to have known, of such circumstances or Claim, save that nothing in this extension shall entitle You to cover wider or more extensive than is otherwise available under the Policy;

- f) cover for any company formed or acquired after the inception of the Policy will be subject to the terms of the Acquisitions and Formations of Companies extension of the Policy.

This extension shall apply in respect of Section 1 – Medtech Professional Indemnity and Section 3 – Third Party Cyber Liability only.

The General Exclusion – Prior Knowledge does not apply to this extension.

## Court Attendance Compensation

We shall compensate You if We or Our legal advisers require You, any Employee or other relevant person to attend any court, arbitration, adjudication or other similar legal process as a witness in connection with a Claim indemnified under the Policy, up to the following rates per day of attendance:

- a) any principal, Partner, Member or Director of Yours AUD2,000;
- b) any Employee AUD1,000;
- c) any other relevant person AUD1,000.

## Data Protection Costs

We shall indemnify You in respect of Your legal liability under the General Data Protection Regulation (EU) 2016/679 dated 27 April 2016 (GDPR) and the Data Protection Act 2018 (or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable)) to pay compensation in respect of:

- a) non-material damage arising:
  - i. under Article 82 of the GDPR (or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable)), including claimants' costs and expenses and prosecution costs awarded against You; and
  - ii. under section 168 and section 169 of the Data Protection Act 2018 (UK) (or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable));

provided that:

the alleged offence was committed or alleged to have been committed during the Period of Insurance and in the course of Your Business and You have taken all reasonable care to comply with the requirements of the GDPR and the Data Protection Act 2018 (UK) (or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable)).

Our liability under this extension, is subject to a sub-limit of AUD1,000,000 any one Claim and in the aggregate or such other limit as specified in the Schedule.

## Exclusion

We will not provide indemnity under this extension in respect of:

- a) the payment of fines or penalties of any kind; or
- b) the costs of replacing, reinstating, rectifying, rewriting or erasing, blocking or destroying any Personal Information or restricting of processing of Personal Information; or

- c) liability arising from or caused by a fraudulent, dishonest, deliberate or intentional act or omission by any Employee or any person eligible for indemnity under this extension, the result of which could reasonably have been expected by any Employee or any person eligible for indemnity under this extension having regard to the nature and circumstances of such act or omission; or
- d) the failure of You to comply with a notice issued under section 14 Part 2 Chapter 2, section 50 Part 3 Chapter 3, section 97 or 99 Part 4 Chapter 3 of the Data Protection Act 2018 (UK) (or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable)) and/or the equivalent section(s) of the GDPR; or
- e) the failure of You to comply with a request under section 98 Part 4 Chapter 3 of the Data Protection Act 2018 (UK) (or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable)) and/or the equivalent section(s) of the GDPR; or
- f) liability arising from the recording processing or provision of data or Personal Information for reward or to determine the financial status of any person;
- g) liability for which indemnity is provided under any other more specific insurance or to the extent that cover is provided elsewhere in the Policy.

## **Defence Against Fraudulent Claims**

The Policy will cover Defence Costs and Expenses incurred by You in respect of groundless, false or fraudulent Claims from third parties that would have otherwise been covered under the Policy.

## **Duty to Defend**

We shall have the right and duty to take control of and conduct the investigation, settlement or defence of any Claim in Your name. We shall also pay on Your behalf Defence Costs and Expenses incurred with Our prior written consent (subject always to Limits of Liability shown in the Schedule where inclusive of such).

Payment of Defence Costs and Expenses shall not be prejudiced by Your refusal to reveal the identity of a confidential, newsgathering source.

## **Refusal of Settlement**

If You refuse to agree to a settlement We recommend and the claimant will accept, You may continue the defence and investigation of that Claim. However, the Defence Costs and Expenses subsequently incurred will be paid by You and Us on a proportional basis, with eighty percent (80%) payable by Us and twenty percent (20%) payable by You. Any increased claimant costs resulting from such continuance will also be paid on the same proportional basis.

## **Exclusion**

We shall not pay for the Defence Costs and Expenses of any part of a Claim that is not covered by the Policy.

# General Conditions

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The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim.

These General Conditions apply to all sections of the Policy. There are additional conditions applicable to individual sections, extensions and the Claims section.

## Alteration

During the Period of Insurance You must tell Us as soon as reasonably possible after You become aware (or a reasonable person in Your circumstances would become aware of) of any changes:

- a) to the most recent information provided by You to Us in relation to the Policy which You know, or could reasonably be expected to know, may affect the risks insured by Us;
- b) whereby Your Business is wound up or conducted by a liquidator or receiver, or put into administration or permanently discontinued;
- c) whereby Your insurable interest ceases otherwise than by will or by operation of the law; or
- d) in the description of the Business.

Except to the extent the Policy expressly provides otherwise and subject to applicable law and the type of change notified, We may (amongst other things):

- i. if the notified change would require a variation to the policy terms, agree (on terms acceptable to Us) or refuse to agree to any such variation;
- ii. if We agree to a variation and the change affects the Premium payable, provide You with a premium adjustment (up or down); or
- iii. cancel the Policy; or
- iv. choose not to renew the Policy.

## Assignment

Any assignment or transfer of this Policy or of any of Your rights shall not be valid without Our prior written consent (such consent not to be unreasonably withheld).

## Cancellation

### Cancellation by the First Named Insured

The First Named Insured may cancel the Policy at any time by contacting Us in writing at the address shown in About SURA Technology Risks. Cancellation will take effect from 4:00pm on the day We receive the First Named Insured's notice of cancellation, or such other time otherwise agreed between Us and the First Named Insured.

## Cancellation by Us

Subject to applicable law, We may cancel the Policy as set out in the Insurance Contracts Act 1984 (Cth) by giving the First Named Insured written notice to that effect. This can include where:

- a) You failed to comply with the duty of utmost good faith;
- b) You failed to comply with the duty of disclosure where that duty applied to You, or made a misrepresentation to Us before entering into, varying, extending or renewing the Policy;
- c) You failed to comply with a provision of the Policy, including a provision with respect to payment of the Premium;
- d) You made a fraudulent claim under the Policy or any other contract of insurance (whether with Us or some other insurer) that provided insurance cover during any part of the period during which the Policy provides insurance cover; or
- e) You failed to notify Us of any specific act or omission or failure that has occurred after the Policy is entered into where notification is required under the terms of the Policy; or
- f) the effect of the Policy is to authorise Us to refuse to pay a claim, either in whole or in part, by reason of an act or omission or failure of You or of some other person and, after the Policy was entered into, such an act or omission or failure has occurred.

When We cancel the Policy, it will have effect from whichever of the following times is the earliest (unless We tell the First Named Insured otherwise in Our cancellation notice and subject to applicable law):

- i. the time when another policy of insurance replacing the Policy is entered into with Us or another insurer; or
- ii. 4:00pm of the third (3rd) business day after the day on which notice was given to the First Named Insured unless specified otherwise or the Policy is in force because of section 58 of the Insurance Contracts Act 1984 (Cth), in which case the cancellation will have effect from 4:00pm of the fourteenth (14th) business day after the day on which notice was given to the First Named Insured.

## Effect of cancellation

Subject to applicable law, the Policy with Us ends from the time of cancellation. However, cancellation by Us or the First Named Insured does not affect any rights that You had under the Policy when it was in force. For the First Named Insured's rights to any premium in relation to a cancellation see Premium refund section.

## Premium refund

If the Policy is cancelled by either the First Named Insured or Us, We will refund the premium for the Policy less a pro-rata proportion of the premium to cover the period for which insurance applied less any government fees, taxes and duties We cannot recover. We will not refund the administration fee or policy fee shown on the invoice.

We will not refund any premium if a claim has been notified to Us or We have paid a Claim to You or on the First Named Insured's behalf under the Policy.

## Governing Law

The Policy will be governed in accordance with the laws of the Commonwealth of Australia. Any disputes arising out of the Policy will be subject to determination by any Court of competent jurisdiction within the Australian State or Territory in which the Policy was issued and according to the laws applicable to the jurisdiction.

## Cross Liabilities

If the Insured comprises more than one party, We shall treat each party as though a separate Policy had been issued to each of them. However, nothing in this clause shall increase Our liability to pay any amount in excess of the applicable Limit of Liability.

## Declarations

If any part of the Premium is based on estimates provided by You, You shall keep an accurate record containing all relevant particulars, and shall allow Us to inspect such record. You shall, within one (1) month after the expiry of the Period of Insurance, provide such information as We may require and the Premium shall then be adjusted and the difference paid by or allowed to You subject to any applicable minimum Premium.

## Excess

We shall only be liable for any amount which is in excess of the applicable Excess as specified in the Schedule. The Excess shall be uninsured and We shall have no liability for all or any portion of such Excess.

If You don't pay the Excess to Us or as We direct, We may deduct the Excess from the amount We pay for any claim. The relevant Limit of Liability We pay up to is less any applicable Excesses, unless We expressly state otherwise.

## Other Insurance

If any loss otherwise covered under the Policy is also covered under any other insurance, coverage under the Policy shall be deemed to be the more specific insurance and shall respond as primary coverage.

## Reasonable Precautions

You shall:

- a) take all reasonable precautions to prevent, diminish or cease any activity which may give rise to any liability under the Policy;
- b) exercise care in the selection and supervision of Employees;
- c) comply with statutory requirements, regulations and manufacturers' recommendations relating to the inspection and use of property and the health and safety of persons; and
- d) as soon as reasonably practicable after discovery, cause any defect or danger to be made good or remedied, and in the interim take all additional precautions as may be required, with effect from the date the Occurrence or Cyber Occurrence.

## **Subrogation and Waiver of Rights**

If You have waived Your right of recovery against any person or organisation in a contract or agreement that is executed before a loss, then We agree to waive Our rights of recovery against such person or organisation.

In the event that We have a right to recover any monies payable under the Policy from any other person, You must co-operate with any reasonable request made by Us in any proceeding, available to Us at law, which We may take.

## **Third Party Rights**

Unless expressly stated, nothing in the Policy is intended to confer a directly enforceable benefit on any third party, whether pursuant to any statute or otherwise.

# General Exclusions

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The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim.

We shall not be liable under the Policy in respect of any loss based on, arising out of or in any way connected to:

## Aircraft, Watercraft, Vehicles and Property

any ownership, possession or use by You or on Your behalf or any Insured Person of any land, buildings, aircraft, watercraft, hovercraft, vessel or mechanically propelled vehicle, including any Goods or property that are leased or rented by You or on Your behalf, or any property of Yours or in which You have an interest.

This exclusion does not apply to premises (including landlord's fixtures and fittings) which are owned, leased or rented by You or on Your behalf.

## Asbestos and Silica

any Asbestos and Silica Risks.

## Betterment

any restoration of Your Network or data stored on Your Network or that of a Third Party Custodian to a level beyond that which existed prior to the loss occurring.

However, You may, with Our prior written consent (such consent not to be unreasonably withheld), elect to improve to a better condition where such costs are the same or less than otherwise would be incurred by Us.

## Chargebacks

any whole or partial payment where a bank or credit card company has prevented or reversed a payment transaction except to the extent covered under Insuring clause Breach of payment security liability of Section 3 – Third Party Cyber Liability.

## Claims by Other Insured or Owned Entities

Claims brought by or on behalf of:

- a) any Insured, except by an Employee in relation to the First Named Insured's disclosure of Personal Information of Employees;
- b) any parent or Subsidiary company of the First Named Insured;
- c) any person or entity having any financial, executive or controlling interest in the principal First Named Insured; or

d) any entity in which the principal First Named Insured has any financial interest, except as where otherwise specifically provided for under the Policy.

## **Conversion, Commingling or Misuse of Funds**

any conversion, commingling or misuse of funds or any form of Money.

## **Cost Representations**

arising out of:

- a) the inaccurate, inadequate or incomplete description of the price of Medtech Products or Medtech Services; or
- b) Your cost guarantees, cost representations, contract price or estimates of probable costs or cost estimates being exceeded.

## **Damages, Proceedings, Fines, Taxes and Prosecution Costs**

any:

- a) disciplinary proceedings; or
- b) prosecution costs, except in relation to Claims made under Section 4 – Public, Medtech Products and Pollution Liability;
- c) any:
  - fines, penalties, punitive, exemplary, aggravated damages, where such damages have been identified separately within any award of a court; or
  - the multiple portion of any multiplied damages, additional damages under any federal, state or foreign statute, law, ordinance or regulation that protects copyright, design or patents and any other restitution or non-compensatory damages,

except in relation to:

- i. Claims made under Section 1 – Medtech Professional Indemnity; or
  - ii. Claims made under Section 3 – Third Party Cyber Liability,
- d) return, restitution, recall, reduction, compromise, disgorgement or refund of commissions, fees, charges or other remuneration; or
  - e) non-monetary orientated proceedings, declaratory or injunctive relief; or
  - f) taxes or debts; or
  - g) any matters or amounts that may be deemed uninsurable under the law governing this Policy or the jurisdiction in which a Claim is brought,

except as otherwise specifically provided in the Policy.

## **Dishonest, Malicious, Criminal or Deliberate Illegal Acts**

Except as provided in the Dishonesty of Employees extension in respect of Section 1 – Medtech Professional Indemnity, any dishonest, malicious, criminal, deliberate, reckless or illegal acts committed by any of Your board members, executive officers, in-house lawyers, risk managers, chief operating officers, chief technology officers, chief information, risk or privacy officers, including any action to condone or wilfully ignore such acts unless such person was no longer in Your employment or working for You at the time such act was committed.

## **Electromagnetic Field**

any liability directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part by Electromagnetic Fields.

## **Employers' Liability**

any liability to pay any Claim or provide any benefit related to:

- a) Bodily Injury to any Insured Person which arises out of their employment or engagement by You;
- b) any obligation for which any Insured may be held liable under any Workers Compensation Act enacted by the Commonwealth of Australia or its States or Territories, or any similar legislation in a different jurisdiction.

With respect to Section 4 – Public, Medtech Products and Pollution Liability only, part b) above does not apply to the liability for damages to which this insurance applies for:

- a) Bodily Injury Contractually Assumed by You in a contract indemnity; or
- b) Bodily Injury or Personal Injury to a person in Your service in Western Australia where You are deemed the employer of such person by reason of section 175 of the Workers' Compensation and Injury Management Act 1981 (WA) or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable).

## **Employment Practices Dispute**

any liability which arises out of:

- a) anyone's employment with or work for You, or any breach of any obligation owed by You as an employer to an Employee or prospective Employee resulting in a dispute being referred, or capable of being referred, to an Employment Tribunal including such appeal courts or tribunals as are available from an Employment Tribunal as provided by the Fair Work Act 2009 (Cth) or similar legislation; including any amendments to, delegated legislation thereof, or successor legislation (as applicable); or
- b) a settlement or adjudication of or under the auspices of an Employment Tribunal or the Fair Work Commission;
- c) any matter which is or is capable of being insured under a generally available Employment Practices Liability Insurance Policy,

except where a Claim is brought under Section 3 – Third Party Cyber Liability by or on behalf of an Employee in relation to Your disclosure of Personal Information of Employees.

## Excluded Territories

any liability to pay any Claim or provide any benefit hereunder in relation to any entity or individual domiciled in, or any Claim or activity involving any entity or person domiciled in or involving the territory of:

- a) Cuba;
- b) Iran;
- c) North Korea;
- d) Syria;
- e) Ukraine (all regions);
- f) Russia;
- g) Belarus.

Notwithstanding the Territorial Limits applicable to the Policy, all such territories stated above are excluded from the Policy and no cover whatsoever shall be deemed given under the Policy and no business activity being undertaken in that territory or the provision of any service to or shipment of any Medtech Products to, from or within that territory will be covered by the Policy.

## Gambling and Adult Entertainment

gambling, prizes, awards, coupons or pornography.

## Guarantee and Warranty Liability

any liability incurred by You pursuant to provisions in a contract or other agreement which:

- a) guarantees or warrants a particular outcome beyond the scope of any duty that would otherwise be implied by common law or statute; or
- b) provides for a level of service or produce a result beyond the scope of any duty that would otherwise be implied by common law or statute; or
- c) impose any other liability wider than the liability You would have at law in the absence of such contract or other agreement.

except as specifically insured under:

- i. Insuring clause Breach of payment security liability or Insuring clause Contractually Assumed incident response and notification expenses of Section 3 – Third Party Cyber Liability; or
- ii. Section 4 – Public, Medtech Products and Pollution Liability;
- iii. Section 1 – Medtech Professional Indemnity.

## Insolvency

any insolvency or bankruptcy of You or any Subsidiary, associated, joint venture or affiliated company of Yours.

## Joint Ventures

any association with others while acting in partnership, consortium or joint venture, except:

- a) where the Claim emanates solely from a third party unconnected with said consortium or joint venture; and
- b) the act, error or omission giving rise to such Claim is committed or omitted in the course of Medtech Services within the Territorial Limits, which Medtech Services are provided as part of Your contribution, obligation, share or input into such partnership, consortium or joint venture; or
- c) unless agreed writing by Us and referenced in the Schedule.

## Nuclear Hazards and Radioactive Contamination

any:

- a) emission, release or escape of electromagnetic radiation; or
- b) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- d) the radioactive, toxic, explosive or other hazardous properties of any:
  - i. Nuclear Installation, Nuclear Reactor or other nuclear assembly or nuclear component thereof; or
  - ii. radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes (other than nuclear fuel) when such isotopes are being prepared, carried, stored or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
- e) any chemical, biological, bio-chemical or electromagnetic weapon.

However, so far as Bodily Injury to any Employee which arises out of, and in the course of, his or her employment or engagement by You, this exclusion shall only apply in respect of:

- 1) liability of any party other than Yours; and
- 2) liability assumed by You by agreement which would not have attached in the absence of such agreement.

## Opioids

any loss, or liability, directly or indirectly based on, arising out of, in connection with, or in consequence of any cause, including but not limited to any action, involvement, production, process, sale, prescription, distribution, installation, or involvement, howsoever arising from, or related to any Opioid.

## Patent

any liability to pay any Claim or provide any benefit related to any actual or alleged patent infringement except to the extent covered under Extension Patent within Section 1 – Medtech Professional Indemnity.

## Pollution

any liability arising in connection with or resulting from or the Remediation of Pollution, except where specifically insured under Section 4 – Public Medtech Products and Pollution Liability.

## Prior Knowledge

any:

- a) Claim made, commenced or threatened against You prior to the inception of this Policy; or
- b) circumstance known to, or which ought reasonably to have been known to You prior to the inception of this Policy; or
- c) Claim or circumstance notified, or which ought reasonably to have been notified under any other insurance prior to the inception of this Policy; or
- d) Claim or circumstance which ought reasonably to have been notified to Us.

This exclusion shall only apply to Section 1 – Medtech Professional Indemnity and Section 3 – Third Party Cyber Liability.

## Retroactive Date

any act, error or omission actually or allegedly committed or omitted prior to the Retroactive Date.

This exclusion shall only apply to Section 1 – Medtech Professional Indemnity and Section 3 – Third Party Cyber Liability.

## Taxation, Competition, Restraint of Trade

based upon or arising out of actual or alleged:

- a) unfair competition, dilution, deceptive trade practices, civil actions for consumer fraud; or
- b) charges of price fixing, monopolisation or restraint of trade; or
- c) violation of the Competition and Consumer Act 2010 (Cth) (or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable)) or any anti-trust legislation or regulation regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade in a different jurisdiction.

## Terrorism

Terrorism, regardless of any other cause or event contributing concurrently, or in any other sequence to the Claim, loss, damage, liability, Defence Costs and Expenses, cost or expense.

Additionally, the Policy excludes and We shall not be liable to You in respect of any Claim, loss, damage, liability, Defence Costs and Expenses, cost or expense based on, arising out of or in any way connected to any action taken in controlling, preventing or suppressing any act of Terrorism.

## Tobacco

any loss based on or arising out of or in any way connected to tobacco or tobacco products, including electronic nicotine delivery systems or their components.

## Trading and Investment Losses

any:

- a) trading loss or trading liability including those arising from the loss of any client, account or business of Yours; or
- b) guarantee or undertaking given by You for any debt or performance or any other obligation by a third party; or
- c) depreciation, failure to appreciate or loss of any investments or property for such investment purposes when such depreciation, failure to appreciate or loss is a result of normal fluctuations in financial, stock, commodity or other markets which are outside Your control or influence.

## Unsolicited Communications

any actual or alleged violation by You of:

- a) the Spam Act of 2003 (Cth) or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable); or
- b) any other federal, state or foreign anti-spam statute, law, ordinance or regulation that prohibits or limits the sending, transmitting, communication or distribution of material or information in any foreign jurisdiction.

## War and Cyber Operation

any loss, damage, liability, cost, or expense, of any kind:

- i. directly or indirectly arising from a War, and/or
- ii. arising from a Cyber Operation that is carried out as part of a War or the immediate preparation for a War, and/or
- iii. arising from a Cyber Operation that causes a State to become an Impacted State.

Paragraph iii. shall not apply to the direct or indirect effect of a Cyber Operation on a Computer System used by the Insured or their third party service providers that is not physically located in an Impacted State but is affected by a Cyber Operation.

Definitions applicable to this exclusion:

**Computer System** means any computer, hardware, software, communications system, electronic device (including but not limited to, smart phone, laptop, tablet, wearable device), server, cloud infrastructure or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility. If there is any inconsistency between definitions of **Computer System** in this exclusion and the Policy, the definition in the Policy shall apply.

**Cyber Operation** means the use of a Computer System by, at the direction of, or under the control of a State to:

- a) disrupt, deny access to or, degrade functionality of a Computer System, and/or
- b) copy, remove, manipulate deny access to or destroy information in a Computer System.

**Essential Service** means a service that is essential for the maintenance of vital functions of a State including, but not limited to, financial institutions and associated financial market infrastructure, health services or utility services.

**Impacted State** means any State where a Cyber Operation has had a major detrimental impact on:

- a) the functioning of that State due to disruption to the availability, integrity or delivery of an Essential Service in that State, and/or
- b) the security or defence of that State.

**State** means sovereign state.

**War** means armed conflict involving physical force:

- a) by a State against another State, or
- b) as part of a civil war, rebellion, revolution, insurrection, military action or usurpation of power, whether war be declared or not.

## **Wear and Tear**

any wear, tear or gradual deterioration of data and software or Your Network or any part thereof.

# Claims

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The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim.

## Allocation of Loss

If any Claim includes both insured and uninsured loss, We will only cover any insured portion based upon the Policy terms and You and We will mutually agree on a reasonable proportionate allocation of costs and liability between insured and uninsured losses.

## Cyber Breach Response

In the event of a Cyber Occurrence or where You require immediate response to a Cyber breach event, please contact Our appointed breach response service providers via the contact information stated in the Schedule. No Excess applies to the appointed breach response services.

## Defence of Claims

- a) You shall provide any relevant information We may reasonably request related to the defence of any Claim;
- b) You must co-operate with Us and Our appointed agents wherever reasonably requested to do so, in respect of all circumstances, Claims, Occurrences and Cyber Occurrences to enable You to comply with any applicable pre-action protocols, practice directions or other laws governing the conduct of claims; and
- c) in the event that a dispute arises between Us and You regarding whether or not to contest any legal proceedings, neither We nor You shall be required to contest any legal proceedings unless senior counsel that is agreed by You and Us, or in default of such agreement appointed by the bar association of the jurisdiction of the dispute shall advise that the proceedings should be contested. We shall bear the costs of such senior litigation solicitor.

## Discharge of Liability

We may, at Our sole discretion, pay to You in connection with any Claim against You, the applicable Limit of Liability (after deducting any sums already paid), or any lesser amount for which such Claim can be settled. We will then relinquish the conduct and control of the Claim and incur no further liability relating to the Claim, except for the amount of any Defence Costs and Expenses incurred prior to the date of payment where these are outside of the Limit of Liability.

## Interrelated Claims

If Interrelated Claims are subsequently made against You and reported to Us, all such Interrelated Claims, whenever made, shall be considered a single Claim first made and reported to Us within the Period of Insurance in which the earliest of the Interrelated Claims was first made and reported to Us.

## Notice of Claims

You shall give written notice of any Claim to Us as soon as reasonably practicable after You first become aware of the Claim during the Period of Insurance using the e-mail address stated in the Incident Notification Details in the Schedule.

## Notice of Occurrences and Cyber Occurrences

You shall give written notice to Us of any Occurrence or Cyber Occurrence, which may give rise to any liability of Ours under this Policy as soon as reasonably practicable after You first become aware of such Occurrence or Cyber Occurrence using the e-mail address stated in the Incident Notification Details in the Schedule.

## Payment of Defence Costs and Expenses

We shall not be liable for any Defence Costs and Expenses to which We have not consented in writing (such consent not to be unreasonably withheld).

Payment of Defence Costs and Expenses shall be subject to the following conditions:

- a) if You and We agree on an allocation of insured and uninsured Defence Costs and Expenses, We shall pay the amount of insured Defence Costs and Expenses; or
- b) if You and We cannot, after exerting Our best efforts, agree on an allocation of insured and uninsured Defence Costs and Expenses, We shall pay the percentage of Defence Costs and Expenses which We in Our opinion believe are fair and reasonable, until a different allocation is agreed upon or determined pursuant to the provisions of this Policy and applicable law; and
- c) You agree to repay Us any Defence Costs and Expenses finally established not to be insured; and
- d) any allocation or advancement of Defence Costs and Expenses shall not commit or bind Us to any other liability.

## Provision of Information

You must, as soon as reasonably practicable, provide:

- a) to Us, at Your own expense, all information relating to the circumstances, Claim, Occurrence or Cyber Occurrence reasonably requested by Us. Every writ, claim form or summons must be forwarded to Us immediately on receipt; and
- b) details of any other insurance relating to the circumstances, Claim, Occurrence or Cyber Occurrence; and
- c) all such business books, documents, proofs, information, explanation and other evidence as may be reasonably required, all of which information and details may be produced by Your professional accountants or auditors, provided they regularly act as such; and
- d) if reasonably required by Us, a statutory declaration of the truth of the circumstance, Claim, Occurrence or Cyber Occurrence and any matter connected with it.

## Settlement/Admission of Liability

You shall not admit or assume any liability, consent to any judgment, agree to any settlement or make any settlement offer without Our prior written consent.

SURA Technology Risks Pty Ltd  
ABN 84 664 644 482 acts as an  
agent for Certain Underwriters  
at Lloyd's and is authorised to  
arrange, enter into/bind and  
administer this insurance on  
their behalf.

SURA Technology Risks Pty Ltd  
is an Authorised Representative  
(AR No. 1301575) of SURA Pty Ltd  
ABN 36 115 672 350  
AFSL 294313.

Thank you for receiving this  
document electronically.  
SURA Technology Risks Pty Ltd  
supports positive initiatives for our  
environment.

**S U R A** LIFE  
SCIENTES

**NSW**

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