

# Malpractice Liability

Policy wording



# Welcome to NZI.

Thanks for selecting us as your insurer.  
This is your Malpractice Liability policy wording.

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## Why NZI

NZI is one of New Zealand's largest and most well-known insurance brands. We're proudly backed by IAG (Insurance Australia Group) New Zealand. IAG is Australasia's largest general insurer. At IAG, our purpose is to make your world a safer place.



## Get in touch

If you have any questions, or you would like more information on this insurance policy, please contact your broker.

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## Introduction

<b>About this policy</b>	This Malpractice Liability policy consists of: <ul style="list-style-type: none"><li>(a) this policy document, and</li><li>(b) the <b>schedule</b>, and</li><li>(c) any endorsements that have been applied.</li></ul>
<b>Duty of disclosure</b>	<p>The <b>insured</b> has a legal duty of disclosure when they apply for insurance. This means the <b>insured</b> or anyone acting on the <b>insured's</b> behalf must tell <b>us</b> everything they know (or could be reasonably expected to know) that a prudent insurer would want to take into account in deciding:</p> <ul style="list-style-type: none"><li>(a) to accept or decline the insurance, and/or</li><li>(b) the cost or terms of the insurance, including the <b>excess</b>.</li></ul> <p>The <b>insured</b> also has this duty every time their insurance renews and when they make any changes to it.</p> <p>If the <b>insured</b> or anyone acting on the <b>insured's</b> behalf breaches this duty, <b>we</b> may treat this policy as being of no effect and to have never existed. Please ask if you are not sure whether you need to tell <b>us</b> about something.</p>
<b>Defined words</b>	<p>If a word is shown in <b>bold</b>, it has a specific meaning.</p> <p>There is a list of these words and what they mean in Section 8 'Definitions'.</p>
<b>Headings</b>	<p>The headings in this policy document are for reference only and do not form part of it. They must not be used when interpreting the policy document.</p>

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## 1. Insurance agreement

<b>1.1 Our agreement</b>	The <b>insured</b> agrees to pay <b>us</b> the premium and comply with this policy. In exchange and in reliance on the information provided in the <b>application</b> , <b>we</b> agree to provide cover as set out in this policy.
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## 2. What this policy covers

<b>2.1 Malpractice liability</b>	<p><b>We</b> will cover the <b>insured</b> for <b>liability</b> arising out of a <b>claim</b>:</p> <ul style="list-style-type: none"><li>(a) first made against the <b>insured</b> and notified to <b>us</b> during the <b>period of insurance</b> or within 30 days of its expiry, and</li><li>(b) for any actual or alleged malpractice causing injury, harm or financial loss in connection with the provision of the <b>insured's healthcare services</b> that happened after the <b>retroactive date</b>.</li></ul>
<b>2.2 Defence costs</b>	<p>In addition to the <b>limit of indemnity</b>, <b>we</b> will also cover the <b>insured</b> for all reasonable and necessary <b>defence costs</b> incurred with <b>our</b> prior written consent, for the investigation, defence, settlement or appeal of a <b>claim</b> for <b>liability</b> covered by this policy.</p>

### 3. Automatic extensions

Subject to the terms of Section 2: 'What this policy covers', and all the other terms of this policy, the following extensions are included automatically.

Some automatic extensions have a specified sub-limit and **excess** and these will apply unless specifically stated otherwise in the **schedule**. Unless specifically stated otherwise, all sub-limits are included in and are not in addition to the **limit of indemnity** or the amount payable for **defence costs**, whichever is applicable.

- 3.1 Advancement of defence costs** We will advance **defence costs** to the **insured** in connection with an **investigation** or a **claim** made against an **insured** that would be covered by this policy, but for exclusion 4.9 'Fraud or dishonesty' prior to the disposition of such **claim** or **investigation**.  
If it is established by judgment, written admission or other final adjudication that such **defence costs** are not covered by this policy, the **insured** agrees to repay such **defence costs**.
- 3.2 Automatic reinstatement** On payment of a **claim** under this policy, the **limit of indemnity** will be reinstated, without additional premium, to the extent of the amount paid in respect of that **claim**, provided that:  
(a) the total amount payable by **us** for any one **claim** will not exceed the **limit of indemnity**, and  
(b) in respect of all **claims** in a **period of insurance**, the total amount reinstated will not exceed an amount equal to the **limit of indemnity**.
- 3.3 Boards and committees** We will cover the **insured** for **liability** arising from any formal medical, audit or quality assurance board or ethics committee convened by the **insured**.
- 3.4 Breach of personal information** We will cover the **insured** for **liability** arising from an unintentional breach of the Privacy Act 1993 in relation to a patient's personal information.  
This extension does not apply to **liability** arising from or in connection with personal information that is obtained from a malicious or unauthorised electronic attack on the **insured's** computer system.
- 3.5 Consultants and sub-contractors** We will cover the **insured** for **liability** arising out of the acts, errors, omissions or conduct of any of the **insured's** consultants, contractors or locum tenens providing **healthcare services**. This extension does not extend cover to the consultants, contractors or locum tenens.
- 3.6 Continuity of cover** We will cover the **insured** for **liability** arising from a **claim** that would be covered under this policy but for exclusion 4.13 'Known claims and circumstances', provided that:  
(a) **we** were the **insured's** malpractice or professional indemnity insurer under a policy ('the former policy') at the time the **insured** should have notified **us** of the **claim** or circumstance that might give rise to a **claim**, and  
(b) **we** have continued without interruption as the **insured's** malpractice or professional indemnity insurer from the time the **insured** should have notified **us** up until such time as the **claim** was made against the **insured** and notified to **us**, and  
(c) **our** liability is limited to the amount for which **we** would have been liable at the time referred to in (a) in accordance with the terms and conditions of the former policy, and  
(d) **our** liability will be reduced by the amount that fairly represents the extent to which liability for the **claim** could have been reduced had the circumstances been reported under the former policy.
- 3.7 Court or disciplinary and investigation attendance costs** We will pay to the **insured**:  
(a) \$500 per day for any principal, partner or director,  
(b) \$250 per day for any **employee**,  
of the **insured**, for each day they are required to attend a court as a witness in connection with a **claim** covered by this policy or that they are required to attend in connection with a **disciplinary proceeding** or **investigation** covered by this policy.  
The most **we** will pay under this extension during the **period of insurance** is \$20,000.

<b>3.8 Criminal prosecution defence costs</b>	<p><b>We</b> will advance <b>defence costs</b> in connection with a criminal proceeding against an <b>insured</b> relating to the death of a patient, that would be covered by this policy but for exclusion 4.9 'Fraud or dishonesty', prior to the disposition of such criminal proceedings.</p> <p>If it is established by judgment, written admission or other final adjudication that such <b>defence costs</b> are not covered by this policy, that <b>insured</b> agrees to repay such <b>defence costs</b>. The most <b>we</b> will pay under this extension during the <b>period of insurance</b> is \$100,000.</p>
<b>3.9 Defamation</b>	<p><b>We</b> will cover the <b>insured</b> for <b>liability</b> arising from unintentional defamation.</p> <p>Exclusion 4.3 'Defamation' does not apply to this extension.</p>
<b>3.10 Disciplinary proceedings</b>	<p><b>We</b> will cover the <b>insured</b> for:</p> <ul style="list-style-type: none"><li>(a) <b>defence costs</b> reasonably and necessarily incurred with <b>our</b> prior written consent, and</li><li>(b) all monetary orders or determinations made against the <b>insured</b>,</li></ul> <p>in relation to <b>disciplinary proceedings</b> first instituted against the <b>insured</b> and notified to <b>us</b> during the <b>period of insurance</b> or within 30 days of its expiry.</p> <p>Provided that:</p> <ul style="list-style-type: none"><li>(a) the act, error, omission or conduct that gave rise to the <b>disciplinary proceedings</b> happened after the <b>retroactive date</b> if applicable, and</li><li>(b) the <b>disciplinary proceedings</b> do not involve allegations of fraud, dishonesty or criminal conduct, other than criminal proceeding as a result of the death of a patient, and</li><li>(c) <b>we</b> will be entitled to appoint a lawyer to represent the <b>insured</b>.</li></ul> <p>Cover under this extension only applies in excess of any other insurance in force in respect of <b>disciplinary proceedings</b>.</p> <p>An <b>excess</b> of \$1,000 is payable in respect of this extension.</p>
<b>3.11 Dishonesty of employees</b>	<p><b>We</b> will cover the <b>insured</b> for <b>liability</b> arising from a dishonest, fraudulent, criminal or malicious act or omission of an <b>employee</b>.</p> <p>There is no cover under this extension:</p> <ul style="list-style-type: none"><li>(a) for loss of money, currency or any other negotiable instrument,</li><li>(b) for any person committing or condoning any dishonest, fraudulent, criminal or malicious act or omission.</li></ul> <p>Exclusion 4.9 'Fraud or dishonesty' does not apply to this extension.</p>
<b>3.12 Extended reporting period</b>	<p>If <b>we</b> do not offer to renew this policy, then the <b>insured</b> may extend cover under this policy for another 12 months. However, the extended policy will only cover <b>liability</b> arising from any actual or alleged act, error, omission or conduct that happened before the original expiry of this policy's <b>period of insurance</b> and not any actual or alleged act, error, omission or conduct happening in the extended period.</p> <p>If the <b>insured</b> elects to extend the policy as described above, notice of such election must be given to <b>us</b> within 30 days of the expiry of the <b>period of insurance</b> and the <b>insured</b> must pay <b>us</b> an additional premium (being 50% of the last annual premium).</p> <p>This policy cannot be extended if <b>we</b> cancel this policy or declare this policy unenforceable because the <b>insured</b> did not:</p> <ul style="list-style-type: none"><li>(a) pay the premium,</li><li>(b) disclose information material to the risk,</li><li>(c) comply with terms of this policy.</li></ul> <p>This extension does not provide a new <b>limit of indemnity</b> for the extended period.</p>
<b>3.13 Fair Trading Act</b>	<p><b>We</b> will cover the <b>insured</b> for <b>liability</b> arising from a breach of the Fair Trading Act 1986.</p> <p>Exclusion 4.5 'Fair Trading Act' does not apply to this extension.</p>
<b>3.14 Good samaritan act</b>	<p><b>We</b> will cover any medically qualified person covered under this policy for <b>liability</b> arising out of emergency first aid assistance.</p>
<b>3.15 Intellectual property</b>	<p><b>We</b> will cover the <b>insured</b> for <b>liability</b> arising from an unintentional plagiarism or an unintentional infringement of any copyright, design or trademark.</p> <p>Exclusion 4.10 'Intellectual property' (a) to (c) does not apply to this extension.</p>

- 3.16 Investigations and Inquiries** We will cover the **insured** for **defence costs** reasonably and necessarily incurred with **our** prior written consent, in relation to an **investigation** where such **investigation** may lead to a **claim**, which if made, would be covered by this policy, but only where:
- (a) notice of the **investigation** is first given to the **insured** and to **us** during the **period of insurance** or within 30 days of its expiry, and
  - (b) the conduct which is the subject of the **investigation** happened after the **retroactive date**, if any.
- 3.17 Joint venture liability** We will cover the **insured** for **liability** arising from the **insured's** involvement in any joint venture or partnership.
- There is no cover for the joint venture, the joint venture partners or partnerships.
- Exclusion 4.12 'Joint venture liability' does not apply to this extension.
- 3.18 Loss of documents** We will cover the **insured** for **liability** arising out of the loss of, damage to or destruction, of any **documents** that were in the custody or control of:
- (a) the **insured**, or
  - (b) any other person to whom the **insured** had entrusted, lodged, deposited or has delegated custody of the **documents** in the ordinary course of business.
- Exclusion 4.14 'Loss of documents' does not apply to this extension.
- 3.19 New subsidiary** If the **insured** creates an entity or acquires more than 50% of the voting rights of another entity during the **period of insurance**, **we** will automatically cover the new entity:
- (a) from the date of acquisition, but only in respect of activities carried out after the date of acquisition, or
  - (b) from the date it was created,
- but only if the entity being acquired or created:
- (a) performs services of the same type as the **healthcare services** undertaken by the **insured**, and
  - (b) is not incorporated, domiciled or conducting business outside New Zealand, and
  - (c) does not have revenue or estimated revenue of more than 25% of the gross annual consolidated revenue of the **insured** at the commencement of the **period of insurance**.
- 3.20 Public relations expenses** We will cover the **insured** for any reasonable fees, costs, charges and expenses incurred by the **insured** with **our** prior written consent, to engage a public relations firm in order to mitigate the adverse effect of any negative publicity as a result of a **claim**.
- The most **we** will pay under this extension during the **period of insurance** is \$25,000.
- 3.21 Punitive or exemplary damages** We will cover the **insured** for **liability** to pay punitive or exemplary damages ordered by a New Zealand Court as a result of a treatment injury covered under the Accident Compensation Act 2001 except where **we** are prohibited from paying such fine or penalty.
- The most **we** will pay under this extension during the **period of insurance** is \$1,000,000 or the **limit of indemnity**, whichever is the lesser amount.
- The **excess** payable under this extension is \$10,000 or the **excess** specified in the **schedule**, whichever is the greater amount.
- Exclusion 4.7 'Fines and penalties' does not apply to this extension.

## 4. Exclusions

- 4.1 Asbestos** This policy does not cover any **claim** arising out of, relating to or in any way connected with asbestos.
- 4.2 Contractual liability** This policy does not cover any **claim** arising from or in connection with any contractual liability, warranty or guarantee assumed or provided by the **insured** except if the **insured** would have been liable in the absence of the contract, warranty or guarantee.
- 4.3 Defamation** This policy does not cover any **claim** for defamation.
- 4.4 Director's liability** This policy does not cover any **claim** arising from or in connection with any act, error or omission of a director or officer of any company, while acting in that capacity.
- 4.5 Fair Trading Act** This policy does not cover any **claim** in connection with the Fair Trading Act 1986 or similar legislation in any other jurisdiction.
- 4.6 Financial condition** This policy does not cover any **claim** arising from or in connection with the insolvency, bankruptcy, receivership, statutory management or liquidation of the **insured**.
- 4.7 Fines and penalties** This policy does not cover any:  
(a) fine or penalty imposed, whether under contract or statute, or  
(b) punitive, aggravated, liquidated, or exemplary damages.
- 4.8 Foreign courts** This policy does not cover any **claim** arising from or in connection with any legal action or proceedings:  
(a) first brought in a court outside of the jurisdiction stated in the **schedule**,  
(b) brought in a court within the jurisdiction stated in the **schedule** for the purposes of enforcing a judgment made by a court outside the jurisdiction stated in the **schedule**,  
(c) where the proper law to be applied to the issue/s is that of a country other than that of a country within the jurisdiction stated in the **schedule**.
- 4.9 Fraud or dishonesty** This policy does not cover any **claim** arising from or in connection with any actual or alleged dishonest, fraudulent, criminal or malicious act, error, omission or conduct by the **insured**, or any **employee**, principal, officer or director of the **insured** or any other person covered by this policy.
- 4.10 Intellectual property** This policy does not cover any **claim** arising from or in connection with:  
(a) breach of confidential information,  
(b) plagiarism,  
(c) infringement of any copyright, design or trademark,  
(d) infringement of any patent.
- 4.11 Intentional or reckless acts** This policy does not cover any **claim** arising from or in connection with any:  
(a) wilful or intentional breach of statute, or  
(b) error, omission or conduct committed or omitted with a reckless disregard for the consequences.
- 4.12 Joint venture liability** This policy does not cover any **claim** arising from or in connection with a joint venture or partnership.
- 4.13 Known claims and circumstances** This policy does not cover any **claim**:  
(a) made or intimated against the **insured** prior to the commencement of the **period of insurance**, or  
(b) notified under a previous policy, or  
(c) arising from or in connection with circumstances:  
(i) that the **insured** was aware of prior to the **period of insurance**, and  
(ii) that a reasonable person in the position of the **insured** would have considered might give rise to a **claim**.
- 4.14 Loss of documents** This policy does not cover any **claim** arising from or in connection with the loss of or damage to or destruction of any **documents**.

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<b>4.15 Nuclear</b>	<p>This policy does not cover any <b>claim</b> arising from or in connection with any atomic energy risks, being operations employing the process of nuclear fission or fusion or handling of radioactive material, which operations include but are not limited to:</p> <ul style="list-style-type: none"><li>(a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices, or</li><li>(b) the use, handling or transportation of radioactive materials, or</li><li>(c) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.</li></ul> <p>This exclusion will not apply to radio-isotopes, radium or radium compounds only when used for medical purposes.</p>
<b>4.16 Obligations to employees</b>	<p>This policy does not cover any <b>claim</b> arising from or in connection with any breach of any obligations as an employer.</p>
<b>4.17 Pollution</b>	<p>This policy does not cover any <b>claim</b> arising from or in connection with pollution or contamination.</p>
<b>4.18 Product liability</b>	<p>This policy does not cover any <b>claim</b> arising from or in connection with the sale, supply, installation or manufacture of goods by or on behalf of the <b>insured</b>.</p>
<b>4.19 Property liability</b>	<p>This policy does not cover any <b>claim</b> arising from or in connection with the ownership, possession or use by or on behalf of the <b>insured</b> of any land, buildings, aircraft, watercraft or vehicle.</p>
<b>4.20 Refund of fees</b>	<p>This policy does not cover any <b>claim</b> for a refund of professional fees or charges, by way of damages or otherwise.</p>
<b>4.21 Sanctions</b>	<p>This policy does not cover any <b>claim</b> or provide any cover to the extent such cover would expose <b>us</b> to any sanction, prohibition or restriction under any United Nations resolution, or any trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, Australia or New Zealand.</p>
<b>4.22 Territorial limit</b>	<p>This policy does not cover any <b>claim</b> arising from or in connection with any act, error or omission that occurred outside of the territorial limit specified in the <b>schedule</b>.</p>
<b>4.23 Terrorism</b>	<p>This policy does not cover any <b>claim</b> for death, injury, illness, loss or damage directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any <b>act of terrorism</b>, regardless of any other cause or event contributing concurrently or in any other sequence to the loss including in connection with controlling, preventing, suppressing, retaliating against, or responding to an <b>act of terrorism</b>.</p>
<b>4.24 War</b>	<p>This policy does not cover any <b>claim</b> for loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.</p>

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## 5. Basis of settlement

<b>5.1 Maximum amount payable</b>	<p>(a) <b>Liability</b></p> <p>Subject to automatic extension 3.2 'Automatic reinstatement', the most that <b>we</b> will pay in total for any one <b>claim</b> and all <b>claims</b> covered by this policy during the <b>period of insurance</b> is the <b>limit of indemnity</b>.</p> <p>Where more than one <b>claim</b> arises out of the same act, error or omission or connected or interrelated acts, errors or omissions, then all those <b>claims</b> will be treated as one <b>claim</b> for the purposes of the application of the <b>limit of indemnity</b>.</p> <p>(b) <b>Defence costs</b></p> <p>The most <b>we</b> will pay in total for <b>defence costs</b> during the <b>period of insurance</b> for all <b>claims</b> covered by this policy is an amount equal to the <b>limit of indemnity</b>.</p>
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### 5.2 Excess payable

The **excess** applies to any **defence costs** covered under this policy. **We** will only pay that part of **defence costs** that exceeds the amount of the **excess**.

Where more than one **claim** arises out of the same act, error, omission or conduct or connected or interrelated acts, errors, omissions or conduct then all of those **claims** will together constitute one **claim** for the purposes of determining the **excess**.

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## 6. Claims conditions

### The insured's obligations

#### 6.1 Advise us of a claim or circumstance

If the **insured** becomes aware of any **claim**, or circumstance that may give rise to a **claim** under this policy, regardless of the anticipated amount, they must notify **us** in writing as soon as possible. Once a circumstance is notified to **us** in writing, any subsequent **claim** is deemed to be a **claim** in the **period of insurance** in which the circumstance was notified.

#### 6.2 Co-operation

The **insured** must provide at their own cost, all information and reasonable assistance to **us** to determine liability under this policy and to enable **us** to investigate, defend or settle a **claim**. The **insured** must fully co-operate with any recovery process.

#### 6.3 Dishonest or fraudulent statements

If the **insured** makes any dishonest or fraudulent statement in connection with a **claim** or any application for cover under this policy, **we** may:

- (a) decline the **claim**, either in whole or in part, and/or
- (b) declare either this policy or all insurance the **insured** has with **us** to be of no effect and to no longer exist from the date of the dishonest or fraudulent statement.

#### 6.4 Do not admit liability

The **insured** must not:

- (a) admit liability, or
- (b) do or say anything that may prejudice **our** ability to defend the **claim** against the **insured** or take recovery action in the **insured's** name.

#### 6.5 Minimise the claim

The **insured** must, at their own cost, take all reasonable steps to minimise a **claim** and avoid any further loss or liability arising.

#### 6.6 Obtain our agreement

The **insured** must obtain **our** agreement before:

- (a) incurring any **defence costs** or other expenses in connection with any **claim** under this policy, or
- (b) negotiating, paying, settling, admitting or denying any **claim** against them.

#### 6.7 Other insurance

The **insured** must notify **us** as soon as they know of any other insurance policy that may cover them for any of the risks covered under this policy.

If the **insured** holds other insurance cover with another insurer in respect of any **claim** covered under this policy, then **we** will only pay under this policy once cover under any other policy has been exhausted.

#### 6.8 Waiver of legal privilege

The lawyers **we** instruct to act on behalf of the **insured** in relation to any **claim** against the **insured**, are at liberty to disclose to **us** any information they receive in that capacity, including information they receive from the **insured**. The **insured** authorises the lawyers to disclose this information to **us**.

### How we manage a claim

#### 6.9 Allocation of defence costs

If a **claim** is only partly covered by this policy, **we** will attempt to ensure fair and proper allocation of the **defence costs** for covered and uninsured portions.

If **we** and the **insured** are unable to agree upon the allocation of the **defence costs** then that allocation will be decided by a lawyer that **we** and the **insured** agree to instruct, whose determination will be binding. The cost of the lawyer's determination is to be taken as part of the **defence costs** covered under this policy.

If **we** and the **insured** cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

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- 6.10 Claim below the excess** If **we** believe that a **claim** will not exceed the **excess**, **we** may instruct the **insured** to conduct the investigation, defence and settlement at the **insured's** expense. Should the **claim** subsequently exceed the **excess**, **we** agree to reimburse the reasonable **defence costs** incurred by the **insured** or pay on behalf of the **insured** any additional **defence costs**.
- 6.11 Claim in excess of the limit of indemnity** If any payment, settlement or judgment in excess of the **limit of indemnity** has to be made to settle or dispose of any **claim**, **our** liability for **defence costs** is limited to such proportion as the **limit of indemnity** bears to the amount payable to dispose of the **claim**.  
The **insured** must refund to **us** all amounts **we** pay for **defence costs** in excess of **our** proportion.
- 6.12 Defence of a claim** **We** have the sole right (which will be a condition precedent to the **insured's** right to be covered) to:  
(a) act in the **insured's** name and on the **insured's** behalf to defend, negotiate or settle the **claim** as **we** see fit,  
(b) appoint **our** own lawyers to defend or legally represent the **insured** and the lawyer will report directly to **us**.
- 6.13 Discharge of a claim** **We** may elect at any time to pay the **insured**:  
(a) the maximum amount payable under this policy in relation to a **claim**, or  
(b) any lesser sum that the **claim** against the **insured** can be settled for.  
Once **we** have paid this (including any **defence costs** already incurred up to the date of the election), **our** responsibility to the **insured** under this policy is met in full.
- 6.14 Insured's right to contest settlement of a claim** If the **insured** does not agree with a decision by **us** to settle a **claim**, the **insured** can elect to contest the **claim** at their own expense but **our** liability will not exceed the amount for which the **claim** could have been settled in the opinion of the lawyer appointed under claims condition 6.15 'Requirement to defend a claim'.  
**We** will pay **defence costs** incurred up to the date the **insured** notifies **us** in writing of their election under this clause, and will pay the **insured** (subject to the **excess**) the amount for which the **claim** could have been settled. The **insured** expressly agrees that **our** liability in respect of such **claim** will then be at an end.
- 6.15 Requirement to defend a claim** **We** will not require the **insured** to defend any legal proceedings in respect of a **claim**, nor will the **insured** require **us** to defend on their behalf, any legal proceedings in respect of a **claim**, unless a lawyer mutually agreed by **us** and the **insured** advises such proceedings should be defended. In formulating his or her advice, the lawyer must be instructed to consider the:  
(a) damages and costs likely to be recovered, and  
(b) likely costs of defence, and  
(c) prospects of successfully defending the **claim**.  
The cost of the lawyer's opinion is to be taken as part of the **defence costs** covered under this policy.  
If the lawyer advises that the **claim** should be settled and if the terms on which settlement can be achieved are within limits that are reasonable (in the lawyer's opinion, and in consideration of the matters), then the **insured**:  
(a) will cooperate with **us** to effect such settlement in accordance with this policy, and  
(b) if applicable, must pay the **excess** shown in the **schedule**.
- 6.16 Severability** If a natural person covered under this policy fails to comply with their duty of disclosure, makes a misrepresentation or is in breach of any condition of this policy, **we** will not deny indemnity to any other natural person covered under this policy on these grounds if that other person was unaware of the matter not disclosed or the fact of the misrepresentation or did not breach the policy condition.
- 6.17 Subrogation** **We** may assume the **insured's** legal right of recovery. The proceeds of any recovery will be applied first to the costs of effecting the recovery, then to **us** for covered loss. Any remaining balance will be paid to the **insured** for uncovered loss and then the **insured's excess**.  
**We** will not exercise any rights of recovery against any **employee** of the **insured** unless the **claim** has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the **employee**.

## 7. General conditions

### How we administer this policy

- 7.1 Assignment** The **insured** may not assign this policy or any interest under this policy without **our** prior written consent.
- 7.2 Cancellation**
- By the insured**  
The **insured** may cancel this policy at any time by giving **us**, or the **insured's** broker, notice in writing or by electronic means. If they do, **we** will refund any premium that is due to the **insured** based on the unused portion of the **period of insurance**. The **insured** must pay any outstanding premium due for the expired portion of the **period of insurance**.
- By us**  
**We** may cancel this policy by giving the **insured**, or their broker, notice in writing or by electronic means, at the **insured's**, or their broker's, last known address. The policy will be cancelled from 4pm on the 30th day after the date of the notice. **We** will refund the **insured** any premium that is due to the **insured** based on the unused portion of the **period of insurance**.
- 7.3 Currency** Any amounts shown in this policy or in the **schedule** are in New Zealand dollars, unless otherwise specified in the **schedule**.
- 7.4 Disputes about this policy** The law of New Zealand applies to disputes about this policy and the New Zealand Courts have exclusive jurisdiction.
- 7.5 Goods and Services Tax** Where GST is recoverable by **us** under the Goods and Services Tax Act 1985:  
(a) the limits of indemnity exclude GST, and  
(b) all sub limits exclude GST, and  
(c) any **excess** includes GST.  
GST will be added, where applicable, to any payments.
- 7.6 Legislation changes** Any reference to any Act of Parliament or subordinate rules referred to in this policy includes any amendments made or substitutions to that law.

### The insured's obligations

- 7.7 Change in circumstances** The **insured** must tell **us** as soon as possible if there is a material:  
(a) increase in the risk insured, or  
(b) alteration of the risk insured.  
Once the **insured** has told **us** of the change, **we** may then alter the premium and/or the terms of this policy or cancel this policy.  
If the **insured** fails to notify **us** about a change in the risk insured, **we** may:  
(a) declare this policy unenforceable, and/or  
(b) decline any subsequent **claim** either in whole or in part.  
These actions will be taken from the date the **insured** knew, or ought to have known, of the increase or alteration in the risk insured.
- 7.8 Comply with this policy** The **insured** (and any other person or entity covered by the policy) must comply with the terms and conditions of this policy.  
If:  
(a) the **insured**, or  
(b) any other person or entity covered under this policy, or  
(c) anyone acting on the **insured's** behalf,  
breaches any of the terms and/or conditions of this policy, **we** may decline the **claim** either in whole or in part.

## 8. Definitions

The definitions apply to the plural and any derivatives of the bolded words.

<b>act of terrorism</b>	Any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which: (a) involves violence against one or more persons, or (b) involves damage to property, or (c) endangers life other than that of the person committing the action, or (d) creates a risk to health or safety of the public or a section of the public, or (e) is designed to interfere with or to disrupt an electronic system.
<b>application</b>	The information provided to <b>us</b> by the <b>insured</b> or on the <b>insured's</b> behalf when the <b>insured</b> purchased this insurance or requested a quotation for this insurance from <b>us</b> .
<b>claim</b>	(a) the receipt by the <b>insured</b> of any written notice of demand for compensation, (b) legal or arbitral proceedings instituted and served upon the <b>insured</b> , (c) a threat or intimation that legal or arbitral proceedings will be issued against the <b>insured</b> . It does not include proceedings seeking non-monetary relief, including judicial reviews, injunctions or declarations.
<b>defence costs</b>	Legal costs, expenses and disbursements, witnesses' costs, assessors' or experts' fees.
<b>disciplinary proceedings</b>	Any legal or quasi legal proceeding arising out of or in connection with an actual or alleged malpractice by the <b>insured</b> where the proceeding is administered by any statutory registration board, professional body or similar regulatory authority, where such body has jurisdiction to enquire into or adjudicate any such breach.
<b>documents</b>	Deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including records or computer records and electronic data material but will not include bearer bonds or coupons, stamps, bank currency notes or other negotiable instruments.
<b>employee</b>	Any person employed under a contract of service or apprenticeship during or prior to the commencement of the <b>period of insurance</b> including the services of any volunteer worker.
<b>excess</b>	The amount specified as the 'Excess' in the <b>schedule</b> or as specified in any extension.
<b>healthcare services</b>	The activities or services performed or business of the <b>insured</b> as described in the <b>schedule</b> .
<b>insured</b>	The person, persons, partnership, entity or entities named on the <b>schedule</b> , including: (a) any predecessor in business, (b) any <b>subsidiary</b> , (c) any person who is or becomes, during the <b>period of insurance</b> , a principal, partner, director or <b>employee</b> , (d) any former principal, partner, director or employee, (e) the estate, heirs, legal representatives or assigns of any principal, partner or director in the event of their death or incapacity but only if such persons observe and are subject to the terms and conditions of this policy, (f) any student practitioner obtaining practical work experience as part of academic studies with a university or college of advanced education.

## Malpractice Liability / Policy wording

<b>investigation</b>	<p>(a) an official investigation, hearing, examination or inquiry by:</p> <ul style="list-style-type: none"><li>(i) The Health and Disability Commissioner,</li><li>(ii) The Privacy Commissioner,</li><li>(iii) the Human Rights Review Tribunal,</li><li>(iv) the Accident Compensation Corporation,</li></ul> <p>(b) a Coroner's inquiry or inquest.</p>
<b>liability</b>	<p>Liability for:</p> <ul style="list-style-type: none"><li>(a) compensatory damages and interest that a civil court or arbitrator orders the <b>insured</b> to pay in civil proceedings,</li><li>(b) legal costs of a party making the <b>claim</b>.</li></ul> <p>It includes settlements negotiated by <b>us</b>, in relation to a <b>claim</b>.</p>
<b>limit of indemnity</b>	<p>The amount specified as the 'Limit of indemnity' in the <b>schedule</b>.</p>
<b>period of insurance</b>	<p>The 'Period of insurance' shown in the <b>schedule</b>, that states the start and end dates of this insurance policy.</p>
<b>retroactive date</b>	<p>The 'Retroactive date' shown in the <b>schedule</b>.</p>
<b>schedule</b>	<p>The latest version of the schedule <b>we</b> have issued to the <b>insured</b> for this policy.</p>
<b>subsidiary</b>	<p>Any entity that is or was controlled by the <b>insured</b> holding more than 50% of the voting rights of that organisation or has the ability to control decisions made by the board of directors (whether directly or indirectly).</p>
<b>we/us/our</b>	<p>NZI, a business division of IAG New Zealand Limited.</p>

