Practice Medical Indemnity Policy

Version 1.0

Avant Insurance
Avant Insurance Limited ABN 82 003 707 471 AFSL 238765

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Special Notices

This is important and must be read by all persons applying for, renewing or varying an Avant Insurance Limited insurance policy. In these notices a reference to 'we' 'us' or 'our' means Avant Insurance Limited ABN 82 003 707 471 AFSL 238765.

1. Your duty of disclosure

Under the *Insurance Contracts Act 1984* (Cth), before you enter a contract of insurance with us you have a duty to disclose every matter that you know or could reasonably be expected to know that is relevant to our decision to accept the risk of the insurance and, if so, on what terms. You have the same duty to disclose those matters to us before you renew, extend or vary your insurance Policy with us and a continuing obligation throughout the Period of Insurance.

Your duty of disclosure does not extend to:

- a matter that diminishes the risk undertaken by us; or
- a matter that is considered to be common knowledge or facts that we know or should know in the ordinary course of business; or
- matters that we tell you we do not need to know, or matters for which we waive disclosure.

If you fail to comply with your duty of disclosure, depending on the prejudice caused by your failure to comply, we may:

- reject your Claim or reduce our liability in respect of a Claim, complaint or matter; or
- cancel the Policy.

If your non-disclosure is fraudulent, we may avoid the Policy entirely (that is, we may treat the Policy as never being of any force or effect).

2. The Practice Medical Indemnity Policy is a 'Claims made and notified' contract.

This means that (subject to the terms and conditions of the Policy) you are covered for:

a) compensation Claims notified to us and made against you or an Insured Person during the Period of Insurance, including Defence Costs incurred in respect of such compensation Claims; and

b) Legal Fees incurred in representing you or an Insured Person in relation to defending a prosecution, or responding to an Inquiry, inquest, investigation or complaint, provided that the matter is notified to us during the Period of Insurance and commenced during the Period of Insurance.

3. This Policy does not provide cover in relation to:

- events that occurred prior to the Retroactive Date (if such a date is specified in the Policy Schedule); or
- Claims or incidents notified to us after the expiry of the Period of Insurance even though the event giving rise to the Claim may have occurred during the Period of Insurance; or
- Claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy or on any previous application form; or
- Claims made, threatened or intimated against you or an Insured Person prior to the commencement of the Period of Insurance; or
- facts or circumstances of which you or an Insured Person first become aware (or which ought reasonably to have known might give rise to a request for indemnity under this Policy) prior to the Period of Insurance.

4. Notification of facts which might give rise to a Claim

Pursuant to section 40(3) of the *Insurance Contracts Act 1984* (Cth) where you or an Insured Person give notice to us of facts that might give rise to a Claim as soon as was reasonably practicable after you become aware of those facts but before the Policy expires, you are covered for any Claim made against you arising from those facts even if it is not made against you until after the Period of Insurance has expired.

5. Limit of retroactive cover

The Practice Medical Indemnity Policy offered by us will not cover you for events or circumstances that occurred before the Retroactive Date shown on the Policy Schedule.

6. Cancellation of the Policy

We refer you to the cancellation provisions in the Policy which details the circumstances under which the Policy of insurance may be cancelled, which includes cancellation for non-payment of premium.

7. Privacy Statement

The *Privacy Act 1988* (Cth) requires us to inform you of the following:

a) Purpose of collection

We collect personal information from you for the primary purpose of providing insurance to you, including underwriting, the management of Claims, risk management, medico-legal and ethical advice and education. This personal information can be used or disclosed for a secondary purpose related to the primary purposes above, to the extent you would reasonably expect us to use or disclose this information for that secondary purpose.

b) Access to information

We will allow you access to the personal information we collect from you and correct that information if it is wrong. Please contact Member Services team on 1800 128 268 for details.

c) Disclosure

We may share this information with other Avant Group companies. We may disclose personal information to our reinsurers, solicitors, accountants, actuaries or government regulatory bodies, for the provision of statistical data for research, to those involved in corporate risk management and to organisations who manage business and corporate strategies. We may be authorised or required to disclose your personal information by law, or permitted to do so in an emergency.

d) Failure to provide information

If you do not provide us with the information we need then your insurance cover may be inadequate for your needs, or we may be unable to provide you with insurance.

Policy wording

Introduction

In consideration of payment of the premium, the Insurer will indemnify the Insured in accordance with the definitions, terms, conditions, limit of indemnity, sub-limit of indemnity, Deductible, exclusions and endorsements, if any, of this Policy.

Some of the terms that the Insurer uses in this Policy have a special meaning. Those words appear in capitals and their meanings are explained in the definitions section.

The Insurer has relied on information provided by the Insured in the application form and other forms of disclosure in determining whether to enter into this contract and on what terms. If this information is incorrect the Insurer may be able to reject a request for indemnity, reduce its liability or void this Policy from inception.

How much the Insurer will pay

(a) The most the Insurer will pay for any one Claim or request for indemnity under this Policy, and in the aggregate for all Claims and requests for indemnity during the Period of Insurance is the limit of indemnity that is specified in the Policy Schedule.

(b) Any sub-limit of indemnity that applies is the most the Insurer will pay against that cover in the aggregate during the Period of Insurance; and in such cases the sub-limit of indemnity applies in place of the limit of indemnity. Any sub-limit of indemnity will be specified in the Policy Schedule or within the clause providing cover.

(c) The limit of indemnity and sub-limit of indemnity are exclusive of the Deductible.

(d) The limit of indemnity is inclusive of Defence Costs.

(e) Nothing in this Policy operates to increase the limit of indemnity or sub-limit of indemnity.

(f) All Claims or requests for indemnity under this Policy which arise from, or are attributable to a single act, error, omission, or occurrence or series of similar or related single acts, errors, omissions or occurrences will be treated under this Policy as one Claim or request for indemnity.

What the Insurer will cover

1. Civil liability cover

1.1 Healthcare Services provided by the Insured

The Insurer will indemnify the Insured for amounts the Insured becomes legally liable to pay as compensation for a Claim:

(a) first made against the Insured and notified to the Insurer during the Period of Insurance; and

(b) arising from a Healthcare Incident directly in connection with Healthcare Services, which occurred after the Retroactive Date.

1.2 Defence Costs

The Insurer further agrees to indemnify the Insured for Defence Costs that are necessarily and reasonably incurred by the Insurer in investigating, defending or settling a Claim. This is subject to the payment of the Deductible which is the first amount that is to be paid towards Defence Costs.

2. Automatic extensions

The cover under clause 1.1 and 1.2 is extended to cover the following automatic extensions. These automatic extensions are subject to all of the definitions, terms, conditions, limit of indemnity, any sub-limit of indemnity, Deductible, exclusions and endorsements of this Policy, unless specifically expressed to the contrary.

2.1 Good Samaritan act

The Insurer will indemnify the Insured for a Good Samaritan act, error or omission by the Insured, provided that the Insured was not acting in a professional capacity for another employer, entity or practice at the time of the act, error or omission. Cover under this clause applies even if the Claim is not directly in connection with Healthcare Services.

2.2 Consumer protection breach

The Insurer will indemnify the Insured for actual or alleged breaches of Commonwealth consumer protection legislation where the act, error or omission occurred in connection with the provision of Healthcare Services.

2.3 Intellectual property

The Insurer will indemnify the Insured for actual or alleged infringement of intellectual property rights, provided that the act, error or omission by the Insured is unintentional and occurred in connection with the provision of Healthcare Services.

2.4 Consultants, contractors and Medical Practitioners

The Insurer will indemnify the Insured for any liability incurred by the Insured to the extent of the Insured's liability, arising from Healthcare Services provided by a consultant, contractor or Medical Practitioner or any other person or entity that is not the Insured within this Policy. This clause is subject to the Insured complying with clause 7.4. This clause does not operate to indemnify any such consultant, contractor, Medical Practitioner or any other person or entity that is not the Insured.

2.5 Breaches of privacy

The Insurer will indemnify the Insured for actual or alleged breaches of confidentiality or privacy legislation, provided the act, error or omission by the Insured is unintentional and occurred in connection with the provision of Healthcare Services.

2.6 Cover for 'innocent' Insureds

In respect of exclusion clauses 5.3, 5.7 and 5.12, the Insurer will indemnify all innocent Insureds who did not commit, contribute to, or condone the act, error or omission or had no prior knowledge of the act, error or omission. This clause does not operate to indemnify any Insured who allegedly committed or condoned the act, error or omission.

2.7 Continuous cover

Notwithstanding clause 5.10, the Insurer will indemnify the Insured where:

(a) the Insured failed to notify the Insurer about a Known Circumstance that later gave rise to a Claim against the Insured which the Insured knew about or a reasonable person in the Insured's position would have thought might result in a Claim or allegation being made against the Insured; and

(b) the Insurer was the medical indemnity insurer of the Insured at the time the Insured first knew or ought to have known of the Known Circumstance that gave rise to the Claim; and

(c) the Insurer continued without interruption to be the medical indemnity insurer of the Insured after the Insured first knew or ought to have known of the Known Circumstance that gave rise to the Claim; and

(d) the Known Circumstance is notified to the Insurer by the Insured against whom the Claim is made under this Policy and the Claim or circumstance is covered under this Policy; and

(e) had the Insurer been notified by the Insured of the Known Circumstance when the Insured first knew of it, the Insured would have been covered under the policy in force at that time; and

(f) the Known Circumstance giving rise to the Claim was not previously notified to the Insurer; and

(g) the Insurer's liability under this automatic extension for any one occurrence and in the aggregate for all occurrences under this extension shall not exceed the lesser of the limit of indemnity under this Policy, or the limit of indemnity under the previous policy that the Known Circumstance should have been notified; and

(h) there is an absence of fraudulent non-disclosure by the Insured.

The Insurer may reduce its liability to the extent of any prejudice the Insurer may suffer in connection with the Insured's failure to notify the Insurer when the Insured first knew of the Known Circumstance.

2.8 Loss of Documents

The Insurer will indemnify the Insured for costs incurred by the Insured to replace or restore Documents which have been destroyed or damaged where such loss or damage is sustained during the Period of Insurance while the Documents are either in transit or in the Insured's custody or the custody of any person to whom the Insured has entrusted them in the course of the normal conduct of the Insured's business, but only when:

(a) such loss or damage is not a result of normal wear and tear, lack of access to electronic data or where the Insured deliberately or wilfully caused the destruction or damage; and

(b) the cost to replace or restore the Documents must be supported by bills and accounts which shall be subject to approval by the Lawyer or, if there is a dispute, the President of the Law Society of the state in which the Policy was issued; and

(c) the Insured does not hold any other insurance for document replacement or restoration cover with another insurer.

The Insurer's liability under this clause is limited to $100,000 for the Period of Insurance unless another sub-limit of indemnity is specified in the Policy Schedule. It is not a requirement under this automatic extension that there is a Healthcare Incident.

2.9 Extended reporting period

The Insured may continue to notify the Insurer of Claims up to 30 days after the expiry of the Period of Insurance where the Claim was first made against the Insured during the Period of Insurance, provided always that the Claim is a result of an act, error or omission or alleged act, error or omission that occurred prior to the expiry of the Period of Insurance.

If this notification occurs during the 30 day period the Insurer will treat the Claim as if it were notified in the Period of Insurance.

2.10 Joint venture liability

The Insurer will indemnify the Insured for the Insured's participation in a joint venture where the joint venture forms part of the Insured's Healthcare Services, provided that:

(a) the Insurer will only be liable for the Insured's portion of liability of the joint venture; and

(b) the joint venture was disclosed to the Insurer in the Insured's application form.

3. Legal Fees cover

The Insurer will indemnify the Insured for Legal Fees incurred by the Insurer with the Lawyer in relation to the following matters. This clause does not operate to indemnify the Insured for civil liability, fines, penalties or costs awarded against the Insured.

3.1 Medicare benefits scheme

Notwithstanding clause 5.3 the Insurer will pay Legal Fees incurred at an Inquiry in relation to the Medicare benefits scheme including any alleged dishonest, fraudulent or criminal act, error or omission, but only where the actual or alleged act, error or omission:

(a) occurred in connection with the provision of Healthcare Services; and

(b) is made against the Insured and notified to the Insurer in the Period of Insurance; and

(c) occurred after the Retroactive Date.

Neither the Insured who is alleged to have committed any dishonest, fraudulent or criminal act, error or omission nor any Insured Person who condoned the act, error or omission is covered by this extension. The Insurer's liability under this clause is limited to $100,000 in the Period of Insurance, unless another sub-limit of indemnity is specified in the Policy Schedule.

3.2 Legal Fees for Inquiries

Notwithstanding clause 5.3 the Insurer will pay Legal Fees incurred at an Inquiry that is commenced, commissioned or ordered during the Period of Insurance and notified to the Insurer in the Period of Insurance but only when the actual or alleged act, error or omission occurred:

(a) in connection with the provision of Healthcare Services; and

(b) after the Retroactive Date.

Neither the Insured who is alleged to have committed any dishonest, fraudulent or criminal act, error or omission nor any Insured Person who condoned the act, error or omission is covered by this extension. The Insurer's liability under this clause is limited to $250,000 in the Period of Insurance, unless another sub-limit of indemnity is specified in the Policy Schedule.

3.3 Reporting a healthcare professional or incident

The Insurer will pay Legal Fees incurred at an Inquiry that is commenced, commissioned or ordered during the Period of Insurance and notified to the Insurer in the Period of Insurance that arises from the Insured reporting an incident, healthcare professional, person or entity to a professional or statutory body or area health authority, but only when:

(a) the Insured was required to do so as result of an obligation imposed by law or in the public interest; and

(b) the act, error or omission giving rise to the Inquiry, occurred after the Retroactive Date.

The Insurer's liability under this clause is limited to $250,000 in the Period of Insurance, unless another sub-limit of indemnity is specified in the Policy Schedule.

4. Optional cover

The following optional cover is only included if noted in the Policy Schedule.

4.1 Reinstatement

Cover under clause 1.1 and 1.2 is extended in the event of exhaustion of the limit of indemnity specified in the Policy Schedule. The Insurer will reinstate the limit of indemnity once during the Period of Insurance, to the amount specified in the Policy Schedule, for all sums which the Insured becomes legally liable to pay for subsequent Claims and for subsequent Defence Costs that are notified to the Insurer during the Period of Insurance and that are unrelated to any prior Claim notified to the Insurer during the Period of Insurance.

5. What the Insurer will not cover

The Insurer is not liable under this Policy to indemnify the Insured for any Claim or request for indemnity which arises out of or in connection with:

5.1 Asbestos or pollution

any asbestos or pollution except where the Claim arises from the treatment of a patient in relation to asbestos or pollution related disease or condition.

5.2 Contractual liability

any liability that the Insured assumed by contract, waiver, guarantee or warranty, unless liability would have attached in the absence of such a contract, waiver, guarantee or warranty.

5.3 Dishonest, criminal or fraudulent act

any:

(a) actual or alleged dishonest, criminal or fraudulent act, error or omission; or

(b) wilful breach of any statute, contract or duty of care.

5.4 Director and officer liability

the Insured acting as a director, officer, principal, trustee, associate or shareholder.

5.5 Fines, penalties or punitive damages

any punitive, aggravated or exemplary damages, fines or civil penalties.

5.6 Healthcare Services not listed in Policy Schedule

any act, error or omission not directly in connection with the provision of Healthcare Services.

5.7 Intoxication or under the influence

actual or alleged breach of duty or obligation that is attributable to or may be attributable to an Insured Person being under the influence of any drug, alcohol, intoxicant, narcotic or illegal substance.

5.8 Insured v Insured

a Claim, proceeding or matter initiated by a contractor, Insured or any entity that is operated or controlled by an Insured, except for a:

(a) cross claim or a third party claim otherwise insured under this Policy; or

(b) Claim by a contractor or Insured Person in their capacity as a patient.

5.9 Outside Commonwealth of Australia

any act, error or omission committed or allegedly committed outside the Commonwealth of Australia; or any court or tribunal proceedings outside the Commonwealth of Australia or any court or tribunal in Australia which is applying the law of a country other than the law of the Commonwealth of Australia.

5.10 Prior, pending or outside Period of Insurance

any:

(a) act, error, omission, fact, circumstance or Healthcare provided or that occurred prior to the Retroactive Date; or

(b) act, error, omission, fact or circumstance which should have been notified to the Insurer in the application form or otherwise in accordance with the duty of disclosure; or

(c) a Known Circumstance; or

(d) Claim or matter notified to the Insurer outside the Period of Insurance other than as provided in clause 2.9.

5.11 Product and public liability, property damage and workers compensation

(a) the design, manufacture, distribution or sale of any goods or products (other than to the extent that the Claim arises from the negligent advice by the Insured in the ordinary course of Healthcare Services); or

(b) any physical loss of, or damage to property or any loss or damage which results from that loss or damage (except as provided under clause 2.8); or

(c) any personal injury or property damage suffered by an Insured Person (except in their capacity as a patient); or

(d) the ownership, use or occupation or state of premises, or the contents of such premises or anything done or omitted to be done in respect of the state of any premises owned, leased or occupied by the Insured or the contents of such premises.

5.12 Sexual misconduct, sexual harassment or discriminatory conduct

actual or alleged sexual harassment, sexual misconduct or any form of discriminatory conduct.

5.13 Radioactive materials

radioactive materials of any type except when used in the ordinary course of radiotherapy, radiology or nuclear medicine.

5.14 Recovery of money or refund patient fees

any action in relation to the recovery of money or a request by a patient to refund fees they have paid to the Insured or to waive fees due to the Insured.

6. Conduct of Claims or Inquiries

6.1 No admission

The Insured must not make any admission of liability, offer or compromise in relation to any Claim or matter covered by this Policy without the Insurer's prior written consent.

6.2 The Insured must notify the Insurer

The Insured must notify the Insurer in writing as soon as practicable of any Claim, incident or matter, including but not limited to, an incident in respect of which:

(a) a patient suffers a major complication; or

(b) there is an error made in providing Healthcare causing harm; or

(c) an adverse outcome results in significant anger from a patient or their family; or

(d) the Insured receives a letter from a solicitor indicating dissatisfaction or requesting a patient record; or

(e) the Insured is concerned that an incident has occurred which the Insured thinks may lead to a Claim or Inquiry.

If the Insured does not notify the Insurer of a Claim, incident or matter as soon as practicable, the Insured may not be covered under this Policy or the Insured's right to indemnity may be significantly reduced by the Insurer.

To report a Claim or incident the Insured must notify the Insurer in writing to:

Avant Insurance Limited
PO Box 746 Queen Victoria Building NSW 1230.

The notification must include the Insured's details, the details of the Claim, incident or matter including the date of the incident, the patient's name and the details of any Claim, incident or matter.

6.3 Conduct of Claims or Inquiries

The Insured agrees that the Insurer has conduct of a Claim or Inquiry covered under this Policy including its investigation, pursuit, defence, avoidance, reduction or settlement and the Insurer may do so in the Insured's name. The Insurer may defend or settle a Claim or Inquiry as the Insurer thinks fit.

6.4 The Insurer will appoint the Lawyer or Other Person

The Insurer will appoint the Lawyer or Other Person to provide services to the Insurer for the benefit of the Insured. When the Insurer appoints the Lawyer or Other Person, the Insurer does so in the Insurer's own capacity and not as an agent for the Insured.

The Lawyer or Other Person appointed by the Insurer supplies services to the Insurer and not to the Insured for the purposes of the Goods and Services Tax (GST). The Insurer is entitled to claim a GST input tax credit on services supplied by the Lawyer or the Other Person.

6.5 The Insured must co-operate

6.5.1 The Insured must co-operate with the Lawyer or Other Person in resolving the Claim or Inquiry in a satisfactory, timely and cost-effective way. In particular, the Insured must:

(a) give the Lawyer or Other Person a full and truthful account of the relevant facts;

(b) give the Lawyer or Other Person any relevant information or documents they ask for;

(c) execute any documents the Lawyer or Other Person reasonably asks the Insured to execute; and

(d) attend any meetings the Lawyer or Other Person reasonably asks the Insured to attend.

6.5.2 The Insured agrees at the Insured's expense to give the Insurer and the Lawyer or Other Person all information, documents and assistance reasonably required and co-operate fully with the Insurer and the Lawyer or Other Person.

6.5.3 The Insured agrees to waive any claim for legal professional privilege or confidentiality to the extent only that the privilege or confidentiality would otherwise prevent the Lawyer from disclosing information to the Insurer. The Lawyer will keep the Insurer properly informed on all relevant matters.

6.6 Defending a Claim or Inquiry that the Insurer wants to settle

The Insured may defend any Claim or Inquiry which the Insurer believes should be settled, but the Insurer will not be liable for more than:

(a) the amount the Insurer would have been required to pay if it had been settled or resolved as the Insurer believed it could or should have been settled or resolved; and

(b) the Defence Costs or Legal Fees the Insurer has incurred up to the date the Insurer advises the Insured that the Claim or Inquiry should be settled; and

(c) the reasonable Legal Fees that the Insured incurs after the Insurer indicated to the Insured in writing that the Claim or Inquiry should be settled, only if the Insured successfully defends the Claim or Inquiry.

6.7 Appeals

6.7.1 If the Insured is dissatisfied with any decision by a court or other decision-making body and the Insured seeks to appeal against that decision, then the Insured must request the Insurer's consent prior to the appeal within seven (7) business days after the date of the decision, or such earlier period having regard to the time for any appeal.

6.7.2 The application must be in writing and must fully set out the reasons for bringing an appeal. The Insurer will inform the Insured in writing if the Insurer consents to the appeal.

6.7.3 If the Insurer does not consent to the bringing of an appeal, the Insured may conduct the appeal at the Insured's own expense.

6.7.4 If the Insurer decides to appeal against any decision made in respect of a Claim or Inquiry then the Insured must reasonably co-operate with the Insurer in bringing such an appeal.

6.8 Claims acceptance

The acceptance of a Claim, matter or request for indemnity by the Insurer under this Policy can be subsequently withdrawn if facts come to the Insurer's attention that trigger or satisfy Policy exclusion, or the Policy does not cover the Claim, matter or a request for indemnity.

7. Conditions

These conditions apply to the Policy unless otherwise stated.

7.1 Loss prevention

The Insured must not do anything recklessly or wilfully that might give rise to a Claim or Inquiry. The Insured must take all reasonable care to avoid or reduce the chance of any Claim or Inquiry. The Insured must not do, or fail to do anything which the Insured knows or should reasonably be expected to know will result in any Claim or Inquiry being made against the Insured.

7.2 Subrogation and other insurance

If the Insurer makes a payment under this Policy the Insurer will be subrogated to all the Insured's rights of contribution, indemnity or recovery without the need for consent of the Insured. The Insured agrees not to surrender any right to, or settle any claim for, contribution, indemnity or recovery without the Insurer's prior written consent.

The Insured must notify the Insurer in writing when making a Claim or a request for indemnity if the Insured has any other insurance policies or entitlement to indemnity which may also cover the Insured in respect of anything covered by this Policy.

To the extent allowed by law, the Insurer will not pay under this Policy any part of a liability to which the Insured is entitled to be indemnified under another policy of insurance.

7.3 Fraud

The Insurer may reject any fraudulent request for indemnity or any part of a request for indemnity that is fraudulent or is supported by fraudulent or exaggerated evidence. The Insurer may also recover from the Insured any payments that have been made by the Insurer to a third party based on the Insured's fraudulent request for indemnity.

7.4 Requirements for Insured Persons and contractors

7.4.1 The Insured must ensure during the Period of Insurance, that each Insured Person:

(a) holds the requisite qualifications, registration, authorisations, licences; and

(b) if the Insured Person is a Medical Practitioner they hold current professional indemnity insurance covering the types of Healthcare they provide.

7.4.2 The Insured must ensure at all times during the Period of Insurance, that any person contracted or engaged by the Insured who is a Medical Practitioner:

(a) holds the requisite qualifications, registration, authorisations, licences; and

(b) holds current professional indemnity insurance covering the types of Healthcare they provide.

7.4.3 The Insured must ensure during the Period of Insurance, that any contractor who is a healthcare professional (not including a Medical Practitioner):

(a) holds the requisite qualifications, registration, authorisations, licences; and

(b) holds current professional indemnity insurance covering the types of Healthcare they provide.

7.4.4 The Insured must maintain accurate records and obtain copies of such qualifications, registrations, authorisations, licences and insurances mentioned in clauses 7.4.1, 7.4.2 and 7.4.3 above during the Period of Insurance and retain these records and copies for at least seven years from the expiry date of this Policy.

7.5 Material change in risk

7.5.1 The Insured must notify the Insurer in writing within 30 days after the Insured becomes aware of any change that materially varies a matter relevant to the risk or alters the risk covered by this Policy.

7.5.2 Failure to notify the Insurer of any material change to risk may mean that the Insurer is not liable under this Policy to indemnify the Insured for a Claim. This notification includes, but is not limited to, the following matters:

(a) any merger between the Insured and another company or business, any acquisition by the Insured of another company or business, or if the Insured is acquired by another company or business;

(b) the establishment by the Insured of a subsidiary company or another branch office;

(c) addition of a new premises, or the extension or expansion of the business premises;

(d) the bankruptcy, administration, receivership, liquidation, appointment of a receiver or bankruptcy or winding-up proceedings that relate to the Insured;

(e) any material change in the nature of the business or of the Healthcare Services provided by the Insured;

(f) an increase by more than 10% of those declared in the proposal in relation to the number of:

(i) beds operated by the Insured;

(ii) Insured Persons;

(iii) contractors engaged by the Insured; or

(iv) Medical Practitioners engaged by the Insured.

(g) the cancellation or modification of, or failure to maintain, accreditation or a licence of any hospital, clinic or other establishment forming part of, or operated by the Insured.

7.5.3 Failure to notify the Insurer of the matters in clause 7.5.2 may mean that the Insurer is not liable under this Policy to indemnify the Insured for a Claim or Inquiry.

7.6 Severability and non-imputation

Where this Policy insures more than one party:

(a) any non-disclosure or misrepresentation (whether fraudulent or otherwise) by one party (collectively a 'failure') will not affect any other party insured under this Policy provided that:

(i) the failure was not made with any involvement or knowledge of the second mentioned party; and

(ii) as soon as practicable after the second mentioned party becomes aware of any such failure, the second mentioned party advises the Insurer in writing within the Period of Insurance of all the relevant circumstances of the failure; and

(b) this Policy operates, except in relation to limits, in the same manner as if there were a separate Policy of insurance covering each party.

7.7 Payment of Deductible

The following conditions apply to the payment of the Deductible set out in the Policy Schedule or in a clause in this Policy:

(a) the Insured shall bear the amount of the Deductible at the Insured's own risk;

(b) where the Insurer has paid all or part of any Deductible on the Insured's behalf the Insured must reimburse the Insurer all or any part of the Deductible the Insured owes the Insurer within 14 days from the date the Insurer requested payment from the Insured;

(c) in the event that the Insured fails to reimburse the Insurer in response to a request under (b) above the sum requested shall, at the expiration of 14 days after the request, become a debt due and payable to the Insurer; and

(d) in the event that the Insured fails to reimburse the Insurer in response to a request under (b) above, and if such failure leads to an increase in costs or liability, the Insurer's liability under the Policy shall not exceed the amount for which the Claim or matter could have been settled up to the date of the Insured's failure or refusal to reimburse all or part of the Deductible.

7.8 Payment of premium

The Insured will not be covered by this Policy if the Insured does not pay the premium for this Policy or for any earlier policy in full. It is a condition of this Policy that the Insured pay the current premium and any premium that remains outstanding from any prior policy.

7.9 Cancellation

The Insured may cancel this Policy at any time by notice in writing in which case the Insurer will refund the premium on a pro rata basis, less an administration charge of $250. If the Insured has notified a Claim, incident or matter or requested indemnity during the Period of Insurance there will be no pro rata refund.

The Insurer may cancel this Policy by giving the Insured seven (7) business days' notice in writing:

(a) if the Insured has not paid the premium within thirty (30) business days of the Period of Insurance commencing in full; or

(b) if the Insured is in breach of any of the conditions of this Policy; or

(c) for any other reason available to the Insurer under the *Insurance Contracts Act 1984* (Cth).

If the Insurer gives notice to cancel the Policy then the Insurer must give that notice to the Insured personally, or send it to the Insured by certified mail at the last address of which the Insured notified the Insurer. Unless the Insured proves otherwise, the Insured will be deemed to have received the notice when it would have arrived in the ordinary course of the post.

7.10 Medical records

The Insured must ensure that adequate standards of medical record keeping take place and that such records are kept safe and retained for the statutory periods required for such records.

7.11 Governing law

Any interpretation of this Policy relating to its construction, validity or operation shall be made in accordance with the laws of the Australian state or territory in which it is issued. The parties to this Policy will submit to the exclusive jurisdiction of the courts of that state or territory in which the Policy is issued.

A reference to a statute, regulation, code or other law or a provision of any of them or a professional body or organisation includes any amendment or replacement of it and/or another regulation or other statutory instrument made under it, or made under it as amended or replaced.

7.12 Currency

All premiums, limits, retentions and other amounts under this Policy are expressed and payable in Australian currency.

7.13 GST

The premium is exclusive of GST. The GST component will be reflected in the Policy Schedule. The limit of indemnity and sub-limit of indemnity are GST exclusive.

8. Definitions

8.1 Claim

A demand, an assertion of a right or an intimation of an intention made by a third party, which is first brought against the Insured and notified to the Insurer in writing during the Period of Insurance, arising directly in connection with Healthcare Services provided by or on behalf of the Insured.

For the purpose of cover under section 3, Claim also means a request for Legal Fees.

8.2 Deductible

The Deductible is the sum specified in the Policy Schedule which the Insured must pay before there is any indemnity under this Policy. The limit of indemnity and the sub-limit of indemnity only apply after the Deductible has been exhausted.

8.3 Defence Costs

Legal costs and disbursements that the Insurer incurs or the Insured incurs with the Insurer's prior written consent in defending a Claim that is covered by this Policy.

8.4 Documents

A document of any nature whether written, printed or reproduced by any method including computer records or electronic data in the possession of or control of the Insured but does not include money or negotiable instruments.

8.5 Healthcare

Any treatment, advice, service or goods provided by, or on behalf of the Insured, in connection with Healthcare Services in respect of the physical or mental health of a patient under the Insured's care.

8.6 Healthcare Incident

Any act, error or omission which adversely affects a patient, or an unexpected complication or injury occurring to a patient under the Insured's care, as a result of, or during the provision of Healthcare Services.

8.7 Healthcare Services

The provision of Healthcare Services by or on behalf of the Insured as described in the Policy Schedule. For clarification it does not include any other Healthcare Services that are not listed on the Policy Schedule.

8.8 Inquiry

Defending a prosecution, or responding to an inquest, investigation, audit or complaint, brought by a registration board, tribunal, complaints unit, criminal court or coronial court, or by a statutory body empowered by law, but does not include any internal inquiry or proceeding by the Insured.

8.9 Insured

Means:

(a) the legal entity named in the Policy Schedule and any subsidiary of the legal entity; and

(b) any Insured Person.

8.10 Insured Person

The following individuals to the extent that they are not engaged in the provision of services relating to Healthcare in their capacity as a Medical Practitioner:

(a) a past, present or future principal, partner, director, officer, employee, volunteer or student; or

(b) a past, present or future member of the Insured's ethics or advisory committee or other committee the Insured is legally required to have.

Also includes the representatives of the estates of persons listed in (a) and (b) above.

8.11 Insurer

Avant Insurance Limited ABN 82 003 707 471 and AFS Licence 238765.

8.12 Known Circumstance

Any fact, situation or circumstance which might result in someone making a Claim or allegation against the Insured in respect of a liability, which might be covered by this Policy and either:

(a) the Insured knew of such a fact, situation or circumstance before this Policy commenced; or

(b) a reasonable person in the Insured's position before this Policy commenced would have considered that such a fact, situation or circumstance might result in such a Claim or allegation.

8.13 Lawyer

The legal practitioner engaged by the Insurer to provide services to it.

8.14 Legal Fees

The necessary and reasonable legal costs of investigating, defending or resolving any legal proceedings or Inquiry made against the Insured and covered by this Policy.

8.15 Medical Practitioner

An individual registered or licensed as a Medical Practitioner in accordance with the laws of the Commonwealth; or state or territory laws of Australia that provides for the registration or licensing of Medical Practitioners.

8.16 Other Person

A person including, but not limited to an accountant, an actuary, an expert witness, a witness as to fact, or any Other Person required to assist the Insurer in any matter covered by this Policy.

8.17 Period of Insurance

Means the Period of Insurance specified in the Policy Schedule.

8.18 Policy

Is comprised of:

(a) the terms, conditions, definitions and exclusions set out in this Policy and the current Policy Schedule;

(b) any endorsement attached to and forming part of this document;

(c) the application form; and

(d) any offer of insurance or renewal offer made to the Insured.

8.19 Policy Schedule

The current Policy Schedule to the Policy.

8.20 Retroactive Date

The Retroactive Date specified in the Policy Schedule. The Retroactive Date is the date on or after which an incident must have occurred to constitute a valid Claim under the Policy.

Avant Insurance Limited ABN 82 003 707 471 AFSL 238765

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