Introduction

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The Financial Services Guide applies to financial services provided on or after the date of issue 11 May 2016.

The Product Disclosure Statement and Policy wording applies to policies commencing on or after 1 July 2016.
SECTION 1: Financial Services Guide

This Financial Services Guide (FSG) provides you with information about MDA National Insurance Pty Ltd (MDA National Insurance) to help you decide whether to use the financial services we provide.

It also explains:

• how MDA National Insurance, our staff and other parties are remunerated in relation to those services;
• other documents you may receive in relation to the provision of our financial products and services;
• how we safeguard your personal information; and
• details of our internal and external complaints handling procedures should you need them.

Who are we?

MDA National Insurance Pty Ltd (ABN 56 058 271 417) is a general insurer authorised by the Australian Prudential Regulation Authority. We hold an Australian Financial Services Licence Number 238073 and are authorised to provide financial product advice in relation to, and deal in, general insurance products. We are a wholly owned subsidiary of MDA National Limited ABN 67 055 801 771.

Who do we act for?

MDA National Insurance acts on its own behalf as an insurer. We do not act on your behalf.

What financial services and products do we offer?

We currently offer the following professional indemnity insurance products:

• Professional Indemnity Insurance Policy
• Practice Indemnity Policy
• Dental Indemnity Policy
• Run-off under the Run-off Cover Scheme (ROCS)

Our Professional Indemnity Insurance Policy is only available to Members of MDA National, with limited exceptions. MDA National Insurance does not provide financial services and products from related or non-related product providers.
How can you do business with us?
You can obtain the financial services we offer through trained employees of MDA National Insurance.

They can help you apply for our products and may also give you general financial product advice in relation to these products. When giving general financial product advice our employees will not take into account your personal objectives, financial situation and needs. We may give personal financial product advice in limited situations.

You can give us instructions by telephone, in writing, in person, by email or via our website. In some cases, however, before we provide our products we may require written confirmation and the return of specific documents and completed forms.

How are we remunerated for the services we provide?
We charge a premium for our financial products.

If you choose to finance the cost of our products through a nominated finance corporation, where applicable we may be paid a referral fee of 1% of the amount financed by you.

The Commonwealth Government pays us an administration fee to reimburse the costs of administering the Premium Support Scheme (PSS) and the ROCS. These fees may be based on the number of policyholders and/or Members and are not based on any premium amount. No fee paid to us relating to the PSS or ROCS is deducted out of premiums or any monies paid by policyholders.

How are our employees remunerated for services provided?
The employees of MDA National Insurance who provide our services to you do not receive specific payments or commissions for giving that service. These employees receive salaries.

When and how do we pay other parties?
If you acquire our financial products through an approved broker, we will pay that broker a commission of up to 15% of the total premium and subscription paid by you. We may pay referral fees to third parties who refer business to us as a lump sum amount or a percentage of the total premium. We receive the total premium paid by you and pay commissions and referral fees in a separate transaction back to the broker or third party.
How do we safeguard your personal information?

The protection of your personal information is important to us. We collect your personal information to ensure that we are able to provide you with appropriate products and services. We collect, handle, store and disclose personal and sensitive information in order to:

- decide whether to issue a policy;
- determine the terms and conditions of the policy;
- analyse data;
- handle claims;
- meet our legal obligations;
- administer Government Schemes; and
- provide our products to you and improve the delivery of our products and services.

As part of our commitment to client service and the protection of client confidentiality we have adopted the Australian Privacy Principles set out in the Privacy Act 1988 (Cth) as amended. You can download our Privacy Policy from our website at mdanational.com.au or contact our Member Services team on 1800 011 255 to obtain a copy.

Marketing information

We are committed to providing you with access to leading products and services. From time to time we may provide you with information on other MDA National Insurance or third party products or services that may be of interest to you. We may also disclose your personal information on a confidential basis to our related entities and to the MDA National Group so that they can also offer you products and services.

If you do not wish to receive this information please contact Member Services on 1800 011 255 or write to us at any of the addresses set out on the back of this document.

What to do if you want to make a complaint

We are committed to dealing openly with all of our clients and we will endeavour to resolve any complaint quickly, efficiently and fairly. We view complaint resolution as an important part of our continuous improvement process.

A complaint is an expression of dissatisfaction made to us, relating to our products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
Internal dispute resolution

In our experience, most issues can be resolved with a quick phone call or email to one of our staff.

If you are not satisfied with the response to your complaint or do not take up a matter directly with staff, please contact our Complaints Officer by:

Phone: 1800 034 466 (Freecall)
Fax: (08) 9415 1492
Email: complaintsofficer@mdanational.com.au
In writing: PO Box 445
WEST PERTH WA 6872

We will respond to you with a decision within 15 business days. If you are satisfied with our response, the matter will be considered resolved. If you are not satisfied with our response and wish to pursue the matter further you may wish to refer your complaint to the external dispute resolution scheme to which we belong.

External dispute resolution

If you are not satisfied with the outcome of our internal dispute resolution process, you can refer the dispute to the Financial Ombudsman Service Limited (FOS). The FOS is an independent and impartial national body established to handle enquiries and complaints and to resolve disputes between consumers and their financial services provider. Their service is free to consumers.

The FOS will review a complaint by you or an insured person only if you or the insured person have first gone through our internal complaints and dispute resolution process and the matter to which the complaint relates is within the FOS’ Terms of Reference. Please note that the FOS is not able to consider matters relating to Membership of MDA National.

For more information about the FOS and the types of matters it can resolve, visit its website at fos.org.au or contact our Complaints Officer. Online dispute forms are available on the FOS website.

You can contact the FOS by:

Phone: 1300 780 808 (local call fee applies)
In writing: GPO Box 3
MELBOURNE VIC 3001

Further information and updates

This FSG is issued 11 May 2016 and applies to financial services provided on or after that date. Please check our website for updates.
SECTION 2: Product Disclosure Statement

Your MDA National Insurance Important Information

This Product Disclosure Statement (PDS) is designed to help you make an informed decision about acquiring the Professional Indemnity Insurance Policy (Policy) underwritten by MDA National Insurance Pty Ltd (MDA National Insurance) ABN 56 058 271 417, AFS Licence Number 238073. You can contact us at any of the addresses shown on the back of this booklet.

It is important that you carefully read all of the information in this PDS, including the terms and conditions, exclusions and defined terms of the standard Policy wording in Section 3. If a Policy is issued to you, you should also read the Certificate of Insurance and any endorsements issued in conjunction with the Policy wording.

Any financial product advice in this document is of a general nature only and does not take into account your particular circumstances.

Information in this PDS may need to be updated from time to time. You can obtain a copy of any updated information by contacting us. If there is a material change to anything that generally affects the Policy, we may provide all policyholders with a new or supplementary PDS.

Updates will also be available on our website mdanational.com.au.

This PDS is issued on 11 May 2016 and applies to policies commencing on or after 1 July 2016.

Applying for Professional Indemnity Insurance

You must fill out a proposal to apply for this insurance. In the case of renewal, you must confirm that your details are correct and that you have disclosed to us all the information relevant to your risk.

A proposal form is included in the application pack or is available by calling 1800 011 255 or visiting the Download Centre of our website mdanational.com.au.
Your duty of disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms. You have this duty until we agree to insure you. You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

• reduces the risk we insure you for; or
• is common knowledge; or
• we know or should know as an insurer; or
• we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both. If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

What makes up the insurance contract?

The insurance contract is made up of:

• the Certificate of Insurance issued to you;
• the Policy wording included in this Professional Indemnity Insurance Policy booklet;
• any Endorsement to the Policy Wording in relation to this Professional Indemnity Insurance Policy booklet that is current during the period of insurance; and
• any endorsement issued to you.

You must read all of these documents carefully. They should be kept in a secure place.
What you are insured for

The Professional Indemnity Insurance Policy is a contract of insurance. The Policy is available to both medical practitioners and medical students, although some covers apply only to medical practitioners. The following is a summary of the insurance and does not form part of the contract of insurance and does not refer to exclusions or other terms and conditions that may reduce or avoid the cover. All of the features, terms and conditions of this insurance are set out in the Policy wording (Section 3 of this document).

Medical practitioners and students

The Policy insures you and your estate for civil liability claims arising:

- directly out of your provision of healthcare services including Good Samaritan acts (clauses 1 and 2);
- out of your unintended breach of privacy legislation (clause 3);
- out of you reporting an incident or registered healthcare professional to a hospital, area health authority or professional body, or participating in the examination of such an incident or registered healthcare professional (clause 4).

The Policy insures legal costs:

- incurred by us on your behalf for the defence of a civil liability claim covered under the Policy (clause 5);
- incurred by us on your behalf for assisting you in an investigation by a professional registration board or professional services review committee (clause 6(i));
- incurred by us on your behalf for assisting you in an inquiry arising from the provision of healthcare services by you, including an investigative proceeding or hearing by or on behalf of a professional body, health services authority, medical tribunal, Royal Commission, Coroner’s Court, criminal court, health or medical benefits fund, or the Australian Information Commissioner or Anti-Discrimination Board (or equivalent) or, if you are a medical student, by or on behalf of a university that you attend (clause 6(ii));
- of a professional or administrative body which you are ordered to pay as a result of an investigation or inquiry (clauses 6(i) and 6(ii));
- for the successful defence of a claim, criminal proceeding, investigation or inquiry which arises out of alleged criminal conduct or sexual misconduct by you against a patient arising directly out of your provision of healthcare services to the patient (clause 7).

The Policy also provides a payment to you if you are first diagnosed during the period of insurance as having acquired HIV, Hepatitis B, Hepatitis C, extremely drug-resistant tuberculosis (XDRTB), multi-drug-resistant tuberculosis (MDRTB) or New Delhi Metallo enzyme enterococci and as a result of contracting such a disease have permanently ceased or substantially altered your medical practice or in the case of a medical student have ceased your medical studies. This benefit is payable only once and only for one communicable disease (clause 8).
Medical practitioners only

If you are a medical practitioner (but not if you are a medical student), the Policy also insures you and your estate for civil liability claims:

- against a practice entity controlled by you but only when the claim arises directly in connection with the provision of healthcare services by you (clause 9); and
- out of your provision of healthcare services as part of your involvement in a clinical trial or research project (but not in relation to you as designer or acting as an administrator or a sponsor of the trial or project) (clause 10).

If you are a medical practitioner (but not if you are a medical student), the Policy also insures legal costs incurred by you with our consent or by us on your behalf in:

- seeking an Apprehended Violence Order where there is a threat to the personal safety of you or your immediate family related to the provision of healthcare services by you (clause 11);
- defending alleged breaches of the *Competition and Consumer Act 2010* (Cth), the *Trade Practices Act 1974* (Cth) or equivalent State or Territory fair trading legislation arising directly out of the provision of healthcare services by you (clause 12);
- certain employment disputes (clause 13);
- pursuing certain claims of lack of procedural fairness in relation to a decision to suspend or revoke mid-term your credentialing with a hospital or health service (clause 13); and
- pursuing or defending an internal complaint or appeal arising directly out of your involvement with a training program approved by a medical college (clause 14).

Finally, if you are a medical practitioner (but not if you are a medical student), the Policy indemnifies you for the reasonable cost of replacement or restoration of certain lost or damaged documents (clause 15).

A claims made Policy

The Professional Indemnity Insurance Policy is a claims made contract of insurance. This means that it covers civil liability claims (and associated legal costs) made against you and notified to us during the period of insurance and the legal costs of investigations and inquiries that you first become aware of and notify to us during the period of insurance. Similarly, the cover for legal costs for other matters only applies to matters that you first become aware of and tell us about during the period of insurance.

The communicable disease cover applies only if your first diagnosis of having acquired a communicable disease occurs during the period of insurance.

The Policy does not cover matters of which you were aware (or reasonably should have been aware) prior to the commencement of the period of insurance, whether you told us about them on your proposal or not. The Policy does not cover any communicable disease (clause 8) which you knew or ought reasonably to have known you had before we first started providing cover to you for communicable disease under your insurance with us.
Such matters may be:

- claims that have already been made or threatened against you; or
- investigations or inquiries whether commenced or not; or
- a prior diagnosis of your having any communicable disease; or
- circumstances of which you are aware (or reasonably should have been aware) that could give rise to a claim against you, an investigation or inquiry, or a claim by you for indemnity under the Policy.

In relation to civil liability claims against you, if you notify us in writing during the period of insurance of your Policy of circumstances that may give rise to a claim against you, the fact that you do not give us written notice of a claim relating to those circumstances before your Policy has expired will not, of itself, relieve us of liability. However, you must notify us of the claim as soon as you become aware of it.

If you notify us of a matter after your Policy has expired or is cancelled, you may not be covered for that matter. If you want to remain insured it is important that you continue to renew your insurance with us or obtain alternative insurance. Matters notified prior to the expiry or cancellation of your Policy and accepted by us as a valid claim will continue to be covered under your Policy.

**Retroactive cover**

Retroactive cover provides cover for your prior practice in respect of matters that you first become aware of during the period of insurance. The retroactive date of your Professional Indemnity Insurance Policy determines how much of your prior practice is covered under your Policy.

Your Certificate of Insurance will (with limited exceptions) include a retroactive date. The Policy will not cover you for incidents that occurred prior to this date. Due to the nature of healthcare services, it is not unusual for claims, investigations or inquiries to arise months or years after the incident giving rise to them occurred. As your Policy is a claims made policy, such matters may be covered, but only if the incident giving rise to them occurred on or after the retroactive date shown on your Certificate of Insurance. In some instances, we may issue a Policy without a retroactive date, in which case the Policy can respond to properly notified matters irrespective of the date of the incident.

When MDA National Insurance offers insurance to a medical practitioner it is obliged to make an offer of insurance which covers the medical practitioner for any claims arising from prior incidents that are not otherwise covered by any insurance. Therefore it is very important that you select a retroactive date which provides you with adequate retroactive cover.
Prior to 1997, all Australian Medical Indemnity cover was provided on a claims incurred basis. Claims incurred cover responded to claims which arose from incidents which occurred during the period of cover, even if the claim came to light after the cover expired. This claims incurred coverage was gradually phased out from 1997 to 2003, after which cover became claims made. Claims made policies only cover claims which are notified during the current period of insurance and which arise from incidents occurring after the retroactive date of the policy. If you practised prior to 1 July 2003, it is important to find out when your last claims incurred cover expired.

To illustrate, if your Policy has a retroactive date of 1 July 2003, your Policy would not cover a claim or any other matter arising from an incident that occurred before 1 July 2003, even if you first learn of the claim, investigation or inquiry and report it to us during the current period of insurance.

Everyone’s circumstances are unique, but as a guide, the following may assist you in making a decision on your retroactive cover needs. Please contact our Member Services team on 1800 011 255 if you require further clarification.

You may require retroactive cover from the first date on which:

• you practised privately in Australia and did not have medical indemnity cover from any source including a Medical Defence organisation; or
• you practised in the public hospital system or a corporate setting and did not have indemnity from your employer or under a Government indemnity scheme; or
• you held a claims made medical indemnity insurance policy; or
• your last claims incurred medical indemnity cover expired; or
• if you are a recent graduate, you commenced your internship; or
• if you are a student, you commenced your medical degree.

Once your retroactive date has been agreed by us, in most cases you will retain this retroactive date for each subsequent renewal. However if you do require additional retroactive cover, you can apply for this at any time.

What we do not insure you for

The Policy will not provide insurance cover in certain circumstances. Clauses 18 to 20 of the Policy wording set out what the Policy does not cover. Please ensure that you read the Policy exclusions carefully in order to understand what is not covered.
Policy conditions

There are things that you must do. If you do not do them, we may be able to reduce or avoid our liability under the Policy. These conditions are set out in clauses 22 to 31 of the Policy. For example, you must pay any premium on or before the date when it is due (clause 22). You must also notify us in writing as soon as practicable after you become aware of any claim, investigation or inquiry, or circumstances or any other matter that could give rise to such (clause 23).

You must meet and cooperate with us for the purposes of discussing your risk management practices if we request such a meeting (clause 26(c)).

General terms and definitions

There are some general terms and definitions that apply to all of the insuring clauses. These are set out in clauses 32 to 42 of the Policy.

For example, when a claim, investigation, inquiry or other matter includes both allegations that are indemnified under the Policy and allegations that are not indemnified under the Policy, we may pay only the legal costs that we regard as attributable to the allegations for which we provide indemnity (clause 32).

We also have the right to conduct and control any proceedings that we agree to indemnify under the Policy, although we will not admit liability for or settle any claim, investigation, inquiry or other matter without your prior consent. However, if you unreasonably do not consent to our settling a claim or otherwise resolving an investigation, inquiry or other matter, your entitlement to indemnity may be affected (clause 33).

Subrogation

We have a right under the Policy to take over all of your rights of recovery in respect of a claim and to pursue actions against third parties in your name even if a claim has not actually been paid.

If you surrender any right or settle any claim for contribution, indemnity or recovery without our prior written consent then we may be entitled to reduce our liability under the Policy.
How much we insure you for

Your Certificate of Insurance sets out the Maximum Limit of Indemnity we will pay under the Policy.

Our standard Maximum Limit of Indemnity is $20,000,000 for the aggregate of all claims, legal costs and other matters covered under the Policy during the period of insurance.

Sub-limits of Indemnity as set out in the Certificate of Insurance also apply, provided the Maximum Limit of Indemnity is not exceeded:

- $1,000,000 for the aggregate of legal costs and costs orders for all investigations and inquiries (clause 6) and legal costs of successfully defended claims, investigations and inquiries relating to sexual misconduct or criminal conduct (clause 7) indemnified under the Policy during the period of insurance;
- $100,000 for the aggregate of all legal costs for applications for Apprehended Violence Orders (clause 11) indemnified under the Policy during the period of insurance;
- $100,000 for the aggregate of all legal costs for claims for breach of competition, consumer and fair trading legislation (clause 12) indemnified under the Policy during the period of insurance;
- $100,000 for the aggregate of all legal costs for employment disputes and credentialing disputes (clause 13) indemnified under the Policy during the period of insurance;
- $100,000 for the aggregate of all legal costs for pursuing or defending an internal complaint in relation to training with a Medical College (clause 14) indemnified under the Policy during the period of insurance;
- $100,000 for loss of documents (clause 15).

Provided the Sub-Limit of Indemnity for all legal costs of employment and credentialing disputes under clause 13 is not exceeded, the maximum amount we will pay for the legal costs of pursuing any one claim for unpaid remuneration and other monies under clause 13(i) of the Policy will not exceed the total amount of the unpaid remuneration and other monies that you claim.

Under the communicable disease cover (clause 8), we will pay you $100,000 if you were a medical practitioner at the time of first diagnosis and $50,000 if you were a medical student at the time of first diagnosis.

This amount is payable only if, as a result of the diagnosis, you have been obliged to cease practice permanently, substantially alter your practice or, in the case of a medical student, permanently cease your medical studies.

It is also payable once only and only if you have not previously been diagnosed as having a communicable disease or received a payment for any communicable diseases under any professional indemnity insurance policy for any prior period of insurance.
Policy excess

Most Policies issued by us to medical practitioners and medical students do not specify an excess. However if an excess is to apply, it will be detailed in your Certificate of Insurance and you must pay us the applicable amount for each and every relevant matter for which you seek indemnity under the Policy.

Single claim

Where the same act or omission or one or more related acts or omissions give rise to more than one claim, investigation or inquiry against you or your practice entity (whether by one or more claimants), all such claims, investigations or inquiries will constitute a single claim under the Policy and will be treated as if first made at the earlier of the time the earliest claim by any claimant was made or the first investigation or inquiry arose.

How much will the Policy cost?

In order for you to receive a Policy, you must be a Member of MDA National (with limited exceptions). If you are a medical practitioner, you must pay your MDA National Membership subscription. The amount of this subscription is specified separately in the quotation or renewal documentation. If you are a medical student, Membership and the Policy are provided free of charge.

The total insurance premium is made up of the basic premium, the ROCS Support Payment and Government taxes and charges. The basic premium will vary depending on the risk covered. We use a system of rating factors to calculate this component including:

- your specialty or field of practice;
- your gross annual billings;
- your retroactive date and the nature of practice undertaken in that period; and
- the state(s) in which you practice.

Other factors that could affect the total cost of your Policy are:

- a Premium Support Scheme subsidy; and
- an administration charge if paying your premium by quarterly instalments.
**Premium Support Scheme (PSS)**

The PSS has been established by the Australian Government to assist eligible Medical Practitioners to meet the costs of their medical indemnity insurance. We administer the PSS in relation to our Insureds on behalf of the Government.

You must apply for the PSS subsidy separately for each year that you wish to be assessed for eligibility. The PSS may require that you provide a Statutory Declaration of your Actual Income in order to be eligible. You may also apply for an advance payment and, if we receive your PSS application in time and you are eligible, we can collect the PSS payment directly from Medicare Australia and you will only need to pay the balance of the premium. Otherwise, you will be required to pay the full premium amount and we will refund any premium support due to you.

If you receive an advance payment and it is later determined that you are not eligible to receive a PSS payment or you received a higher subsidy than you are entitled to, you will need to repay to us the PSS payment or that portion of the PSS payment that you are not entitled to.

If you would like further information in relation to the PSS, please refer to the PSS Information Booklet available from the Download Centre of our website mdanational.com.au or contact our Member Services team on 1800 011 255.

**Paying your insurance premium**

Your premium is an annual premium. Subject to a minimum premium, you can choose to pay quarterly. If you choose to pay quarterly an administration charge is added so your total premium will be more than if you paid the premium in one transaction.

If you would like to pay monthly, we can provide you with the contact details of a premium funding provider who can provide a loan for the premium which is repayable to them in monthly instalments. The premium funding provider will charge you an application fee and interest on the amount borrowed.

For a total range of payment options please refer to the Frequently Asked Questions (FAQ) section of our website mdanational.com.au or contact our Member Services team on 1800 011 255.

Unless we advise otherwise, any payment reminder we send you does not change the due date for payment of your premium under the terms of your Policy.
Policy variations

Treatment of public patients in public hospitals
Occasionally, medical practitioners will find that they are not able to access State or employer indemnity for the treatment of public patients in public hospitals. Under such circumstances, you may apply for an extension of cover under your Policy by completing a Treatment of Public Patients form and returning it to us with written confirmation regarding your indemnity status. An additional premium may apply if this cover is issued.

Not practising for three months or more
If you are planning to temporarily cease practice for three consecutive months or more during the insurance year, you may be eligible for a premium reduction. Please contact our Member Services team on 1800 011 255 for more information. While on your break, it is advisable not to let your Policy lapse without first having some other cover in place. In the event a claim is made against you or you become aware of an investigation or inquiry or other matter while you are on your break, the claim or your legal costs in relation to the investigation or inquiry or other matter may only be covered if you have a current insurance policy at the time the claim is notified.

Run-off cover
Run-off cover is a form of cover generally taken out by professionals when they permanently cease practice, as professional negligence claims can be made against a medical practitioner years after the healthcare services are provided.
Run-off Indemnity covers claims that first come to light and are notified to us in writing after a nominated cessation date, but only in respect of healthcare services provided during the period from your retroactive date to your nominated cessation date. The cessation date is normally the day after your last day of practice for which you require our cover.
If you would like to find out more about run-off cover, please contact our Member Services team on 1800 011 255. When considering run-off cover, you should be aware of the Australian Government’s Run-off Cover Scheme (ROCS), which means you may not need to purchase run-off cover from us. Please refer to pages 19 to 21 for further information on the Scheme.
Practising outside Australia
With the exception of Good Samaritan acts, the Policy excludes cover for acts or omissions outside Australia unless we have agreed in writing to extend cover for your work outside Australia. Please contact us to discuss your plans if you are proposing to work abroad. Cover is subject to our approval and is generally granted only for short periods of time.

If your practice takes you outside Australia regularly, please notify us of this fact. Unless you receive from us specific notice to the contrary, you will need to request cover for each separate overseas trip.

Team doctors travelling overseas
If you are accompanying an Australian sporting or cultural team overseas as the team doctor, we can arrange cover for the healthcare services you provide to team members. You will need to provide us with details of your trip and request cover in writing. Cover is subject to our approval.

Cooling off period
You have a cooling off period that allows you to cancel your Policy within 21 days of it being issued.

You must cancel the Policy in writing. If you cancel during the cooling off period, we will refund the whole of the premium (including any Government taxes and charges) that you have paid.

However, your cooling off right does not apply if you make a claim under your Policy prior to your request to cancel it.

Cancellation
You may cancel your Policy at any time by telling us in writing.

If you cancel after the 21 day cooling off period and you have paid the total annual premium and membership subscription, we will refund the premium and membership subscription for the unexpired period of insurance on a pro rata basis, less a cancellation fee equal to 45 days’ premium and subscription.

If you are paying by quarterly instalments, you will be required to pay us the cancellation fee equal to 45 days’ premium and membership subscription, less any refund that may be due to you.

We will not make any refund where:

• the total annual premium payable is $20 or less;
• you have made a claim or notified a potential claim under the Policy.

For the avoidance of doubt, cancellation, including refunds of your membership subscription will be treated similarly.
We may cancel the Policy by giving you 3 business days’ written notice if:

• you fail to disclose or misrepresent to us any information that you know or could reasonably be expected to know was relevant to our decision to insure you and on what terms;
• you fail to comply with your duty of utmost good faith to us;
• you fail to comply with a provision of the Policy, including the provision to pay the premium or a premium instalment;
• you fail to comply with any provision of the Policy which requires you to notify us; or
• you make a fraudulent claim under the Policy.

**Refunds**

A premium refund may be due to you if your Policy is cancelled or amended during the year. Subject to the cancellation clause (clause 37), if the total refund is less than $5 we will, as instructed by you, either issue this as a refund directly to your nominated bank account or donate the amount to a registered charity identified within our Corporate Social Responsibility program.

**How to make a claim under the Policy**

Early reporting of a matter in respect of which you may be entitled to indemnity under the Policy is critical and is a condition of the Policy. The sooner we know about the matter, the quicker we are able to help.

If any of the following occur you must notify us by providing full details in writing as soon as practicable, and in any event during the period of insurance. You can do this via our online notification form which is available on our website mdanational.com.au, by fax to 1300 011 235 or by mail to any of our offices in the following circumstances:

• a claim has been made or intimated against you or against your practice entity in connection with the provision of healthcare services by you;
• you become involved in any investigation or inquiry;
• before you incur legal costs for which you may be entitled to indemnity under the Policy (for example in relation to certain employment disputes or alleged breaches of competition, consumer or fair trading legislation);
• you lose documents or data relating to your provision of healthcare services; or
• you are diagnosed as having acquired HIV, Hepatitis B, Hepatitis C, extremely drug-resistant tuberculosis (XDRTB), multi-drug-resistant tuberculosis (MDRTB) or New Delhi Metallo enzyme enterococci.
If you do not use the online notification form, your written notice to us should include:

- your full name, Member number and preferred contact details;
- the specific nature of the matter for which you seek indemnity;
- the name and address of any other practitioners involved;
- the date, time and place of the event;
- if applicable, the name, address and date of birth of the patient involved; and
- a detailed account of the healthcare service you performed.

If you do not notify us during the period of insurance, you may not be entitled to indemnity under the Policy. If you are not sure whether to notify or you require assistance, please contact our Medico Legal Advisory team on 1800 011 255 or email peaceofmind@mdnational.com.au.

**Incidents or circumstances that may give rise to a claim**

If at any time after the insurance policy has been issued and during the period of insurance you become aware of a matter that you believe may result in a claim against you, you should let us know as soon as you can. Don’t wait until a claim is made against you.

**What to do when something goes wrong**

Speak to us first. Patients are always entitled to a full, accurate, sympathetic and prompt account of the facts, but you must not admit liability or do anything that may compromise our ability to defend a claim.

Refrain from entering into any correspondence with the patient, hospital or supervisor without first contacting us.

**Run-off Cover Scheme (ROCS)**

From 1 July 2004, the Australian Government introduced the ROCS for medical practitioners who have ceased practice in Australia and who satisfy certain eligibility criteria, and to the estates of deceased medical practitioners.

The ROCS ensures that eligible medical practitioners get secure and free medical indemnity cover for incidents which have occurred but have not been notified to insurers prior to becoming eligible for ROCS.

Under the ROCS, medical indemnity insurers are required to provide indemnity to eligible medical practitioners based on their last contract of insurance. The medical indemnity insurers manage any claims that emerge under a ROCS insurance policy. The Government reimburses the insurer for any valid claims (including the cost of managing claims) made against eligible medical practitioners.

Regulations require that we pay the Government a certain percentage of premiums collected to fund the ROCS. Your renewal notice will detail the ROCS Support Payment we have paid on your behalf.
Eligibility
You are eligible for ROCS if you:

(a) are aged 65 years or over and have retired permanently from remunerated private medical practice;

(b) are aged 65 years or over and have retired permanently from all remunerated medical practice (including public sector);

(c) have not engaged in any remunerated private medical practice at any time during the preceding period of 3 years;

(d) have not engaged in any (including public sector) remunerated medical practice in the preceding 3 years;

(e) have ceased all remunerated (temporarily or permanently) medical practice because of maternity*;

(f) have ceased all remunerated medical practice because of a permanent disability**; or

(g) have left Australia permanently having practised in Australia on a Visa sub class 422 or 457.

A medical practitioner’s estate will also be eligible for ROCS after the medical practitioner’s death.

* A person is taken to have ceased practice as a medical practitioner because of maternity if and only if:
   (a) the person has ceased all practice as a medical practitioner:
      (i) because she is pregnant; or  
         (ii) has given birth; or  
      (iii) in order to care for one or more children to whom she has given birth; or  
      (iv) is recovering from a pregnancy (including a miscarriage or stillbirth); and  
   (b) another person who is a medical practitioner has certified, that the person is pregnant, has given birth or is recovering from a pregnancy as the case may be.

** A person is taken to have ceased practice as a medical practitioner because of permanent disability if and only if the person has permanently ceased all medical practice because:

(a) the person has incurred an injury, or suffers from an illness, that is permanent, or is likely to be permanent; and

(b) as a result of the injury or illness, the person can no longer practice in the area of medicine in which he or she had (at the time of the injury or illness) chosen to practice and been qualified to practice; and
(c) another person who is a medical practitioner has certified that the person:

(i) has incurred an injury or suffers from an illness, that is permanent or is likely to be permanent; and

(ii) can no longer practise in that area of medicine.

Factors affecting your eligibility
You should be aware that you will immediately become ineligible for ROCS for a number of reasons including if:

• you engage in any remunerated private medical practice, regardless of how few hours you work; or

• you work in the public sector and claim against your Medicare Australia provider number.

More information on the ROCS is available from the Department of Health and Ageing at health.gov.au.

If you believe you may be eligible for the ROCS, please contact our Member Services team on 1800 011 255 as you may not need to purchase or renew your Professional Indemnity Insurance Policy.

What to do if you want to make a complaint about us
Please refer to pages 4 and 5 of the Financial Services Guide.

Financial Claims Scheme
This Policy may be a ‘protected policy’ under the Federal Government’s Financial Claims Scheme (FCS), which is administered by the Australian Prudential Regulation Authority (APRA). The FCS is intended to protect certain policyholders in the extremely unlikely event of an insurer becoming insolvent. A person entitled to claim under a protected policy may be entitled to payment under the FCS although access to the scheme is subject to eligibility criteria. Information about the FCS can be obtained from APRA at apra.gov.au or by calling the APRA infoline on 1300 558 849.
SECTION 3: Policy Wording

Professional Indemnity Insurance Policy

This Professional Indemnity Insurance Policy is issued by MDA National Insurance Pty Ltd ABN 56 058 271 417, AFS Licence No. 238073.

When issuing your Policy we have relied on the information you have given us in your proposal. You must tell us without delay if any of this information is incorrect or if it changes.

Please read this Policy wording and the Certificate of Insurance carefully and keep them in a safe place. When reading this Policy wording, please note the use of specially defined words in clause 42.

What we insure you for

Civil liability
1. We will indemnify you for civil liability for a claim arising directly out of your provision of healthcare services, but only when:
   (a) the claim is first made against you during the period of insurance; and
   (b) you tell us about the claim in writing during the period of insurance; and
   (c) the claim arises from an act or omission occurring on or after the retroactive date and not within any non-practising period.

   Notwithstanding exclusion 18.4, when we have separately agreed in writing to do so, we will indemnify you under this clause for the provision of healthcare services to a public patient in a public hospital.

Good Samaritan acts
2. We will indemnify you for civil liability for a claim arising directly out of the provision of emergency medical assistance by you where:
   (i) you are in attendance as a bystander; and
   (ii) there is no expectation of payment or other reward;

   but only when:
   (a) the claim is first made against you during the period of insurance; and
   (b) you tell us about the claim in writing during the period of insurance; and
   (c) the claim arises from an act or omission occurring on or after the retroactive date.

   This clause applies only to acts necessary to stabilise the patient or to prepare the patient for transfer.
Breach of privacy
3. We will indemnify you for civil liability for a claim arising out of your unintended breach of the Privacy Act 1988 (Cth) or equivalent State or Territory legislation in connection with your provision of healthcare services, but only when:
   (a) the claim is first made against you during the period of insurance; and
   (b) you tell us about the claim in writing during the period of insurance; and
   (c) the claim arises from an act or omission occurring on or after the retroactive date and not within any non-practising period.

Liability for reports about others
4. We will indemnify you for civil liability for a claim (including a claim for defamation) arising directly out of you, in good faith and in the public interest, reporting an incident or a registered healthcare professional to a hospital, area health authority or professional body or participating in the examination of the incident or registered healthcare professional, but only when:
   (a) the claim is first made against you during the period of insurance; and
   (b) you tell us about the claim in writing during the period of insurance; and
   (c) the claim arises from a report made on or after the retroactive date.

Legal costs for defence against claims
5. Subject to clause 33, we will indemnify you for legal costs that we incur on your behalf for defending you against any claim made against you for civil liability that is covered under any of clauses 1 to 4 or 10 of your Policy.

Legal costs for investigations and inquiries
6. We will indemnify you for:
   (i) legal costs that we incur on your behalf in assisting you in an investigation and legal costs of a professional registration board or professional services review committee that you are ordered to pay as a result of a finding made against you in the investigation; and
   (ii) legal costs that we incur on your behalf in assisting you in an inquiry arising from the provision of healthcare services by you; and legal costs of a professional or administrative body that you are ordered to pay as a result of a finding against you in the inquiry;
but only when:
(a) you first become aware of the investigation or inquiry during the period of insurance; and
(b) you tell us about the investigation or inquiry in writing during the period of insurance; and
(c) the investigation or inquiry arises out of an act or omission occurring on or after the retroactive date and not within any non-practising period.

Legal costs for defence against allegations of sexual misconduct and criminal conduct towards patients

7. We will indemnify you for reasonable legal costs incurred by you with our consent or incurred by us on your behalf for the successful defence of any claim, criminal proceeding, investigation or inquiry arising out of alleged sexual misconduct or criminal conduct by you against a patient arising directly out of your provision of healthcare services to the patient, if and when:
(i) in the case of a civil claim, there is a final judgment in your favour; or
(ii) in the case of a criminal proceeding, you have been found not guilty or the charges against you have been dropped; or
(iii) in the case of an investigation or inquiry, the outcome is that no finding of professional misconduct has been made against you; and
(iv) in any case, the claim, criminal proceeding, investigation or inquiry has been permanently discontinued;
but only if:
(a) you first become aware of the claim, criminal proceeding investigation or inquiry during the period of insurance; and
(b) you tell us about the claim, criminal proceeding, investigation or inquiry during the period of insurance; and
(c) the claim, investigation or inquiry arises from an act or omission occurring on or after the retroactive date and not within any non-practising period; and
(d) all appeal rights of any party in relation to the allegations made against you have been exhausted.

We may at our absolute discretion agree to advance the legal costs under this clause to you as they are incurred and prior to the finalisation of any claim, criminal proceeding, investigation or inquiry. We may in our absolute discretion cease to advance legal costs to you at any time and take steps to recover from you any legal costs already paid under this clause.

If we do advance legal costs to you, and we subsequently determine that we have no liability to pay those legal costs under this clause, then you must repay those legal costs to us.
If we do not advance legal costs and you are eligible for indemnity under this clause, you must provide evidence of the legal costs incurred by you. We will indemnify you only for the reasonable costs incurred by you in conducting your defence.

**Communicable disease cover**

8. We will indemnify you for communicable disease, but only when:

(i) you are first diagnosed as having a communicable disease during the period of insurance; and

(ii) you tell us in writing about the diagnosis during the period of insurance; and

(iii) if you are insured under your Policy as:

(a) a medical practitioner, you show us that, solely by reason of that diagnosis, you have permanently ceased practice as a medical practitioner or substantially altered your practice of medicine; or

(b) a medical student, you show us that, solely by reason of that diagnosis, you have permanently ceased studies as a medical student;

but not if:

(iv) you have been diagnosed prior to the commencement of the period of insurance as having the communicable disease; or

(v) you knew or a reasonable person in your professional position could be expected to have known that you had the communicable disease before the date when we first commenced providing insurance for communicable disease to you under insurance that you have continuously renewed with us from that date until the period of insurance; or

(vi) you have previously received a payment from us, another insurer or a medical defence organisation or medical indemnity provider as a result of your having or being diagnosed as having the same or any other communicable disease at any time after the retroactive date.

The amount we will pay will be the amount set out for the Sub-Limit of Indemnity for clause 8 in the Certificate of Insurance for:

(a) a medical student if you were a Medical Student at the time of the diagnosis; and

(b) a medical practitioner if you were a Medical Practitioner at the time of the diagnosis.

The amount for communicable disease is payable once only and only for one communicable disease.
Automatic additional cover for medical practitioners

Your practice entity (medical practitioners only)

9. If you are a medical practitioner, we will indemnify under your Policy a practice entity controlled by you for civil liability for a claim:

(i) made against that practice entity arising directly from healthcare services provided by you personally; and

(ii) for which you could claim indemnity under your Policy if it were made against you;

but only when:

(a) the claim is first made against the practice entity during the period of insurance; and

(b) you tell us about the claim in writing during the period of insurance; and

(c) the claim arises from an act or omission occurring on or after the retroactive date and not within any non-practising period; and

(d) the practice entity and you comply with the terms and conditions of your Policy that you must comply with.

We will also indemnify the practice for legal costs incurred by us on its behalf to defend against the claim. If the practice entity is not 100% owned by you, the indemnity we will pay shall be the same proportion of the civil liability and legal costs of the practice entity as your proportion of ownership of the practice entity.

Clinical trials cover (medical practitioners only)

10. If you are a medical practitioner, we will indemnify you for civil liability for a claim arising directly out of the provision of healthcare services by you as part of your involvement in a clinical trial or research project that both:

(i) has approval from an ethics committee in accordance with the National Health and Medical Research Council guidelines; and

(ii) has been conducted in accordance with any conditions or approval made by the ethics committee;

but only when:

(a) the claim is first made against you during the period of insurance; and

(b) you tell us about the claim in writing during the period of insurance; and

(c) the claim arises from an act or omission occurring on or after the retroactive date and not within any non-practising period.
SECTION 3: Policy Wording

Legal costs for Apprehended Violence Orders (medical practitioners only)
11. If you are a medical practitioner, we will indemnify you for legal costs we incur on your behalf in seeking an Apprehended Violence Order or equivalent relief where there is a threat to the personal safety of you or a member of your immediate family, but only when:

(a) you first become aware of the threat during the period of insurance; and
(b) you tell us about the threat in writing during the period of insurance; and
(c) the threat is related to your provision (or non provision) of healthcare services occurring on or after the retroactive date and not within any non-practising period.

Legal costs for competition, consumer and fair trading claims (medical practitioners only)
12. If you are a medical practitioner, we will indemnify you for legal costs incurred by us on your behalf to defend against a claim that you breached a provision of the Competition and Consumer Act 2010 (Cth), the Trade Practices Act 1974 (Cth) or any State or Territory fair trading legislation in connection with your provision of healthcare services, but only when:

(a) the claim is first made against you during the period of insurance; and
(b) you tell us about the claim in writing during the period of insurance; and
(c) the claim arises from an act or omission occurring on or after the retroactive date and not within any non-practising period; and
(d) the claim does not arise from a malicious act or omission or intentional breach.

Legal costs for employment and credentialing disputes (medical practitioners only)
13. If you are a medical practitioner we will indemnify you for legal costs we incur on your behalf for:

(i) defending against an allegation or claim made against you by a person formerly, currently or proposed to be employed or contracted as a staff member by you that relates to or arises from the contract or proposed contract under which the employee or contracted staff member was, is or will be engaged to assist you in the provision of healthcare services; or
(ii) defending against an allegation or claim made against you by your former, current or proposed employer or principal that relates to or arises from the contract or proposed contract under which you were, are or will be employed or contracted to provide healthcare services in your field of practice; or
(iii) pursuing an allegation or claim made by you, as an employee, against your former, current or proposed employer or, as a contracted staff member, against your principal that, in either case, relates to or arises from the contract or proposed contract under which you were, are or will be employed or engaged to provide healthcare services in your field of practice;

in each case of sub-clauses (i), (ii) or (iii) above, including a complaint under anti-discrimination or equal opportunity legislation; or

(iv) pursuing an allegation by you of lack of procedural fairness in relation to a decision which has resulted in a mid-term suspension or revocation of your credentialing with a hospital or health service;

but only when:

(a) you first become aware of the allegation or claim against you or the matters which you allege or give rise to your claim during the period of insurance; and

(b) you tell us about the allegation or claim against you or the matters which you alleges or that give rise to your claim in writing during the period of insurance; and

(c) the allegation or claim arises from an act, omission or event occurring on or after the retroactive date and not within any non-practising period.

We will not pay or continue to pay for legal costs for your pursuing any allegation or claim under this clause if we, in our absolute discretion, consider that the allegation or claim does not have reasonable prospects of success. In determining prospects of success, we may, but are not obliged to, seek appropriate legal advice as to the merits and prospects of success, taking into account both the legal issues and the legal costs.

Legal costs for Medical College training disputes (medical practitioners only)

14. If you are a medical practitioner, we will indemnify you for legal costs incurred by us on your behalf in pursuing or defending against an internal complaint or appeal under the by-laws of a medical college arising out of your involvement with a training program approved by that Medical College, but only when:

(a) you first become aware of the complaint or appeal or the facts and circumstances giving rise to your complaint or appeal during the period of insurance; and

(b) you tell us about the complaint or appeal in writing during the period of insurance; and

(c) the complaint or appeal relates to an act, omission or event occurring on or after the retroactive date and not within any non-practising period.

We will not pay or continue to pay for legal costs for your pursuing any complaint or appeal under this clause if we, in our absolute discretion, consider that the complaint or appeal does not have reasonable prospects of success. In determining prospects of success, we may, but are not obliged to, seek appropriate legal advice as to the merits and prospects of success, taking into account both the legal issues and the legal costs.
Loss of Documents (medical practitioners only)

15. If you are a medical practitioner, in the event of any loss of documents which in the ordinary course of your providing healthcare services were in your possession or the possession of those to whom the documents were entrusted by you, we will indemnify you for the reasonable costs and expenses incurred by you in replacing or restoring those documents, but only when:

(a) the loss of documents occurred, or you first become aware of, the loss of documents during the period of insurance; and
(b) you notify us about the loss of documents in writing during the period of insurance; and
(c) we have agreed to the costs of replacement or restoration before they are incurred.

We will not indemnify you for any costs and expenses incurred in replacing or restoring electronic documents or data as a result of a computer virus or an unauthorised access to your systems where you do not have appropriate back up storage systems and protocols and current security software installed to protect your documents and data from such risks.

How much we insure you for

16. The total amount we will pay:

(a) for the aggregate of all claims, legal costs and other matters paid under your Policy during the period of insurance will not exceed the Maximum Limit of Indemnity set out in the Certificate of Insurance; and

provided that Maximum Limit of Indemnity is not exceeded:

(b) for the aggregate of:

(i) all legal costs for investigations, inquiries and claims of sexual misconduct or criminal conduct under clauses 6 and 7;
(ii) all legal costs of seeking Apprehended Violence Orders under clause 11;
(iii) all legal costs of defending breach of competition, consumer or fair trading legislation claims under clause 12;
(iv) all legal costs of employment disputes and credentialing disputes under clause 13;
(v) all legal costs of medical college training disputes under clause 14;
(vi) all claims for loss of documents under clause 15;

indemnified under your Policy during the period of insurance will not exceed the applicable Sub-Limit of Indemnity set out in the Certificate of Insurance;

(c) for communicable disease under clause 8 of your Policy will be the amount set out for the Sub-Limit of Indemnity for clause 8 in the Certificate of Insurance;
(d) for the legal costs of pursuing a claim for unpaid remuneration and other monies under clause 13(iii) of your Policy will not exceed the total amount of unpaid remuneration and other monies that you claim.

If an excess applies, it must be paid in respect of each applicable matter for which indemnity is claimed under your Policy before we will pay any indemnity.

17. Where the same act or omission or one or more related acts or omissions give rise to more than one claim (whether by one or more claimants), investigation or inquiry, all such claims, investigations and inquiries will constitute a single claim under your Policy and will be treated as if first made at the earliest of the time the earliest claim by any claimant was made or the first investigation or inquiry arose.

Exclusions

What we exclude from your Policy

18. We will not indemnify you or make a payment under your Policy when:

18.1 and to the extent that you are entitled to indemnity under a previous policy issued by us or another insurer (to the extent allowed by law) or you have the benefit of a prior indemnification arrangement with a Medical Defence Organisation or you are indemnified under a government scheme or you are entitled to any indemnity from your employer or other indemnity provider;

18.2 the matter for which you claim indemnity or payment:

(a) was known by you or could be expected to have been known by a reasonable person in your professional position; or

(b) arises out of an act, omission or event which you knew and which you or a reasonable person in your professional position could be expected to have known might give rise to the matter before the period of insurance commenced, but this exclusion does not apply for the purposes of clause 8(v);

18.3 the matter for which you claim indemnity or payment arises from circumstances which you notified to us, to another insurer, Medical Defence Organisation or indemnity provider before the period of insurance;

18.4 the claim arises in any way out of the provision of healthcare services to a public patient in a public hospital except to the extent that we have confirmed in writing that you are indemnified under clause 1;

18.5 the claim arises out of the provision of elective medical treatment by you on or after 1 July 2004 to a member of your immediate family;

18.6 the matter for which you claim indemnity or payment arises in any way out of an act or omission by you when you were not registered, were prohibited from practising or you acted outside of, or did not comply with the terms, limitations or requirements of your registration;
18.7 the claim, investigation or inquiry arises in any way out of a practice or procedure not associated with your field of practice, except where the claim, investigation or inquiry relates to the provision of emergency medical assistance by you where you are in attendance as a bystander and have no expectation of payment or other reward;

18.8 the claim, investigation or inquiry arises because of your continuing use of a procedure or practice in the provision of healthcare services 14 days after you have received notice from us under clause 25 asking you to stop using the procedure or practice;

18.9 the matter for which you claim indemnity or payment arises in any way out of or in connection with defamation or any allegation of defamation, except to the extent that we agree to indemnify you under clause 4;

18.10 the claim arises in any way from any activity in connection with a clinical trial or research project, including but not limited to:
   (a) claims against you in any way relating to your sponsorship, administration, design or control of the trial or project;
   (b) claims arising from adverse outcomes where you did not provide healthcare services;
   (c) claims relating to the trial or project protocol;
   (d) claims relating to your overseeing the trial or project or any act or omission by you as a member of an ethics committee;

except to the extent that you are indemnified under clause 10;

18.11 the claim or inquiry arises in any way as a result of the transmission of a disease from you or from someone for whom you are vicariously liable to a patient when, at the time of transmission, you knew or reasonably should have known that the infected person was carrying the disease;

18.12 the matter for which you claim indemnity or payment arises in any way out of any actual or alleged:
   (a) sexual misconduct or criminal conduct, except to the extent that you are indemnified for your legal costs under clause 7; or
   (b) sexual misconduct, including sexual harassment, except to the extent that you are indemnified for legal costs under clause 13(i), 13(ii) or 13(iii);

18.13 the claim or inquiry arises in any way out of the provision of healthcare services by a person while intoxicated or otherwise impaired by the use of an intoxicant or drug, except for the reasonable refusal to provide healthcare services because of the influence of such intoxicant or drug;

18.14 the matter for which you claim indemnity or payment arises in any way out of any wilful violation or breach of any statute or regulation or out of any act committed with dishonest, malicious or criminal intent;
18.15 and to the extent that you are legally obliged:

(a) as a result of an investigation or inquiry to refund any fee charged to or in respect of a patient; or

(b) to pay a fine or a civil or criminal penalty; or

(c) to pay punitive, aggravated or exemplary damages; or

(d) in relation to matters under clauses 12 and/or 13, to pay any other party any amount for legal costs;

18.16 the claim arises in any way out of the development, manufacture, storage, supply or endorsement of any good or product, except for the manufacture or supply of a product by you as an intrinsic part of you providing healthcare services to your patients;

18.17 the claim or inquiry arises in any way out of the unlawful sale, supply, use or administration of any substance;

18.18 the matter for which you claim indemnity or payment arises in any way out of the ownership, use, occupation or state of any premises or anything done or omitted to be done in respect of the state of any premises;

18.19 the matter for which you claim indemnity or payment arises in any way out of or in connection with an actual or threatened pollution of the environment (including exposure to asbestos) or a requirement for you to deal with that pollution exposure, except for the provision of healthcare services to a patient who has symptoms, whether actual or alleged, as a result of exposure to pollution (including asbestos), whether directly or indirectly;

18.20 the claim arises out of or is connected with:

(a) any contract for the sale or purchase of any asset, property or investment, including a contract for the purchase or sale of all or part of your or another practice providing healthcare services;

(b) any dispute arising out of or in connection with an employment contract or contract for services entered into in connection with your sale of a practice;

(c) any contractual liability, warranty or guarantee except if you would have been otherwise liable in the absence of the contractual liability, warranty or guarantee;

(d) any trading debt or guarantee for payment of a trading debt;

(e) payment or non-payment of any dividend or other form of profit sharing or distribution;
18.21 the matter for which you claim indemnity or payment arises out of or is connected with acts of terrorism, war, invasions, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, insurrection, military or usurped power. This exclusion does not apply to any healthcare procedure performed as a result of any injuries arising out of any terrorism, war or warlike situation;

18.22 the matter for which you claim indemnity or payment arises out of:

(a) a judgment or order:
   (i) by a court in the United States of America or its territories; or
   (ii) by a court elsewhere exercising jurisdiction under a Local, State or Federal Law of the United States of America; or
   (iii) based on, derived from or to enforce a judgment or order by a court referred to in (i) or (ii); or

(b) acts or omissions (other than loss of electronic documents or data) which occur within the territorial limits of the United States of America or its territories.

This exclusion does not apply to Good Samaritan acts covered under clause 2;

18.23 you have admitted liability for the claim, or settled or agreed to settle the claim without our consent.

19. In addition to clause 18, if you are a medical practitioner, we will not indemnify you or make a payment under your Policy when:

19.1 the claim arises from the acts or omissions of an employee, contractor or any other person when those acts or omissions were:
   (a) outside the terms and conditions of his or her employment, contract or agreement; or
   (b) outside the boundaries of his or her training and/or qualifications; or
   (c) not under your supervision;

19.2 a person makes a claim because, and only because, that person is or was an employee or agent of you or a practice entity controlled by you or because you or a practice entity controlled by you did not employ that person, except to the extent that you are indemnified for legal costs under clause 13;

19.3 the claim, investigation or inquiry arises in any way out of a dispute between you and a current, former or prospective partner or co-owner in your practice entity, other than a claim of professional negligence;
19.4 the matter for which you claim indemnity or payment arises from any act or omission occurring or allegedly occurring outside the Commonwealth of Australia or its territories or protectorates, unless we have agreed in writing to extend cover and then only to the jurisdictions and for the period of time specified by us in writing. This exclusion does not apply to Good Samaritan acts covered under clause 2 or to loss of electronic documents or data covered under clause 15 occurring in either case within the territorial limits of the United States of America or its territories;

19.5 the matter for which you claim indemnity or payment is in connection with a claim or allegation relating to your credentialing with a hospital or health service, except to the extent that you are covered under clause 13(iv).

20. In addition to clause 18, if you are a medical student, we will not indemnify you or make a payment under your Policy when:

20.1 the claim, investigation or inquiry arises in any way out of the provision of healthcare services by you where you are acting outside the terms and guidelines of your university elective or scholarship placement, except where the claim, investigation or inquiry relates to the provision of emergency medical assistance by you where you are in attendance as a bystander and have no expectation of payment or other reward;

20.2 the claim, investigation or inquiry arises in any way out of the provision of healthcare services by you when you are not under the supervision of a medical practitioner, except where the claim, investigation or inquiry relates to the provision of emergency medical assistance by you where you are in attendance as a bystander and have no expectation of payment or other reward;

20.3 the matter for which you claim indemnity or payment arises in any way out of the provision of healthcare services by you in respect of which you represented or held yourself out as a medical practitioner.

**Fraudulent claims**

21. We may reject a claim made by you under your Policy if the claim or any part of the claim is fraudulent or made fraudulently.
Conditions

Payment of premium
22. You must pay the premium or any instalment of premium on or before the date when it is due.

You have to notify us of a claim or incident
23. You must notify us in writing as soon as practicable after you become aware of:
   (a) any claim, investigation or inquiry;
   (b) any fact or circumstance that might lead to a claim against you or to an investigation or inquiry involving you; and
   (c) any other circumstance which might give rise to a matter for which you make a claim under your Policy.

Other insurance
24. If you seek indemnity under your Policy you must tell us about any other insurance or other entitlement to indemnity that may indemnify or compensate you, including the identity of the other insurer or indemnifier, the policy number and any other information that we may reasonably require.

Stop notice
25. You must stop using a procedure or practice in providing healthcare services if:
   (a) we consider that the practice or procedure poses an unreasonable risk of giving rise to a claim, investigation or inquiry; and
   (b) we give you 14 days’ notice asking you to stop using the procedure or practice.

Your duty to co-operate
26. You must, at your expense:
   (a) give us, our investigators and legal representatives all information, documents and assistance we reasonably require including without limitation access to books and records of your healthcare practice and books and records of your medical services; and
   (b) co-operate fully with us, our investigators and legal representatives; and
   (c) attend any risk management meetings that we request in writing and co-operate fully with us by providing us with all information concerning your risk management.
27. You agree to waive any legal professional privilege to the extent only that the privilege would otherwise prevent any legal representative appointed by us from disclosing information to us.

**Prevention of loss**

28. You must not, without our prior written consent:

(a) admit liability for a claim or potential claim; or

(b) do or not do anything which may compromise us, including our ability to defend you against a claim or potential claim or assist you in an investigation or inquiry; or

(c) make any payment or settlement, or offer of payment or settlement, of any claim or potential claim;

in respect of which we may be liable to indemnify you.

29. You must use all reasonable measures to avoid or reduce any liability under your Policy.

**Alteration of risk**

30. You must give us notice as soon as practicable of any material alteration of the risk during the period of insurance, including without limitation any material change in your field of practice, the nature or extent of the healthcare services provided by you, the risk category you have previously declared or your gross annual billings. We may adjust the premium that you are liable to pay and/or amend the terms of your Policy to reflect the change in the risk.

**Proof of billings**

31. If we request it, you must provide us with independent evidence (such as an accountant’s report) of your gross annual billings for the period of insurance within 60 days of the request. If your gross annual billings vary from the range shown in your field of practice, we will be entitled to adjust the premium that you are liable to pay us. If you do not provide the evidence when we request it, we may cancel your Policy.
**General terms**

**Allocation of defence costs**

32. If a claim, investigation, or inquiry or other matter includes both allegations in relation to which you are entitled to indemnity under your Policy and allegations in relation to which you are not entitled to indemnity under your Policy, we will pay only that proportion of legal costs which are attributable to the covered allegations. We will determine in our absolute discretion the allocation of costs or legal costs between the covered allegations and the uncovered allegations and will inform you of our determination in writing. In determining the allocation of legal costs, we will have regard to the proportion which that part of the claim, investigation, inquiry or other matter consisting of covered allegations bears to the whole of the claim, investigation, inquiry or other matter.

**Our right to the conduct and control of proceedings**

33. You agree that:

   (a) we have the right to conduct and control all matters that we agree to indemnify under your Policy, including their investigation, defence, avoidance, reduction, settlement and, subject to clause 34, any appeal as we see fit; and

   (b) we may do so in your name.

However, we will not admit liability for or settle any claim, investigation, inquiry or other matter without your prior consent, which is not to be withheld unreasonably. In determining whether your consent has been withheld unreasonably, we may seek appropriate legal advice on the merits and prospects of success of any defence, taking into account both the legal issues and the costs.

If you do not consent to our settling a claim, or otherwise resolving an investigation, inquiry or other matter, your entitlement to indemnity for legal costs will cease and our liability is limited to the amount we recommend in settlement and/or the payment of legal costs up to the date that we recommended settlement of the claim or resolution of the investigation, inquiry or other matter to you.
Appeals
34. If you are dissatisfied with the decision made by a court, board, tribunal or other decision making body in a matter in which we have represented you or advanced legal costs to you under your Policy, and you want to appeal against that decision, you must request our written approval within 7 business days after the decision is handed down. You must do so in writing, setting out your reasons for wanting to appeal. We will inform you in writing within 10 business days after we receive your request whether we consent or not to pay your legal costs of the appeal.

Our decision to pay your legal costs of any appeal is final and in our complete discretion. Prior to providing our decision we may, but are not obliged to, seek legal advice on the merits and prospects of success of any such action, taking into account both the legal issues and the associated legal costs.

If you decide to appeal without our consent, we will not pay any additional legal costs associated with the appeal or any further amount which may be an outcome of the appeal.

If your appeal is successful and you are entitled to a payment or refund of legal costs paid by us and/or any money that we paid the claimant, that payment or refund becomes a debt due to us and you must forward that payment or refund to us less any legal fees and expenses you have incurred in the appeal.

Subrogation
35. You agree not to surrender any right to, or settle any claim for, contribution, indemnity or recovery, without our consent.

36. If we make a payment under your Policy, we are subrogated to all of your rights of contribution and indemnity or recovery.

Cancellation
37. You may cancel your Policy at any time by notifying us in writing.

If you cancel your Policy within the cooling off period of 21 days after it was issued to you, your premium will be refunded in full with no cancellation fee deducted.

If you cancel your Policy outside the cooling off period, a cancellation fee applies which is equivalent to 45 days’ premium.

If you have paid your premium in full, we will deduct this cancellation fee from the refund. If you are paying the premium in instalments, you are still liable to pay the cancellation fee. We will issue any refund directly to your nominated bank account or if instructed by you, donate the amount to a registered charity identified within our Corporate Social Responsibility program.

There will be no refund of premium where:
(a) the total premium paid is $20 or less; or
(b) you have notified a claim or potential claim by you under your Policy.
38. We may cancel your Policy by giving you three business days’ written notice if:
   (a) you fail to disclose or misrepresent to us any information that you know
       or could reasonably be expected to know was relevant to our decision to
       insure you and on what terms; or
   (b) you fail to comply with your duty of utmost good faith to us; or
   (c) you fail to comply with a provision of your Policy including the provision
       to pay the premium; or
   (d) you are paying your premium by instalments and at least one instalment
       remains unpaid for over one month; or
   (e) you fail to comply with any provision of your Policy which requires you
       to notify us including your obligation to notify us of any change in the
       healthcare services provided by you; or
   (f) you make a fraudulent claim under your Policy.

Governing law
39. Any dispute that arises between you and us under your Policy will be subject
    to the law and jurisdiction of Western Australia.

Interpretation
40. The headings in this Policy wording are included for descriptive purposes only and
    do not form part of your Policy for the purpose of construction or interpretation.
41. Under your Policy the masculine includes the feminine and the singular includes
    the plural and vice versa.

Definitions
42. In your Policy:
Certificate of Insurance means the Certificate of Insurance to your Policy.

Claim means:
   (a) a demand for, or an assertion of a right to, compensation, damages or injunctive
       relief made against you; or
   (b) an intimation of an intention to seek compensation, damages or injunctive relief
       from you.

Communicable Disease means HIV, Hepatitis B or Hepatitis C viruses, extremely
    drug-resistant tuberculosis (XDRTB), multi-drug-resistant tuberculosis (MDRTB) and
    New Delhi Metallo enzyme enterococci.

Criminal conduct means conduct that is or could be in breach of a criminal law,
    regardless of whether or not a criminal charge has been brought in relation to that
    conduct.
**Documents** means any written, printed or reproduced material, or any electronic document or data used in connection with your practice providing healthcare services, but does not include any currency, negotiable instrument, cheque, stamp, bond or coupon, or any document evidencing title to or constituting a form of security.

**Excess** means the amount set out in the Certificate of Insurance that must be paid to us before we will indemnify you.

**Field of practice** means the field of practice set out in the Certificate of Insurance and any other field of practice notified to us during the period of insurance for which we have agreed in writing to extend cover under your Policy.

**Healthcare services** means:

(a) *If you are a medical practitioner*, the following services that you provide:

(i) healthcare treatment, services or advice or a report of those things provided to a patient or in relation to a patient in a professional capacity; or

(ii) supervision, training or direction of a healthcare student or registered healthcare professional who is undertaking a recognised healthcare training program; or

(iii) supervision or direction of a person who is not a medical practitioner to assist you in providing healthcare treatment, services or advice to a patient; or

(iv) supervision, training or direction of a medical practitioner whose registration or licence is conditional upon such supervision; or

(v) a healthcare report or opinion not for the purpose of treatment; or

(vi) healthcare advice to a person or organisation in relation to a person’s fitness to carry out certain duties or activities; or

(vii) writing an academic paper or an article in a peer reviewed, refereed healthcare journal;

provided that the activity is of a type that a qualified medical practitioner would ordinarily provide if he or she were carrying out your field of practice; or

(b) *If you are a medical student*, healthcare treatment, services or advice or a report of those things provided to a patient or in relation to a patient in a professional capacity, provided that the activity is of a type that is appropriate to be conducted by a medical student at your stage of medical study.

**Immediate family** means:

(a) your current or former spouse, de facto or domestic partner;

(b) your children;

(c) the children of your current or former spouse, de facto or domestic partner;

(d) your brothers, your sisters or your parents.
**Inquiry** means an investigative hearing, inquiry, disciplinary or administrative proceeding:

(a) in the case of medical practitioners and medical students, by or on behalf of a professional body, health services authority, medical tribunal, Royal Commission, Coroner’s Court, criminal court, health or medical benefits fund, or the Australian Information Commissioner or Anti-Discrimination Board (or equivalent); and

(b) in the case of medical students, by or on behalf of a university that you attend;  

but not by or on behalf of a professional registration board or professional services review committee.

**Investigation** means an investigation or disciplinary or administrative proceeding by a professional registration board or professional services review committee, but not by or on behalf of an entity referred to in the definition of “inquiry”.

**Legal costs** means lawyers’ fees and disbursements reasonably and necessarily incurred for matters covered under your Policy, including for:

(a) defending you against a claim or allegation; or

(b) attending or assisting in an investigation or inquiry; or

(c) prosecuting any proceedings for indemnity, contribution recovery or other remedy; or

(d) investigating, avoiding, reducing or settling any such matters above;  

but does not include:

(e) travel expenses or personal expenses incurred by you; and

(f) any fee payable for lodgment of an appeal under the by-laws of a medical college.

**Loss of documents** means:

(a) the loss of, damage to or destruction of physical documents; or

(b) the deletion, corruption or modification of electronic documents or data.

**Medical practitioner** means:

(a) an individual registered, licensed, or provisionally registered or licensed, and providing healthcare services;

(b) a final year medical student who has made an application for provisional registration;

in Australia as a medical practitioner under a law of the Commonwealth or any State or Territory of Australia that provides for the registration or licensing of medical practitioners.

**Medical student** means an individual who is both enrolled as a student in a faculty of medicine of an Australian university and registered as a medical student under a law of the Commonwealth or any State or Territory of Australia that provides for the registration of medical students.
**Non-practising period** means any period commencing after the retroactive date that is set out in the Certificate of Insurance or was declared by you to us and has been accepted by us as a period during which you did not practise as a registered healthcare professional or engage in providing any healthcare services in Australia.

**Period of insurance** means the period of insurance set out in the Certificate of Insurance.

**Policy** means the Certificate of Insurance, this Policy wording, any Endorsement to the Policy wording and current during the period of insurance, and any endorsements issued to you during the period of insurance.

**Proposal** means all documents comprising your application for, or renewal of, your professional indemnity insurance with us, including any Pre-Renewal Questionnaire.

**Registered healthcare professional** means a medical practitioner or an individual who practises a healthcare related vocation and who is registered under a law of the Commonwealth or any State or Territory of Australia to practise that vocation.

**Retroactive date** means the date specified in the Certificate of Insurance as the retroactive date.

**We, our and us** mean MDA National Insurance Pty Ltd ABN 56 058 271 417, AFS Licence No. 238073, being the insurer named in the Certificate of Insurance.

**You and your** mean:

(a) the person named as the insured in the Certificate of Insurance; and
(b) the executor or administrator of that person's estate.
SECTION 4: NSW Healthcare Liability Act 2001

We are required to provide NSW medical practitioners applying for insurance with the following extract from the Insurance Regulation Order made pursuant to the Act.

Insurance Regulation Order 2006
Part 2 - Decisions concerning individual cover

Division 1

1. Preliminary
(1) For the purposes of this Part a refusal to provide approved insurance includes:
   (i) not accepting an offer to enter into a contract for such insurance; or
   (ii) cancelling a contract for such insurance; or
   (iii) not renewing such insurance; or
   (iv) not offering such insurance.

Provision of claims history upon request by practitioner
(3) An insurer, within ten working days of receiving a written request from a medical practitioner who:
   (a) is covered by approved insurance by the insurer; or
   (b) within the immediately preceding six years has been covered by professional indemnity insurance by the insurer, must provide to the medical practitioner his or her record of claims history for whichever is the lesser of the following periods:
      (i) the most recent six year period of the insurance cover; or
      (ii) the total period that the insurer has provided professional indemnity insurance to the practitioner.
Division 2 - Existing policyholders

2. Decisions concerning individual cover

(1) During the period that an adverse decision applies to an existing policy holder, access to risk management activities, which have the purpose of assisting the policyholder to reduce his or her individual claims risk, are to be offered or facilitated by the insurer.

Withdrawal of cover

(2) An insurer must not refuse to provide approved insurance to an existing policyholder:

(a) who has been registered as a medical practitioner for a period of less than three years and who has not previously had his or her name removed from the medical register following disciplinary proceedings; or

(b) who has held specialist qualifications recognised under the Health Insurance Act for a period of less than three years and who has not previously had his or her name removed from the medical register following disciplinary proceedings; or

(c) in the case of a medical practitioner to whom paragraph (a) or (b) does not apply, unless the medical practitioner has an incident and claims history the insurer considers warrants such a decision.

(3) Sub clause (2) does not apply where an insurer refuses to provide approved insurance:

(a) for a reason which is of a similar kind to a reason that enables the cancellation of a contract of general insurance, or the avoidance of a claim or policy, in accordance with the relevant provisions of the Insurance Contracts Act; or

(b) for a reason which relates to a breach or non-observance by the medical practitioner of the terms and conditions of the relevant insurance policy, or the non-payment of the relevant premium; or

(c) because the insurer ceases to engage in the business of providing professional indemnity insurance to non-exempt medical practitioners.

(4) For the purposes of this clause a decision by an insurer to charge a medical practitioner a premium which is at least twice the premium charged by the insurer to all, or a majority of, medical practitioners of the same premium category is taken to be a decision to refuse to provide approved insurance.
3. Proper notice and explanation

(1) Subject to clause (4) of this Part, an insurer must not (whether upon renewal or otherwise), because of the incident and claims history of an existing policy holder, make an adverse decision in respect of the approved insurance of the policy holder or a decision to refuse to provide approved insurance to the policy holder, unless the insurer:
   (a) in the case of any adverse decision, has given the policy holder 28 days’ written notice prior to the decision taking effect; or
   (b) in the case of a decision to refuse to provide professional indemnity insurance, has given the policyholder two months’ written notice prior to the decision taking effect, together with a copy of the claims history specified at clause 1(3) of this Part.

(2) Prior to giving such notice under sub clause (1)(a) the insurer must:
   (a) give the relevant medical practitioner a reasonable opportunity to discuss the proposed decision and the reasons for it with the insurer, and
   (b) take into account any matters raised by the medical practitioner in the course of those discussions.

(3) If requested by the relevant medical practitioner, the insurer must provide to him or her a written explanation of the reasons for its refusal to provide approved insurance.

(4) This clause does not apply where an insurer upon renewal of professional indemnity insurance continues to give effect to an adverse decision made prior to the insurance being renewed.

(5) For the purposes of this clause a decision by an insurer to charge a medical practitioner a premium which is at least twice the premium charged by the insurer to all, or a majority of, medical practitioners of the same premium category is taken to be a decision to refuse to provide approved insurance.

4. Opportunity for consideration by Medical Board at practitioner’s election

(1) This clause applies to a refusal to provide approved insurance because of the incident and claims history of an existing policyholder.

(2) For the purposes of this clause a decision by an insurer to charge a medical practitioner a premium which is at least twice the premium charged by the insurer to all, or a majority of, medical practitioners of the same premium category, is taken to be a decision to refuse to provide approved insurance.
(3) If within 28 days of receiving notice of a decision to refuse to provide approved insurance in respect of an existing policyholder, the policyholder:
(a) authorises the insurer, in writing, to notify the Medical Board of any matter which forms the basis of the decision and to provide to the Medical Board information and documentation relevant to such matter; and
(b) authorises the Medical Board, in writing, to provide to the insurer a copy of its advice to the practitioner as to the outcome of any such notification, if made, and in those cases where the Medical Board refers a matter to an Impaired Registrants Panel or for assessment under Part 5A of the Medical Practice Act 1992, copies of any relevant decisions, reports and recommendations arising from the referral, an insurer is to forward the relevant information to the Medical Board.

(4) If an insurer is authorised to forward information to the Medical Board under sub clause (3), an insurer is not to give effect to the decision to refuse to provide professional indemnity insurance pending whichever of the following occurs first:
(a) the expiration of a period of three months from the date of forwarding the relevant information pursuant to sub clause (3); or
(b) receipt and consideration by the insurer of copies of the information referred to under sub clause (3)(b).

(5) If such matters are the subject of a referral to an Impaired Registrants Panel or form the basis of a referral for assessment under Part 5A of the Medical Practice Act 1992, the insurer is to:
(a) review its decision (whether or not it has already given effect to that decision) following receipt and consideration by the insurer of any reports and recommendations arising from the referral, and of advice on any action taken by the Medical Board consequent upon those reports and recommendations; and
(b) take reasonable steps to advise the relevant practitioner of the outcome of that review.

(6) Nothing in this clause prevents an insurer from charging a premium of an amount that does not constitute a refusal to provide approved insurance under sub clause (2) pending receipt of the Medical Board’s advice or the expiration of three months, whichever first occurs, in accordance with sub clause (3).
Division 3 - New Applicants

5. Decisions concerning individual cover

(1) In this clause a refusal of an application for approved insurance includes a decision to not accept an offer to enter into a contract for such insurance.

Newly qualified practitioners

(2) An insurer must not make a significant adverse decision in respect of an application for approved insurance from a medical practitioner who has not previously held professional indemnity insurance with that insurer:

(a) if the applicant has been registered as a medical practitioner for a period of less than three years and has not previously had his or her name removed from the medical register following disciplinary proceedings; or

(b) if the applicant has held specialist qualifications recognised under the Health Insurance Act for a period of less than three years and has not previously had his or her name removed from the medical register following disciplinary proceedings.

Refusal of cover

(3) Before giving effect to a decision to refuse an application for approved insurance from a medical practitioner an insurer must give the medical practitioner a reasonable opportunity to discuss the proposed decision and the reasons for it with the insurer.

(4) If requested by a medical practitioner whose application for approved insurance is refused, the relevant insurer must provide him or her with a written explanation of the reasons for its refusal.
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Member Services Fax: 1300 011 244  
Claims Fax: 1300 011 235  
Email: peaceofmind@mdanational.com.au  
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Unit 7, 161 Ward Street NORTH ADELAIDE SA 5006  
Phone: (08) 7129 4500 Fax: (08) 7129 4520

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