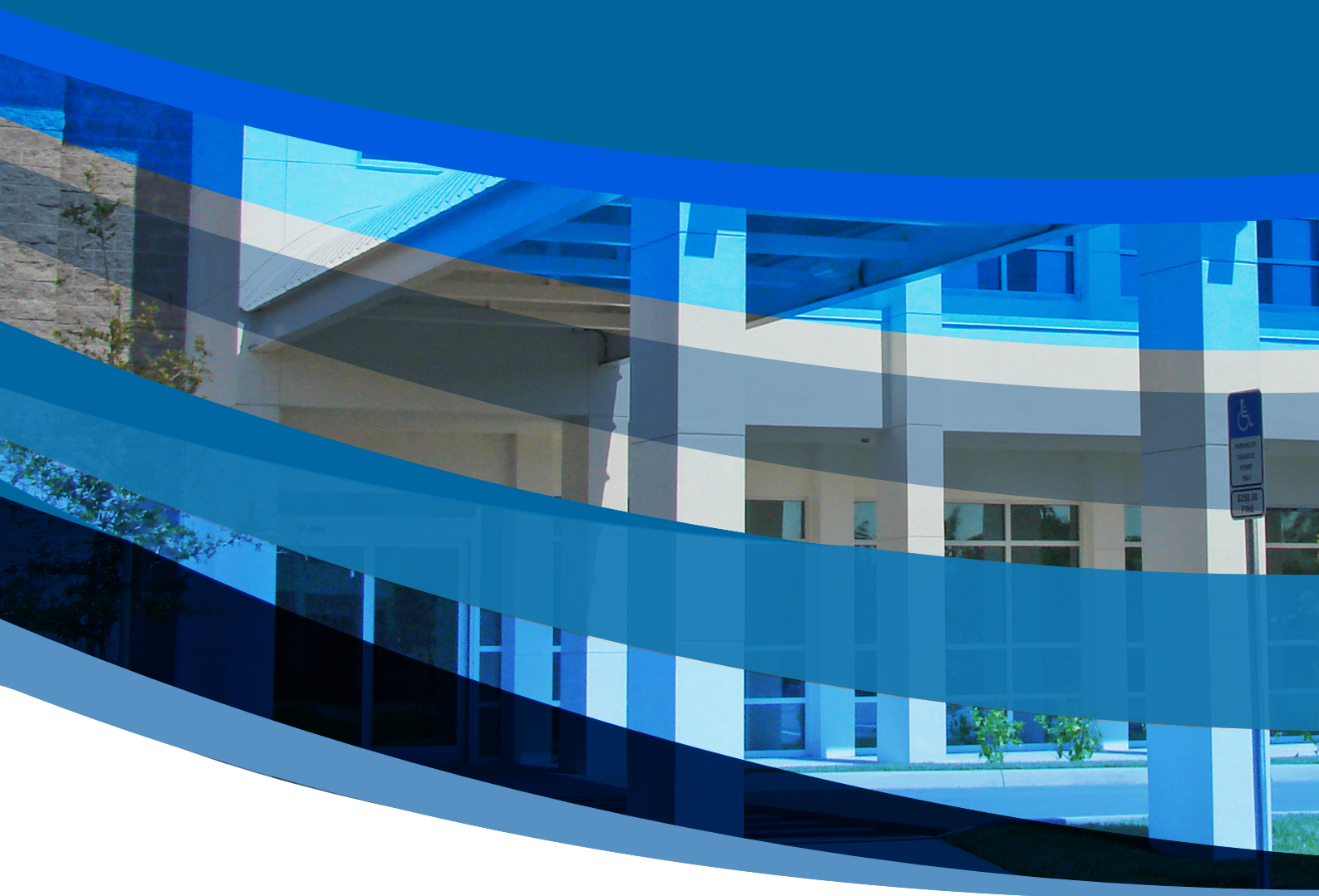


Private hospital

Public Liability (Claims made) Insurance Policy



Avant Insurance

Avant Insurance Limited ABN 82 003 707 471 AFSL 238765

Preamble

In consideration of payment by **the insured** of the **premium**, **the insurer** agrees to provide insurance to **the insured** in accordance with the definitions, terms, conditions, **limit(s) of indemnity**, **sub-limits of indemnity**, **deductibles**, exclusions and endorsements, if any, of this **policy**.

The **policy** is made up of this document, the **policy schedule**, the application form and any endorsements that are made to the **policy**.

How much will the insurer pay?

- (a) Unless stated otherwise in this **policy**, the most **the insurer** will pay for any **occurrence** under this **policy** is the **limit of indemnity**.
- (b) Any **sub-limit of indemnity** that applies to cover provided by this **policy** is the most **the insurer** will pay for any **occurrence**; and in such cases the **sub-limit of indemnity** applies in place of the **limit of indemnity**.
- (c) The **limit of indemnity** and **sub-limit of indemnity** is exclusive of the **deductible**.
- (d) The **limit of indemnity** and **sub-limit of indemnity** are exclusive of **defence costs**; but when the **limit of indemnity** or **sub-limit of indemnity** has been exhausted by payment of compensation and/or costs awarded against **the insured** then no further **defence costs** will be payable further to clause 1.2.
- (e) Subject to (d) above, nothing in this **policy** operates to increase the **limit of indemnity** or **sub-limit of indemnity** under this **policy**.

1. Insuring clause

1.1 Compensation & costs awarded against the insured

The insurer will indemnify or pay on behalf of **the insured** all sums above the **deductible**, which **the insured** becomes legally liable to pay by way of compensation for a **claim** (including all costs awarded against **the insured**) in respect of **personal injury** or **property damage** first made against **the insured** during the **period of insurance** as a result of an **occurrence** after the **retroactive date** which is directly connected with the **business**.

1.2. Defence costs

If **the insurer** agrees to indemnify **the insured** under this **policy**, **the insurer** will pay the **defence costs** incurred with the prior consent of **the insurer**. **Defence costs** will be paid in addition to the **limit of indemnity** or **sub-limit of indemnity**, provided **the insurer** shall not pay any **defence costs** after the **limit of indemnity** or **sub-limit of indemnity** has been exhausted by payment of compensation and/or costs awarded against **the insured**.

2. Automatic extensions

These automatic extensions are subject to all 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. Property in care, custody and control

The insurer will indemnify or pay on behalf of **the insured**, all sums in relation to **claims** made in the **period of insurance** which **the insured** becomes legally liable to pay as compensation as a result of physical loss or damage to:

- (a) premises (including the landlord's fixtures and fittings) which are tenanted by **the insured**;
- (b) premises (including the contents thereof) not owned, leased or rented to **the insured**, but temporarily occupied by **the insured**;
- (c) vehicles not owned or belonging to **the insured** while in **the insured's** car park, unless the car park is operated for reward;
- (d) directors, **employees**, patients and visitors personal effects; and
- (e) other property that is not owned by **the insured** and that is in **the insured's** temporary care, custody and legal control subject to a **sub-limit of indemnity** of \$100,000 for any one **occurrence** and in the aggregate in the **period of insurance**.

Clause 2.1 is subject to the following:

- (a) there is no indemnity granted for liability in respect of damage of any property **the insured** has been or is working on; and
- (b) there is no indemnity granted for any liability arising from **the insured's** failure to effect material damage insurance to the premises, property, contents or goods.

2.2. Food and drink supplied in connection with the business

The insurer will indemnify or pay on behalf of **the insured**, all sums which **the insured** becomes legally liable to pay as compensation in respect of **personal injury** in relation to **claims** made in the **period of insurance** as a result of:

- (a) an **occurrence** in relation to the supply of food and drink in connection with the **business**;
- (b) provided **the insured** was not aware of the defect in the food and drink;

provided **the insurer's** total aggregate liability during the **period of insurance** is the **limit of indemnity**.

3. Exclusions

The insurer does not provide indemnity to the insured under this policy for any liability, loss, damage or expense of whatsoever nature directly or indirectly caused by, resulting from, happening through or in connection with:

3.1. Aircraft and watercraft

the ownership or use by the insured of aircraft or watercraft.

3.2. Asbestos

asbestos in whatever form or quantity or any materials containing asbestos in whatever form or quantity, including any aggravation or contribution to liability or injury loss or damage.

3.3. Contractual liability

obligations assumed by contract, waiver, guarantee or warranty, unless liability would have otherwise attached at law or the insurer has agreed in writing to provide such cover and such agreement is specified in the policy schedule.

3.4. Criminal or dishonest acts

any actual or alleged fraudulent, criminal, wilful, malicious or dishonest act, error omission of the insured, or at the insured's direction.

3.5. Deductible

the deductible stated in the policy schedule.

3.6. Defamation, libel & slander defamation, libel or slander, which is:

- (a) made prior to the period of insurance; or
- (b) made by the insured or at the insured's direction with knowledge of its falsity; or
- (c) related to advertising, broadcasting, telecasting or publishing conducted by the insured or on the insured's behalf; or
- (d) defamatory comments made by one employee about another employee.

3.7. Fines, penalties or punitive damages

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

3.8. Known circumstance

any:

- (a) occurrence that occurred prior to the retroactive date; or
- (b) any occurrence which should have been notified to the insurer in the application form or otherwise in accordance with the duty of disclosure; or
- (c) facts or circumstances which the insured knew about or a reasonable person in the insured's position would have thought my result in a

claim being made prior to the commencement of the policy.

3.9. Not in connection with the business

any occurrence not directly connected with the business.

3.10. Outside jurisdictional or territorial limits

any occurrence that;

- (a) took place outside of territorial limits of the Commonwealth of Australia; or
- (b) is or was the subject of court or tribunal proceedings outside of the Commonwealth of Australia; or
- (c) is or was the subject of proceedings before any court or tribunal in Australia which is or was applying a law of a country other than the Commonwealth of Australia, or a state or territory of Australia.

3.11. Pollution

pollution, but this exclusion does not apply to an accidental, sudden, unintended or unexpected pollution occurrence which takes place in its entirety at a specific time and place and does not arise from a gradually operating cause.

3.12. Product liability

goods and products;

- (a) manufacture, distribution or sale, other than as provided by clause 2.2; or
- (b) services or advice provided in relation to the research, design, development, manufacture, distribution or sale of such goods or products or potential goods or products.

3.13. Professional services

the rendering of professional services or failure to render professional services by the insured or any contractor of the insured.

3.14. Property in care, custody or control

any premises, property, contents or goods owned, hired, leased or rented to the insured or otherwise in the insured's physical or legal control, except as provided by clause 2.1.

3.15. Radioactive materials the following:

- (a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices; or
- (b) the use, handling or transportation of radioactive materials; or
- (c) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

3.16. Sexual molestation

any actual or alleged sexual assault, attempted sexual assault, abuse, molestation or attempted molestation, or sexually discrimination or sexual harassment or inappropriate behaviour of a sexual nature.

3.17. Terrorism

any act of terrorism, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage or expense.

For the purpose of this exclusion, an act of terrorism includes 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.

3.18. Tobacco

the inhalation or ingestion of tobacco or tobacco smoke or products.

3.19. Vehicles

the ownership, possession, operation or use by **the insured** of vehicles where the vehicle is required by law to be registered or required by law to have compulsory liability insurance in force. However, this exclusion does not apply to:

- (a) **personal injury** for which no indemnity is available to **the insured**, provided that **the insured** complied with all obligations relating to vehicle legislation and obligations to insure; or
- (b) **property damage** relating to the loading and unloading of goods from vehicles; or
- (c) **property damage** caused by any vehicle which is designed primarily for lowering, lifting, loading or unloading within the confines of **the insured's** premises.

3.20. War

any of the following:

- (a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war; or
- (b) mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power.

3.21. Workers compensation and employment liability

any **personal injury** to any person:

- (a) incurred, contracted or occurring while under a contract of service or apprenticeship with **the insured**; or
- (b) for any breach of any obligation owed by **the insured** as an employer to any **employee** or to any persons included in the definition of **employee** or deemed to be an **employee** under any workers' compensation law or scheme and or similar legislation or arrangement; or
- (c) any **claim** in respect of which compensation is available under any workers' compensation law or scheme and or similar legislation or arrangement or would have been available had **the insured** complied law, scheme and or similar legislation or arrangement .

This exclusion shall not apply to any **claim** arising out of any bodily **personal injury** of an **employee** while a patient of **the insured** which is caused by any negligent act, error or omission of **the insured**, not involving the provision of medical treatment by a **healthcare professional**.

4. Conduct of claims

- 4.1. **The insured** agrees that **the insurer** has the right of conduct of all **claims** or matters against **the insured** and agrees that **the insurer** is able to:
 - (a) defend or settle the **claim** or matter as **the insurer** thinks fit; and
 - (b) to take this step above in **the insured's** name.
- 4.2. **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 agent for **the insured**.
- 4.3. **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 **other person**.
- 4.4. **The insured** must cooperate with **the insurer**, **the lawyer** and **other person** in resolving or defending the matter in a satisfactory, timely and cost effective way. In particular **the insured** must at its own expense:
 - (a) provide a full and truthful account of the relevant facts;

- (b) provide any relevant information or documents in **the insured's** possession or obtain any other relevant information or documents that **the insured** can;
 - (c) execute any documents that they are reasonably asked to do so;
 - (d) make available its **employees**, contractors and officers; and
 - (e) attend such court hearings, meetings and conferences as reasonably required for this purpose at **the insured's** expense.
- 4.5. The following conditions apply to the payment of the **deductible** set out in the **policy schedule**:
- (a) **the insured** shall bear and pay the amount of the **deductible** at **the insured's** own risk in respect of the **claim** or matter;
 - (b) where **the insurer** has paid all or part of any **deductible** in respect of a **claim** or matter on **the insured's** behalf **the insured** shall within 14 days of a request from **the insurer** for reimbursement of the amount **the insurer** has paid, reimburse **the insurer** for that amount;
 - (c) in the event that **the insured** fails to reimburse **the insurer** in response to a request under (b) above
 - (i) the sum requested shall, at the expiration of 14 days after the request, become a debt due and payable to **the insurer**; and
 - (ii) if such failure leads to an increase in the sum required to settle a **claim** or matter and/or an increase in **defence costs**, **the insurer's** liability under the **policy** shall not extend to that increase in the amount required to settle the **claim** or matter and/or any increase in **defence costs**.

5. General conditions

5.1. Notification

- 5.1.1. **The insured** must give written notice to **the insurer** of any **claim** or **occurrence** as soon as practicable or any **personal injury** or **property damage** which may give rise to a **claim** against **the insured**.
- 5.1.2. **The insured** must report to **the insurer** immediately any **claim** or **occurrence** that:
- (a) involves a brain injury with significant cognitive, behavioural or physical residual damage; or
 - (b) involves quadriplegia or paraplegia; or
 - (c) involves a fatality or a diminished life expectancy of a patient.

- 5.1.3. **The insured** on receiving any letter of **claim**, letter of demand, statement of claim or any other document connected in any way with litigation, will immediately provide such a document to **the insurer**.
- 5.1.4. On a quarterly basis, **the insured** shall furnish **the insurer** with a summary of all **occurrences** that may result in a **claim** under this **policy**, details to be included are:
- (a) incident number;
 - (b) location of incident/business unit;
 - (c) incident date;
 - (d) date of notification to the business unit/ date of notification to **the insured's** claims handling unit;
 - (e) description of the circumstances including the names and titles of the persons involved and the type of injury or damage;
 - (f) name of claimant/ claimants;
 - (g) the amount of legal costs incurred by **the insured** (if any); and
 - (h) any other information which may be reasonably requested by **the insurer**.

5.2. Defending a matter that the insurer wants to settle

The insured may defend any **claim** or matter 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;
- (b) the **defence costs** incurred up to the date **the insurer** advises **the insured** that the matter should be settled; and
- (c) the legal fees that **the insured** incurs after **the insurer** indicated to **the insured** in writing that the matter should be settled, only if **the insured** successfully defends the **claim** or matter; less any of **the insured's** legal costs recovered from the other party.

5.3. Appeals

- 5.3.1. If **the insured** is dissatisfied with any decision made in respect of a **claim** or matter by a court or other decision-making body and **the insured** wishes to appeal against that decision, then **the insured** must seek **the insurer's** consent prior to the appeal within seven (7) business days after the date of the decision sought to be appealed against.
- 5.3.2. 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.

5.3.3. If **the insurer** does not consent to the bringing of an appeal, **the insured** may conduct the appeal at **the insured's** own expense.

5.3.4. If **the insured** appeals from a decision in a **claim** or matter without **the insurer's** consent:

- (a) **the insurer** will not pay any further amount than **the insurer** has already paid or been ordered by a court or other decision-making body to pay, whether the appeal is successful or not; and
- (b) if the appeal is successful and **the insured** is, entitled to a refund of any money that **the insurer** paid to the claimant or other party, then **the insured** must pay **the insurer** that amount after deducting the costs of the appeal incurred by **the insured**.

5.4 Subrogation and other insurance

5.4.1. If **the insurer** makes a payment under this **policy** **the insurer** is subrogated to **the insured's** rights of contribution, recovery and indemnity without the need for **the insured's** consent. **The insured** must always act to secure and preserve all rights of recovery, contribution and indemnity.

5.4.2. If **the insured** makes a claim for indemnity under this **policy**, then at the time of making such a claim **the insured**: must tell **the insurer** in writing about any other insurance or entitlement to indemnity which also covers **the insured** for the same or similar circumstances of the **claim**.

5.5. Material change in risk

5.5.1. **The insured** must notify **the insurer** in writing as soon as reasonably practicable (but within 30 days) after **the insured** becomes aware of any change that:

- (a) materially varies a matter relevant to the risk; or
- (b) alters the risk covered by this **policy**.

5.5.2. 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** or matter. This notification required 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 services provided by **the insured** in relation to the **business**;
- (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) **employees** of **the insured**;
 - (iii) contractors engaged by **the insured**;
- (g) the cancellation or modification of, or failure to maintain, accreditation with the Australian council of healthcare standards (or other similar body) of any hospital, clinic or other establishment forming part of, or operated by, the **business**.

5.6. Severability and non-imputation

Where this **policy** insures more than one party:

- (a) any non disclosure or misrepresentation, whether fraudulent or otherwise, any breach of term or condition of the **policy**, or any fraud or other act, error or omission or default 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 becoming aware of any such failure, the second mentioned party advises **the insurer** in writing within the **period of insurance** of all of 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.

5.7. Cross liability

Where **the insured** consists of more than one party each of the parties shall be considered as a separate legal entity and the term "the insured" shall apply to each party as if a separate **policy** had been issued to each party but nothing contained in this condition shall result in an increase of the **limit of indemnity** in respect of any **occurrence** or **period of insurance**.

5.8. Cancellation

5.8.1. **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 two (2) months **premium**. If **the insured** has notified a **claim** or matter during the **period of insurance** there will be no pro rata refund.

5.8.2. **The insurer** may cancel this **policy** by giving **the insured** the written notice required by law:

- (a) if **the insured** has not paid the **premium** within thirty (30) days of the **period of insurance** commencing; or
- (b) in the event that **the insured** is paying via instalments and an instalment remains unpaid for more than one (1) month; or
- (c) if **the insured** is in breach of any of the conditions of this **policy**; or
- (d) for any other reason available to **the insurer** under the *Insurance Contracts Act 1984* (Cth).

5.8.3. If **the insurer** gives notice to cancel the **policy** then **the insurer** must give that notice to **the insured** by ordinary 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 at **the insured's** last address notified to **the insurer**.

5.9. 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. It is a condition of this **policy** that **the insured** pay the current **premium** and any premium that remains outstanding from any prior year's policy.

5.10. Loss prevention and mitigation

The insured must:

- (a) use all reasonable measures to:
 - (i) avoid or reduce the chance of any **personal injury** or **property damage**; and
 - (ii) reduce **the insured's** liability arising from an **occurrence** or matter; and
- (b) not pursue any course of action which **the insured** knows or ought reasonably know will result in a **claim** or matter being made against **the insured**.

5.11. 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 where the **policy** is issued.

5.12. Currency

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

5.13. GST

5.13.1. The **premium** is exclusive of GST. The GST component will be reflected in the **policy schedule**.

5.13.2. The **limit of indemnity** and **sub-limit of indemnity** are GST exclusive.

6. Policy definitions

In this policy:

Defined term	Meaning
business	The business as specified in the policy schedule.
claim	A demand for, or an assertion of a right to compensation or damages, or an intimation of an intention to seek compensation or damages, which is first made against the insured and notified to the insurer in writing during the period of insurance and is directly connected with an occurrence.
deductible	The deductible is the sum specified in the policy schedule which the insured must pay before there is any liability under this policy. The limit of indemnity and the sub-limit of indemnity only apply after the deductible has been paid by the insured.
defence costs	Legal costs and disbursements that the insurer incurs, including the cost of the lawyer or other person, which: are reasonably and necessarily incurred by in the investigation, defence or settlement of a claim or matter.
duty of disclosure	Has the same meaning given to that expression in the application form.
employee	The following are employees: (a) a principal, partner, director, officer, employee, volunteer, or student; or (b) a member of the insured's ethics or advisory committee or other committee the insured is legally required to have; or (c) the representatives of the estates of persons listed above in (a) and (b) above.
the insured	The legal entity named in the schedule and any: (a) subsidiary of the insured; or (b) any other separate legal entity, specified in the policy schedule as the insured; or (c) an employee of the insured the legal entity mentioned in the schedule or any person referred to in (a) or (b) above.
the insurer	Avant Insurance Limited ABN 82 003 707 471 and AFS Licence 238765.
healthcare	Any care, treatment, advice, service or goods provided by or on behalf of the insured in connection with the business in respect of the physical or mental health of a patient under the insured's care.
healthcare professional	An individual who provides healthcare and is (a) a legally qualified medical, dental, or healthcare practitioner registered in accordance with the laws of the Commonwealth, a state or a territory of Australia, or (b) any healthcare professional who is practising in a recognised vocation in Australia.
the lawyer	The legal practitioner or practitioners engaged by Avant Insurance to provide legal services to it.
limit of indemnity	The maximum sum that is payable by the insurer as set out in the policy schedule. The limit of indemnity does not apply to a type of liability subject to a sub-limit of indemnity.
occurrence	An event, or series of events, which results in personal injury or property damage which was unexpected and unintended by the insured. Events which arise from, or are attributable to, a single event, including continuous or repeated exposure, or related single events will be treated under this policy as one occurrence.
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.
period of insurance	The period of insurance specified in the policy schedule.

personal injury	Bodily injury, death, illness, disability, shock, fright, mental anguish, mental injury of any person. Also includes: (a) false arrest, wrongful detention, false imprisonment, wrongful eviction or malicious prosecution; (b) assault and battery not committed by or at the insured's direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property; (c) libel, slander, defamation of character or invasion of right of privacy.
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, either at the commencement of the policy or during the period of insurance; and (c) the application form.
policy schedule	The current policy schedule to the policy from time to time.
pollution	The discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acid, alkalis, toxic chemicals, liquids or gases waste material or other irritants contaminants or pollutants into or upon land, the atmosphere or any water course or body of water.
premium	The premium set out in the policy schedule.
product	Anything (including any component, packaging or container of or for such thing) after it has ceased to be in the insured's possession or control which has been manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by the insured in the course of your business. The term includes anything (including any component, packaging or container of or for such thing) which by operation of a law of the Commonwealth of Australia the insured is deemed to have manufactured.
property damage	Physical damage, loss, use or destruction to tangible property including any resulting loss from that property, provided it resulted from an occurrence.
retroactive date	The retroactive date specified in the policy schedule. The retroactive date is the date on or after which an occurrence must have occurred to constitute a valid claim under the policy.
sub-limit of indemnity	The sub-limit of indemnity comprises a lesser limit of cover than the limit of indemnity for a designated type of liability, as specified in the policy schedule. Where a sub-limit of indemnity applies it replaces the limit of indemnity.

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