FAMILY DAY CARE AUSTRALIA
PUBLIC LIABILITY INSURANCE

POLICY WORDING SERVICE

PUBLIC LIABILITY INSURANCE - POLICY WORDING SERVICE

December 2024 UMR: B0180PN2409101

Family Day Care Australia Limited AFSL 329 616 | ABN 93 094 436 021

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OUR AGREEMENT

Because You have paid or agreed to pay the premium for this Policy, We agree to provide You with the insurance cover described in this Policy.

1. WHAT THIS POLICY CONSISTS OF

This Policy incorporates the:

- Schedule;
- Our Agreement;
- Coverage;
- Exclusions;
- Conditions;
- Definitions;
- Extensions;
- Endorsements

and any other terms herein which are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

All parts of the printed Policy wording, the Schedule, the Extensions and Endorsements must be read as if they are one and the same document.

2. HOW MUCH WE WILL PAY

2.1 **Limit of Liability**

We will not pay any more for any claim under this Policy than the lesser of:

2.1.1 the Limit of Liability or any sub-limit less any Excess which is listed in the Schedule; or

2.1.2 any other limit less any Excess which is set out in this Policy.

2.2 **Excess**

We will not pay the Excess which applies to any claim. The Excesses are set out in the Schedule and the Policy.

If more than one Excess applies to any one claim or series of claims under this Policy, then only the single highest Excess will apply.

3. COVERAGE

3.1 **Insuring clause**

We will pay to You or on Your behalf all amounts which You shall become legally liable to pay for compensation:

3.1.1 in respect of Personal Injury or Property Damage or Advertising Injury;

3.1.2 which happens during the Period of Insurance; and

3.1.3 is caused by an Occurrence in connection with the Business.

We will not pay more than the Limit of Liability stated in the Schedule for Public Liability for all claims or series of claims arising out of any one Occurrence.

We will not pay more than the Limit of Liability stated in the Schedule for Products Liability for all claims arising out of all or any of Your Products during any one Period of Insurance.

In addition to the Limits of Liability stated in the Schedule, We will:

(a) defend any suit against You claiming any amounts for Personal Injury or Property Damage or Advertising Injury and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; and We may investigate, negotiate and settle any claim or suit as We deem expedient; but We shall not be obligated to pay any claim or judgement or to defend any suit after Our Limit of Liability has been exhausted by payment of judgements or settlements;

(b) pay all expenses incurred by Us, all legal costs recoverable from You in any such suit and all interest accruing after any such judgement until We have paid, tendered, or deposited in court such part of such judgement as does not exceed Our Limit of Liability thereon;

(c) reimburse You for all reasonable expenses other than Your loss of earnings, incurred with Our consent;

(d) pay expenses incurred by You for first-aid to others at the time or any Personal Injury for which You are entitled to compensation.

If a payment exceeding Our Limit of Liability has to be made to dispose of a claim Our liability to pay these additional payments in connection therewith shall be limited to such proportion of the additional payments as the Limit of Liability bears to the amount paid to dispose of the claim.

3.2 **Retroactive cover**

We will indemnify You for any Personal Injury or Property Damage for which a claim is made against You during the Period of Insurance and which is notified to Us during the Period of Insurance so long as the incident from which the claim directly arose:

3.2.1 occurred during the period between the Retroactive Date as stated in the Schedule and the first day of the Period of Insurance; and

3.2.2 had not been reported by You or on Your behalf to another Insurer prior to the Period of Insurance; and

3.2.3 You did not know, or could not reasonably have known that the incident could give rise to a claim against You.

4. OTHER COVERS

4.1 **Errors and Omissions Extension**

It is hereby noted and agreed by Underwriters that the following Extension of cover is to be included in the Policy.

4.1.1 Notice to You

The terms and conditions of this Errors and Omissions Extension provide that:

(a) a Claim (as defined) must be made against You during the Period of Insurance for this Policy to apply; and

(b) You must immediately notify Us in writing of such Claim(s). Such notification must be given to Us during the Period of Insurance for this Policy to apply.

If any circumstances or facts come to Your attention during the Period of Insurance which are likely to give rise to a Claim(s) to be made against You or which You should reasonably expect to give rise to a Claim(s) to be made against You, the terms and conditions of this Errors and Omissions Extension provide You with an option as to whether or not to notify Us. However, failure to notify may affect Policy indemnity, i.e. all or part of any subsequent Claim(s) may not be covered. Assuming the option to notify Us is chosen such notification must be given in writing during the Period of Insurance for this Policy to apply.

The time of the happening of the negligence, whether by act, error or omission which gives rise to a Claim(s) or a possible Claim(s), is not of relevance provided they occur after the Retroactive Date as stated in the Schedule.

Upon expiry of the Period of Insurance, no further Claim(s) can be made under this Policy and therefore the maintenance of insurance provided by this Errors and Omissions Extension is essential.

4.1.2 Errors and Omissions Operative Clause

We, to the extent and in the manner hereinafter provided, hereby agree to pay to or on behalf of You up to the Limit of Liability as stated in the schedule against all sums which You shall become legally liable to pay as compensation as a result of a Claim or Claims first made against You and reported to Us during the Period of Insurance arising out of any negligence, whether by act, error or omission (which expression shall include any non-deliberate breach of section 18 of the Australian Consumer Law (Schedule 2 of Competition and Consumer Act 2010 (Cth))or mirroring provisions of any State Fair Trading Act or similar statute) committed or alleged to have been committed by You or on Your behalf in connection with Your Products or services.

We hereby agree to pay all Costs in the defence of a Claim (including claims handling expenses) for which indemnity is available under this Errors and Omissions Extension provided that Our total aggregate liability (including costs in the defence of Claim) shall not exceed in all the Limit of Liability specified above notwithstanding the number of Claims made.

4.1.3 Additional Exclusions Applicable to Errors and Omissions Cover

This Errors and Omissions Extension does not cover liability:

(a) as already excluded under the Policy. For the purposes of this Errors and Omissions Extension only, Exclusion 6.16 is deleted;

(b) arising out of acts, errors or omissions which occurred or allegedly occurred prior to the commencement of the Period of Insurance;

(c) arising out of any facts or circumstances which You were aware of prior to the commencement of the Period of Insurance or which a reasonable person in Your position would have considered may give rise to a Claim;

(d) arising out of or attributable to any failure or omission on Your part to affect or maintain insurance;

(e) which is more specifically insured against in any other section of this Policy;

(f) arising out of the repair, reconditioning, replacement, making good or recall of any product or faulty or inadequate workmanship performed by You or on Your behalf;

(g) assumed under contract or agreement unless such liability would have attached in the absence of such contract or agreement;

(h) arising from an occurrence which is inevitable having regard to:

(i) the circumstances and nature of the work undertaken, or

(j) Your Products.

(k) arising out of conspiracy, conversion, deceit, inducement, breach of contract or injurious falsehood;

(l) arising in the USA and/or Canada or in respect of any Claims which would be subject to the jurisdiction of the Courts of the USA and/or Canada;

(m) incurred by or caused by a director or officer of Yours whilst acting within the scope of their duties in such capacity.

4.1.4 Conditions Applicable to Errors and Omissions Cover

(a) You shall, as a condition precedent to their right to be indemnified under this section, give to Us as soon as practicable notice in writing during the Period of Insurance:

(i) of any Claim(s) made against You;

(ii) of the receipt of notice from any person of an intention to make a claim against You.

(b) You shall give to Us as soon as practicable, notice in writing during the Period of Insurance of any circumstance of which You shall become aware during the Period of Insurance, likely to give rise to a Claim against You.

4.1.5 If, during the Period of Insurance, You become aware of any circumstances which might subsequently give rise to a Claim under this Errors and Omissions Extension and elect, during the Period of Insurance, to give written notice to Us of such circumstances, then any such Claim which might subsequently arise out of such circumstances will be deemed to have been made during the Period of Insurance.

All other terms and conditions remain unchanged.

4.2 **Criminal Defence Expense Insurance Extension**

4.2.1 Preamble

It is agreed that:

(a) We will pay Your Criminal Legal Costs and Expenses subject to the terms and conditions of this Criminal Defence Expense Insurance Extension;

(b) the indemnity provided by this Criminal Defence Expense Insurance Extension is subject to the Policy, the Schedule, the Certificate of Insurance, and any endorsement (unless otherwise expressly stated herein); and these will be considered one document and any word or expression to which a specific meaning has been attached will bear such meaning wherever it appears;

(c) where this Criminal Defence Expense Insurance Extension is not specified as included in the Schedule then this Policy shall not provide any indemnity in relation to coverage specified in this Criminal Defence Expense Insurance Extension.

4.2.2 Insuring Clause

Subject to the Limit of Liability specified in the Schedule for this Criminal Defence Expense Insurance Extension, We will indemnify You in respect of Criminal Legal Costs and Expenses incurred in:

(a) the defence of criminal proceedings in a court of criminal jurisdiction commenced against You during the Period of Insurance and arising from any Insured Event, ("**Initial Proceedings**").

(b) the appeal, or the defence of any appeal, against judgement, conviction or sentence in any Initial Proceedings.

4.2.3 Claims Conditions

The following Claims Condition applies specifically to this Criminal Defence Expense Insurance Extension:

4.2.4 Presentation of Claim

You must advise Us immediately in writing of the full circumstances of any Insured Event or any actual or likely legal proceedings which give rise or is likely to give rise to a claim under this Policy and provide such proof, supporting evidence, and other information as We may request.

4.2.5 Claims Consent

We shall provide indemnity with respect to a claim where You are able to satisfy Us that:

(a) there are reasonable grounds for defending the legal proceedings

(b) and

(c) it is reasonable for Criminal Legal Costs and Expenses to be provided in the particular case.

(d) You must obtain and forward to Us upon Our request, and at Your expense, a written opinion from Your solicitor and should We deem necessary, counsel, on the merit of the claim or legal proceedings. If the claim is subsequently admitted by Us, the costs incurred by You in obtaining these opinions will be covered by this Policy.

(e) If We either refuse to accept, or do not continue to support a claim We shall inform You of the reasons for doing so.

4.2.6 Representation

(a) Upon making a claim You may either request Us to nominate a solicitor to act for You or You may nominate a solicitor to act for You.

(b) Upon request for the nomination of a solicitor We shall recommend the appointment of a solicitor and You will instruct that solicitor accordingly.

(c) We reserve the right to refuse the nomination of a solicitor by You without giving any reason and prior to Our acceptance of Your nomination of a

solicitor We may make such enquiries as We deem appropriate with respect to that solicitor.

(d) We reserve the right to instruct You to terminate the services of a solicitor nominated by You or appointed by Us if We believe it is in Your best interest to do so. You shall terminate the services of the solicitor and a new solicitor shall be appointed to act for You nominated by You or appointed by Us in the circumstances referred to above.

(e) The solicitor whom We agree shall be nominated to act for You shall be appointed by Us in Your name and on Your behalf.

(f) Prior to Our acceptance of the Your nomination of a solicitor or if You fail to nominate a solicitor We shall be entitled but not bound to instruct a solicitor on Your behalf if We consider this necessary to safeguard Your immediate interests.

4.2.7 Control of Claim

(a) We shall have direct access to the Appointed Solicitor at all times and You shall co-operate fully with Us in all respects and shall keep Us fully and continually informed of all material developments in the legal representation or proceedings. At Our request You shall instruct the Appointed Solicitor to produce immediately any documents, information or advice in his/her possession and further shall give him/her such other instructions in relation to the conduct of the claim as We may require.

(b) We shall not be liable for the costs or fees of counsel, accountants or any expert witness unless We have given Our prior approval to the appointment of such person and agreed the proposed costs or fees.

(c) Unless Our consent is first obtained We shall not be liable for any costs or expenses that may be payable as a result of any agreement, undertaking or promise made or given by You to the Appointed Solicitor or to any witness, expert or other person relevant to the proceedings.

(d) If in any legal proceedings You are not successful in the claim or defence put forward by You, We will not be liable for any appeal or further proceedings unless We are notified in writing of the intention to appeal no later than six (6) clear days before the time for making an appeal expires and We consider there are reasonable prospects of such appeal succeeding and it is reasonable for Criminal Legal Costs and Expenses to be provided in the particular case.

(e) At Our request You shall require the Appointed Solicitor to have the Criminal Legal Costs and Expenses taxed by the relevant statutory authority or otherwise assessed by an appropriate cost consultant approved by Us, as We may direct.

(f) If for any reason the Appointed Solicitor refuses to continue acting for You or if You withdraw Your instruction from the Appointed Solicitor then Our liability will cease forthwith unless in Our absolute discretion We agree to the appointment of another solicitor to continue with the claim.

(g) Where You are awarded costs, You must take steps to recover Criminal Legal Costs and Expenses which would be the subject of payment under this Policy.

Such Criminal Legal Costs and Expenses actually recovered will be taken into account by Us when calculating Our liability under the Policy.

4.2.8 Payment of Costs

All accounts for Criminal Legal Costs and Expenses payable under this Policy shall be submitted to Us immediately.

4.2.9 Exclusions to Criminal Defence Expense Insurance Extension

The following Exclusions apply additionally and only to this Criminal Defence Expense Insurance Extension.

We shall not be liable for any claim for Criminal Legal Costs and Expenses under this Criminal Defence Expense Insurance Extension:

in respect of or arising from or relating to:

(a) any Insured Event which occurred or is alleged to have occurred prior to the commencement of the Period of Insurance and which You knew or ought reasonably to have known was likely to give rise to legal proceedings against You;

(b) Criminal Legal Costs and Expenses incurred prior to the written acceptance of a claim by Us;

(c) defamation, slander or libel;

(d) a dispute with Us arising from any claim under this Policy;

(e) the defence of any criminal prosecution under any relevant motor and road traffic legislation; or

(f) the defence of any criminal prosecution arising from or out of fraud or overcharging in relation to Commonwealth or State legislation.

4.2.10 where You

(a) defend legal proceedings without Our consent or contrary to or in a different manner from that advised by the Appointed Solicitor;

(b) fail to give proper instructions in due time to the Appointed Solicitor or counsel appointed by You; or

(c) are responsible for delay, which is prejudicial to the successful outcome of the claim or legal proceedings.

(d) for any legal proceedings in a court or tribunal outside Australia.

4.2.11 the molestation or interference with a minor or minors by adult family members. Further We shall not have any duty to defend any action, suit or proceedings brought against adult family members (or any other person or body corporate who might otherwise but for the provision of this clause be entitled to indemnity under this Policy) which either directly or vicariously seeks compensation in respect of such molestation or interference as above or any personal injury resultant there from.

4.2.12 in respect of or arising from or relating to the defence of any criminal prosecution where a criminal conviction is subsequently recorded. In respect of any Insured Event whereby indemnity is provided by Us under this Criminal Defence Expense Insurance Extension and a criminal conviction is

subsequently recorded against You relating to the same Insured Event, You shall return to Us all Criminal Legal Costs and Expenses paid by Us immediately.

4.2.13 relating to the defence of any criminal prosecution not arising from or relating to the Your Business.

4.2.14 in respect of or arising from or relating to any occurrence which would otherwise be excluded under this Policy.

4.2.15 Subject otherwise to the terms conditions and exclusions of this policy.

4.3 **Fines and Penalties Extension**

Notwithstanding Exclusion 6.9 of the policy, We will provide cover as follows:

4.3.1 Insuring Clause

We agree to pay to and on Your behalf any Loss arising from any Claim first received by You and notified to Us during the Period of Insurance.

4.3.2 Limit of Indemnity

(a) The Limit of Indemnity shall be as stated in the evidence of cover.

(b) For the purposes of this Policy, all Losses arising out of any one Violation or interrelated Violations are deemed to be one Loss.

4.3.3 Definitions

(a) For the purposes of this Fines and Penalties Extension only:

Claim

Means any verbal or written notice received by You which alleges a Violation and claims that You are liable to pay a Fine.

You

Means the persons identified in the Schedule so long as and only to the extent that they are a member of Family Day Care Australia.

4.3.1 Endorsement NO.A1

This Endorsement replaces and supersedes any provision in the Policy that provides insurance, in whole or in part, for these matters. This Endorsement is effective immediately whether notified to you as part of any renewal or during the Period of Insurance.

Deletion of Other Cover 4.3 Fines and Penalties Extension
Other Cover 4.3 Fines and Penalties Extension is deleted in its entirety from the date on which the provision of insurance indemnifying against any Fine, Loss or Penalty is prohibited or made an offence by any statute, regulation or by-law in the State or Territory in which Your Business is operated.

This Endorsement will apply:

- regardless of when You:
  - first received the Claim; or
  - first notified Us of the Claim;
- provided that the date on which You may be required to pay any such Fine, Loss or Penalty is after the date on which insurance indemnifying against the relevant Fine, Loss or Penalty is prohibited or made an offence by any statute, regulation or

by-law in the State or Territory in which Your Business is operated.

Where Your Business is operated in more than one State or Territory, then this Endorsement shall apply separately to each Business so that a statute, regulation or by-law passed in one State or Territory shall not affect a Business operated in another State or Territory.
Nothing within this Endorsement otherwise affects the terms and conditions of the Policy.

All other terms and conditions remain unchanged.

4.4 **Commercial Legal Expense Extension**

It is hereby noted and agreed by underwriters that the following Commercial Legal Expense Extension of cover is included in the Policy.

Notices

4.4.1 Legal Advice

The advice available is limited to the law and practice in Australia.

This Commercial Legal Expense Extension is only available to You if Your Normal Business Activities are conducted within the Territorial Limits.

4.4.2 Claims Made and Notified

(a) This is a "claims made and notified" insurance extension, which means that it provides cover only in relation to a Claim against You that is:

(i) first made against you during the Period of Insurance; and

(ii) notified by you to the Claims Administrator during the Period of Insurance, provided that you were not aware before the commencement of the Period of Insurance of any facts that alerted you or would have alerted a reasonable person in your position that the Claim might arise (see clause 4.4.17(b) and Exclusion 6.13).

(b) This Commercial Legal Expense Extension also responds to "claims circumstances" notified by You to the Claims Administrator during the Period of Insurance pursuant to section 40(3) of the Insurance Contracts Act 1984 (Cth), which provides:

'Where You gave notice in writing to Us of facts that might give rise to a claim against You as soon as was reasonably practicable after You became aware of those facts but before the insurance cover provided by the contract expired, We are not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of insurance cover provided by the contract.'

(c) This Commercial Legal Expense Extension also provides cover in relation to a claim made by you against another, but only if:

(i) You first become aware of facts and circumstances giving rise to the claim during and not before the Period of Insurance; and

(ii) You first notify the Claims Administrator of those facts and circumstances and your intention to make the claim during the Period of Insurance.

(d) This Commercial Legal Expense Extension does not provide cover for any legal costs or expenses that you incur before the Claims Administrator accepts the Claim.

(e) Please note that, in addition to clause 4.4.17(b), special conditions dealing with the reporting of claims apply to claims under the Statutory Licence Protection and Tax Disputes covers – see section 4.4.10 and 4.4.12 of "Insuring Clause".

4.4.3 Material Alterations of Risk

(a) You shall throughout the Period of Insurance disclose to Us as soon as reasonably practicable any material change in any fact, activity or circumstance as described in the Proposal.

(b) We are entitled to refuse to cover the additional exposure or to charge a reasonable additional premium or, if the nature of the change in circumstances entails a substantially different risk, whether in type or degree, from that previously envisaged, to cancel the contract or reduce its liability.

4.4.4 Insuring Clauses – Sections of Cover

We will indemnify You under the following Sections of Cover, subject to the terms of this Commercial Legal Expense extension and up to but not exceeding the Limit of Indemnity and the Annual Aggregate Limit:

4.4.5 Privacy

The Costs, Attendance Expenses and Opponent's Costs of a Legal Action in respect of:

(a) a Claim against You for breach of the Privacy Act; or

(b) a claim by You being an appeal against an enforcement notice, declaration, determination or other notice relating to interferences with privacy issued under the Privacy Act following Your receipt of such a notice.

4.4.6 Prosecution Defence for You

(a) Your Costs and Attendance Expenses of a Legal Action against You being a criminal prosecution, including under the Competition and Consumer Act, arising from a Claim of an alleged act or omission by You; or

(b) Your Costs and Attendance Expenses of a Legal Action in respect of a Claim being a review of, or appeal against, improvement, prohibition and non-disturbance notices served on You under the Occupational Health and Safety Act 1991 (Cth) or corresponding legislation of a State or Territory of the Commonwealth.

4.4.7 Employee Protection

An Employee's Costs and Your Attendance Expenses of a Legal Action against that Employee being a criminal prosecution, including under the Competition and Consumer Act, arising from a Claim relating to an alleged act or omission in the course of his or her duties as an Employee of Yours.

4.4.8 Property Protection

Your Costs, Attendance Expenses and Opponent's Costs of a Legal Action by You against an Opponent in respect of a Claim relating to an act or omission by that Opponent in relation to the Business Premises or goods owned by You which results in, or is likely to result in, uninsured financial loss to You resulting from physical damage to that property.

4.4.9 Tenancy Disputes

Your Costs, Attendance Expenses and Opponent's Costs of a Legal Action:

(a) by You against Your landlord or against You by Your landlord in respect of a

Claim for breach of the terms contained within the lease or tenancy agreement applying to the Business Premises;

(b) by You in respect of a Claim for breach of the terms contained within a lease or tenancy agreement granted to the tenant by You where Your Normal Business Activities are those of a commercial landlord;

(c) brought against You by a tenant in respect of a Claim for breach of the terms contained within a lease or tenancy agreement granted to the tenant where Your Normal Business Activities are those of a commercial landlord.

4.4.10 Inquiry Protection

Your Costs and Attendance Expenses of a Claim being an Inquiry, excluding those recoverable under any other Section of this Policy.

4.4.11 Tax Disputes and Investigations

(a) Your Costs and Attendance Expenses of a Legal Action arising directly from:

(b) a GST Dispute with the ATO in respect of a Claim by the ATO for additional amounts of GST where there are reasonable prospects of You obtaining a financial benefit. For the purpose of this clause, the Claim is first made against You on the earliest of the following:

(i) the date on which the ATO requests a meeting with You or enters Your premises or expresses dissatisfaction with any of Your GST returns in writing;

(ii) the date on which You or his or her adviser first became aware, or could reasonably have become aware, that a GST Dispute was likely to arise with the ATO; or

(iii) the date on which You are served with a notice of assessment or amended notice of assessment relating to the additional amounts of GST;

(c) a Fringe Benefits Dispute in respect of a Claim by the ATO for additional amounts of tax within the meaning of Income Tax Legislation. For the purpose of this clause, the Claim is first made against You on the earliest of:

(i) the date on which the ATO expresses dissatisfaction with the amounts of PAYG or FBT (as those terms are defined in Income Tax Legislation) paid by You or his or her returns relating to PAYG or FBT; or

(ii) the date on which the ATO starts an investigation into the accuracy of PAYG or FBT returns or information or into Your liability or that of an Employee to pay additional tax because of alleged inaccuracies in such returns or information.

(d) Your Costs and Attendance Expenses arising directly from an ATO Investigation in respect of a Claim being a notification from the ATO that it is taking action, carrying out an investigation or making an inquiry under the provisions of Income Tax Legislation.

4.4.12 Personal Injury

Your Attendance Expenses of a Legal Action by that Employee in respect of a Claim against anyone other than You arising from an incident which causes death or personal injury to the Employee while in the course of the Employee's employment.

4.4.13 Discrimination Protection

Your Costs, Attendance Expenses and Opponent's Costs of a Legal Action against You by an Opponent in respect of a Claim or infringement of his or her rights under Discrimination Legislation.

4.4.14 Contract

Your Costs and Attendance Expenses and Opponents Costs of a Legal Action by or against You in respect of a Claim arising from a dispute between You and his or her customer or supplier about a written agreement or contract for the supply of goods or services. The dispute must be such that the amount in dispute exceeds the Jurisdictional Small Claims limit in any Court or Tribunal having Jurisdiction to deal with Small Claims in the State or Territory in which the action is brought.

The facts and circumstances giving rise to the dispute must first occur at least 90 days after the start of the First Period of Insurance.

4.4.15 Claim Definition

For the purposes of this Commercial Legal Expense Extension only, **Claim** means a claim of a kind described in the Sections of Cover under 'What is Covered' that:

(a) is first made against You or an Employee during the Period of Insurance and notified by You to the Claims Administrator before the end of the Period of Insurance; or

(b) first comes to the knowledge of You during the Period of Insurance and is first notified to the Claims Administrator before the end of the Period of Insurance; and arises out of the Normal Business Activities.

4.4.16 What Is Not Covered

The following exclusions apply in respect of the following sections of cover:

(a) Privacy

Any Claim arising from or relating to:

(i) failure to respond to any notice served under the Privacy Act;

(ii) a wilful failure to comply with any legislative requirement about the processing of sensitive information;

(iii) the cost associated with any Legal Action concerning the grant and/or execution of a warrant of entry; and

(iv) the payment of any civil penalty.

(b) Prosecution Defence for You

Any Claim arising from or relating to:

(i) the ownership, possession, hire or use of a motor vehicle, aircraft or marine craft;

(ii) allegations of:

1. intentional obstruction of a person in the execution of an authorisation order issued under the Privacy Act; and/or

2. failure to give a person executing such an authorisation order the assistance that is reasonably required for its execution;

(iii) allegations of manslaughter;

(iv) prosecution for offences against the person including offences of a sexual nature;

(v) drugs, alcohol, indecent or obscene materials, or immigration;

(vi) income tax;

(vii) superannuation contributions under the Superannuation Industry (Supervision) Act 1993 (Cth).

(viii) allegations of fraud, dishonesty, bribery, intentional violence or any deliberate criminal or dishonest act or omission by You.

(c) Employee Protection

Any Claim arising from or relating to:

(i) the ownership, possession, hire or use of a motor vehicle;

(ii) allegations of:

1. intentional obstruction of a person in the execution of an authorisation order issued under the Privacy Act; and/or

2. failure to give a person executing such a warrant the assistance that is reasonably required for its execution;

(iii) matters which do not relate to the Employee's duties as an Employee of Yours;

(iv) allegations of manslaughter;

(v) drugs, alcohol, indecent or obscene materials, or immigration.

(vi) income tax;

(vii) allegations of fraud, dishonesty, bribery, intentional violence or any deliberate criminal or dishonest act or omission by the Employee.

(d) Property Protection

Any Claim arising from or relating to:

(i) a contract between You and a third party;

(ii) a lease or licence to occupy land or buildings;

(iii) a dispute over the possession of or right to occupy land and/or any building;

(iv) goods in transit;

(v) goods You have hired from or lent to third parties;

(vi) goods at premises other than the Business Premises unless they are to be installed at those premises or to be used in work carried out by You;

(vii) a motor vehicle belonging to You or in Your possession except whilst on the Business Premises;

(viii) any dispute relating to tax, planning or building regulations or decisions or compulsory purchase orders.

(e) Tenancy Disputes

Any Claim arising from or relating to:

(i) the amount, payment or non-payment of rent or other payments due under the terms of the lease, licence or tenancy agreement between You and Your landlord;

(ii) the renewal of a lease or tenancy agreement or any dispute arising during a rent review period.

(f) Inquiry Protection

Any Claim arising from or relating to:

(i) routine supervision, inspection, compliance or similar review of an Insured undertaken by any regulatory (including self-regulatory), professional, statutory or official body or institution;

(ii) investigation of industry-wide violations (as opposed to specific investigations of an Insured);

(iii) child care subsidy;

(iv) a service approval granted under the Children (Education and Care Services) National Law Act 2010.

(g) Tax Disputes and Investigations

(i) Costs incurred in dealing with routine matters which do not fall within a Claim by the ATO in respect of a GST Dispute, Fringe Benefits Dispute or ATO Investigation (including but not limited to a BAS audit/Superannuation Fund audit/payroll tax audit visit).

(ii) In respect of only an ATO Investigation:

(iii) costs arising after the issue of a notice under Income Tax Legislation notifying You that the investigation has been completed; and/or

(iv) costs arising directly from an amendment under Income Tax Legislation; and/or

(v) costs incurred otherwise than wholly in connection with an ATO Investigation into Your business income or profits. Where appropriate the Preferred Practitioner's fees will be apportioned.

(vi) Any Claim where:

1. deliberate mis-statements have been made in respect of accounts, returns or any other submissions made to the relevant authorities with intent to deceive;
2. You have failed to notify his or her business status to the relevant authorities within a statutory period;

3. there has been a failure to maintain or submit accurate, truthful and up-to-date records and returns or a failure to observe statutory time limits or requirements;

4. a false representation has been made either knowingly or without belief in its truth and this has resulted in a mis-statement of amounts payable, expenses claimed, income or profits chargeable or losses allowable for tax or contributions purposes or of expenses payments made;

(vii) Any **Claim** arising from or relating to:

1. an investigation or inquiry by the Prosecutions Division of the ATO or following the transfer of an inquiry to that Division;

2. avoidance schemes relating to tax or superannuation contributions under the Superannuation Industry (Supervision) Act 1993 (Cth); and/or

3. GST refunds in countries outside Australia or Import GST;

4. an industry-wide investigation by the ATO of day care and associated activities.

(h) Discrimination Protection

Any Claim arising from or relating to deliberate discrimination amounting to unlawful discrimination.

(i) Contract

(i) Any Claim arising from or relating to:

1. the recovery of a debt from a customer or supplier where that customer or supplier does not dispute that the money is lawfully owed to You;

2. a dispute between a landlord and tenant or licensor and licensee;

3. the sale, lease, service, repair or test of a motor vehicle;

4. a contract of employment;

5. a dispute about securities, bills of exchange, goodwill, credit, guarantees, assignment, agency, franchisement or bailment;

6. the sale or purchase of real property;

7. construction contracts;
8. computer software operating systems and packaged software tailored by a supplier to Your special order.

(ii) Any Claim arising from an arbitration clause in a contract unless the Claims Administrator has agreed in writing to accept the Claim.

The Following Exclusions Apply to the whole of the Commercial Legal Expense Extension

(j) Excess and Various Liabilities

We will not pay for:

(i) the Excess;

(ii) compensation, damages, interest, penalties or taxes which You or his or her Employees, Partners or Directors are ordered or agree to pay.

(k) Excluded Claims

Any Claim:

(i) notified to the Claims Administrator after the Period of Insurance expires;

(ii) where Your delay during the Period of Insurance in notifying the Claims Administrator has prejudiced Our position, but only to the extent of such prejudice;

(iii) arising from an event, fact or circumstance which happens, or a series of events, facts or circumstances which starts, before the First Period of Insurance;

(iv) where, before the commencement of the Period of Insurance, You were aware, or should have been aware, that a Claim was likely to be made;

(v) where, before the commencement of the Period of Insurance, You were aware of facts and circumstances that might give rise to a Claim;

(vi) arising from driving a motor vehicle without a valid licence and/or insurance;

(vii) more specifically insured or any amount that You cannot recover from a more specific insurance because We refused the claim for indemnity under the other insurance;

(viii) in respect of which You are indemnified or is entitled to be indemnified under any contract of insurance;

(ix) in respect of which You are indemnified or entitled to indemnity under an insurance contract:

1. not entered into by You; or

2. that You was required to enter into by or under a law;

(x) where You have admitted liability or pled guilty without the Claims Administrator's consent;

(xi) where no Court or Tribunal will or would entertain a hearing on the substantive merits of the dispute or which is otherwise not within the jurisdiction of a Court or Tribunal.

Any claim for indemnity under the Extension which is false, fraudulent or exaggerated.

Any Claim concerning or arising from:

(xii) anything to do with building, rebuilding, converting or extending all or

part of a building;

(xiii) a dispute about a licence to occupy property;

(xiv) a dispute relating to a rights under a franchise agreement entered into by You;

(xv) a tax or levy relating to the Business Premises;

(xvi) works by or under the order of any government, public or local authority;

(xvii) planning laws and regulations;

(xviii) patents, copyrights, trademarks, merchandise marks, service marks, registered designs, intellectual or artistic property, secrecy or confidentiality agreements and passing off;

(xix) a manufacturer's warranty or guarantee;

(xx) subsidence, land heave, land slip, mining or quarrying;

(xxi) libel, slander, defamation or malicious falsehood;

(xxii) a dispute between You, Us, Claims Administrator, Advice Provider about this Policy;

(xxiii) any dispute between You and any parent, subsidiary or associated company, or any partner or company or trust operated or controlled by You;

(xxiv) any statute relating to Worker's Compensation;

(xxv) an application for judicial review;

(xxvi) the deliberate, conscious or intentional or reckless or negligent disregard by You of the need to take all reasonable steps to avoid and prevent claims or legal proceedings. For the purposes of this clause 12.3.15 'reasonable' shall be assessed by the standards of a reasonable person carrying on the Business Activities of Yours;

(xxvii) wilful breach of duty or a dishonest, fraudulent, reckless or malicious act or omission or other act committed with criminal intent by You.

(xxviii) Any Claim directly or indirectly caused by or contributed to or arising from:

(xxix) any software, stored program, computer, device or system failing (or partly failing) because of a date-based event;

(xxx) pressure waves caused by aircraft or any other airborne device travelling at sonic or supersonic speed;

(xxxi) confiscation, nationalisation, compulsory purchase, requisition, destruction of or restrictions or controls placed on or damage to property by or under the order of any government or public or local authority.

(xxxii) Any civil claim against You arising from:

(xxxiii) the death or injury to any person including (without limitation) any sickness, disease or any naturally occurring condition or degenerative process;

(xxxiv) the loss destruction or damage to property owned or occupied by or under the control of a third party.

(l) Excluded Insured's Costs, Attendance Expenses and Opponent's Costs

All Insured's Costs, Attendance Expenses and Opponent's Costs:

(i) associated with an appeal unless:

(ii) the appeal relates to a Claim that We have already covered under this Policy; and

(iii) You notifies the Claims Administrator in writing that You wants to appeal at least six working days before You are required to give notice of appeal; and

(iv) the Claims Administrator considers that the appeal has Prospects of Success;

(v) of any private prosecution;

(vi) that You pay or agree to pay before the Claims Administrator has accepted Your claim for indemnity in writing;

(vii) greater than agreed by the Claims Administrator;

(viii) arising from You entering into any form of litigation funding without obtaining the Claims Administrator's consent in writing first;

(ix) arising from Your or Preferred Practitioner's unreasonable behaviour or failing;

(x) arising from breach of Your duties under or acts of Yours or the Preferred Practitioner that cause prejudice to Us;

(xi) arising from You acting against or differently from the advice of the Preferred Practitioner;

(xii) of or relating to any security for costs You are ordered to pay or agrees to pay; and

(xiii) incurred in unnecessary correspondence.

(m) Claims not arising from Normal Business Activities

This Commercial Legal Expense Extension does not provide cover in relation to Claims not arising out of the Normal Business Activities.

(n) Professional Negligence Claims

This Commercial Legal Expense Extension does not provide cover in relation to Claims against You or any Partner, Director or Employee for alleged negligent act, error or omission of a type normally covered under professional indemnity, directors and officers, management liability or similar insurance.

(o) Terrorism / War and Contamination Exclusions

(i) This Commercial Legal Expense Extension does not cover any claims or legal proceedings (including any costs or expenses of any description) arising out of or in connection with:

(ii) war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;

(iii) insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;

(iv) discharge, explosion, or use of a weapon of mass destruction, whether or not employing nuclear fission or fusion, or chemical, biological, radioactive or similar agents, by any party at any time for any reason;

(v) any claims or legal proceedings (including any costs or expenses of any description) arising out of or in connection with any terrorist action (regardless of any other cause or event contributing concurrently or in any other sequence to the liability) or any action taken in controlling, preventing or suppressing terrorist action.

(vi) This Commercial Legal Expenses Extension does not cover any claims or legal proceedings (including any costs or expenses of any description) arising out of or in connection with any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or reclaimed) or contamination of any kind; or ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive.

4.4.17 General Conditions

(a) Premium

You must have paid the relevant premium and have been declared to Us as having done so.

(b) Reporting of Claims

(i) This is a "claims made and notified" legal expenses insurance which means that, subject to the terms of this Commercial Legal Expenses Extension as a whole, the following conditions apply:

(ii) In respect of a Claim against You or an Employee, You are covered under the relevant Section of Cover only if:

1. the Claim is first made against You or Employee during the Period of Insurance; and

2. You notifies the Claims Administrator of the Claim before the expiration of the Period of Insurance.

(iii) In respect of a Claim by You, subject to the terms of this Commercial Legal Expenses Extension, You are covered under the relevant Section of Cover only if:

1. You first becomes aware of the facts and circumstances which might give rise to the Claim during the Period of Insurance; and

2. You notifies the Claims Administrator of those facts and circumstances and Your intention to make the Claim before the expiration of the Period of Insurance.

(iv) You must notify the Claims Administrator by e-mail or post to the address stated in the Schedule immediately upon becoming aware of the Claim or facts and circumstances, as relevant. Delay may prejudice Your legal position. If You are in any doubt about your need to notify a Claim under this insurance or Your eligibility to make a claim in respect of such a Claim, then You should contact the Claims Administrator.

(v) You will be sent a claim form. You must fill this in fully and truthfully and return it to the Claims Administrator and give the Claims Administrator, at Your own cost, any documentation, evidence, or other information that the Claims Administrator may reasonably need in order to assess the Claim, including a copy of the Schedule.

(vi) To enable the Claims Administrator to assess the Claim You must tell Your solicitor or tax adviser, if any, to:

1. provide the Claims Administrator, as soon as reasonably possible, with:
2. his or her views on the merits of the Claim and the strategies and timelines to resolve the Claim;

3. his or her detailed estimate of Your Costs and Opponent's Costs of the Claim; and

4. any information, document or file (including Your solicitor's or tax adviser's files) relating to the Claim, whether or not privileged, that the Claims Administrator may ask for.

(vii) You must also give the Claims Administrator immediate notice of any proceedings brought against You, contemplated by You or believed by You to be considered by a third party and any summons or other process served or threatened to be served on You and/or any other incident or circumstance which may give rise to a Claim.

(c) Observance

The due observance and fulfilment of the terms, conditions and endorsements of this Commercial Legal Expenses Extension insofar as they relate to anything to be done or complied with by You and the truth of any statements in Your proposal and declaration shall be conditions of any liability of Us to make any payment under this Commercial Legal Expenses Extension.

(d) Acceptance of a claim

(i) We will pay Your Costs and Attendance Expenses incurred after the Claims Administrator accepts Your claim in writing and Your solicitor or

tax adviser confirms in writing that he or she will co-operate with You to keep to the terms of this Commercial Legal Expenses Extension.

(ii) The Claims Administrator will accept Your claim only if there are Prospects of Success.

(iii) We will only meet Your Costs and Attendance Expenses of the Claim which have been agreed in advance by the Claims Administrator as to both amount and purpose.

(iv) If at any stage the Claims Administrator considers that the Claim does not have Prospects of Success, You will be given an explanation of the decision in writing. We will not provide any further cover for the Claim.

(v) If You disagrees with the Claims Administrator's decision, You can refer the matter under the Inquiries, Complaints or Disputes procedure.

(e) Appointment of Preferred Practitioner and Conduct of Claims

(i) The Claims Administrator or Advice Provider will arrange for the Preferred Practitioner to act on behalf of You in the resolution of a Claim. You shall choose the Preferred Practitioner from a list provided by the Claims Administrator or the Advice Provider or, upon request, the Claims Administrator will nominate the Preferred Practitioner.

(f) You will authorise and request the Preferred Practitioner to:

1. provide the Claims Administrator, as soon as reasonably possible, with:

2. their views on the merits of the Claim and the strategies and timelines to resolve the Claim;

3. their detailed estimate of Your Costs and Opponent's Costs of the Claim; and

4. any information, document or file (including the Preferred Practitioner's files) relating to the Claim, whether or not privileged, that the Claims Administrator may ask for,

5. keep the Claims Administrator fully updated during the Claim:

6. on the progress of the Claim, including any offers to settle;

7. of any change in their views on the merits of the Claim; and

8. of any change to their estimate of Your Costs and Opponents Costs.

(g) You will co-operate at all times with:

(i) the Claims Administrator and reply promptly to any correspondence about the Claim; and

(ii) the Preferred Practitioner and provide them with all information that they need and attend meetings and hearings whenever You are asked to.

(h) In the event that the Claims Administrator considers it appropriate to refer an issue for expert determination, the Claims Administrator will nominate the

expert to be appointed for that purpose.

(i) In the event that the Claims Administrator considers if appropriate to brief counsel, the Claims Administrator will nominate the counsel to be appointed for that purpose.

(j) The Claims Administrator, or its agents, may investigate the Claim. At its absolute discretion, We may, after considering all the circumstances of the Claim, pay You an amount equal to the Claims Administrator's reasonable estimate of the value of the indemnity instead of providing cover for the costs.

(k) You or the Preferred Practitioner must immediately write to tell the Claims Administrator of any offer made to settle the Claim including offers relating to costs. You must not accept any offers without getting the permission of the Claims Administrator first. The Claims Administrator will not withhold consent in relation to an offer that a reasonable solicitor would recommend to a private client who is paying his or her own fees. If You do not accept an offer the Claims Administrator considers reasonable, We will not pay any further costs.

(l) If the Claims Administrator considers at any stage that the Claim no longer has reasonable Prospects of Success, the Claims Administrator will give You an explanation of that decision in writing. We will not provide any further cover for the Claim. If You disagrees with the decision, You can refer the matter for resolution in accordance with the Inquiries, Complaints or Disputes procedure.

(m) If You withdraw from or discontinue the Claim without getting the permission of the Claims Administrator in writing first then We will not pay any costs and will be entitled to recover from You any Insured's Costs, Attendance Expenses and Opponent's Costs paid before the withdrawal or discontinuance. The Claims Administrator will not withhold permission in relation to a withdrawal or discontinuance that a reasonable solicitor would recommend to a private client who is paying his or her own fees.

(n) All accounts for Your Costs, Attendance Expenses and Opponent's Costs payable under this Commercial Legal Expenses Extension must be submitted to the Claims Administrator immediately upon receipt.

(o) If any payment in respect of Your Costs, Attendance Expenses or Opponent's Costs is made under this Commercial Legal Expenses Extension the Claims Administrator will be subrogated to Your rights of recovery. You will not enter into any agreement, arrangement or understanding which has the effect of limiting or compromising the Claims Administrator's rights of subrogation.

(p) If You are dissatisfied with any decision made by a Court or Tribunal and decide to appeal against that decision, You must request the written consent of the Claims Administrator no later than 6 business days prior to the expiry of the time for making an appeal. The Claims Administrator shall provide consent only if the appeal has Prospects of Success.

(q) If the Claims Administrator is dissatisfied with any decision made by a Court or Tribunal and wishes to appeal against that decision, You will co-operate with the Claims Administrator in making such an appeal. In this event, We agree to pay 100% of Your Costs and Opponent's Costs up to the Limit of Indemnity, subject to the Annual Aggregate Limit and the terms of the Extension.

4.4.18 Assessment and Recovery of Costs

(a) If the Claims Administrator asks, You must instruct the Preferred Practitioner to send all of his or her files and any bill of costs for taxation or assessment by a court or certification by the appropriate professional body or auditing by cost consultants appointed by the Claims Administrator.

(b) You must:

1. take reasonable steps to recover all costs awarded or agreed to be paid to You; and

(ii) immediately pay the Claims Administrator any Costs recovered, or instruct the Preferred Practitioner to do so.

(c) If You pay or agree to pay costs above the Limit of Indemnity in order to resolve a Legal Action or Claim, any costs awarded or agreed to be paid to You will be divided between Us and You to reflect the proportion of costs that both We and You have paid or, but for the recovery of costs from an Opponent, would be liable to pay. You will pay the Claims Administrator or instruct the Preferred Practitioner to pay to the Claims Administrator the amount that is due to Us immediately.

(d) The amount of any payment made under the Extension will be reduced by the amount of any Input Tax Credit that You are, or will be, entitled to under A

New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.

4.4.19 Notification of Alteration in Risk

You must notify Us immediately of any alteration in risk which materially affects this legal expenses insurance. You must also declare information in the form and at the intervals the Claims Administrator specifies and You will pay such additional premium to, or receive a refund of premium from Us as the case may be.

4.4.20 Insolvency

We are not obliged to indemnify You if, at any time, You are made bankrupt or go into liquidation or file a bankruptcy petition or winding up petition or make an arrangement with Your creditors or enter into a deed of arrangement or part or all of Your affairs or property are in the control of a receiver or administrator.

4.4.21 Agreement

We are not bound by any agreement that You or the Preferred Practitioner makes without the Claims Administrator's prior approval or permission.

4.4.22 Waiver

If We waive any right or breaches any term of this Commercial Legal Expenses Extension, this will not waive any other right or later breach.

4.4.23 Transferring Your Rights

You cannot transfer Your rights under this Commercial Legal Expenses Extension.

4.4.24 Other Parties and Interests

We will not indemnify anyone not named as an insured.

4.4.25 Cancellation

We may cancel this Policy in accordance with Sections 59 and 60 of the Insurance Contracts Act 1984 (Cth) by giving the appropriate notice to You.

5. AUTOMATIC EXTENSIONS

5.1 **Landlords Cover**

The Policy automatically extends to indemnify property owners, tenants and/or body corporates of rented properties from which You conduct the Business provided that such an indemnity is only extended for claims arising out of Your Business.

Furthermore the policy extends to indemnify the body corporate where You are an owner occupier of part of the building or premises from which Your business is conducted provided at all times that the indemnity under this extension will only apply in respect of Bodily Injury or Property Damage and that such indemnity is only extended for claims arising out of the conduct of Your Business

It is hereby noted that indemnity for accidental damage will be sub-limited to AUD$5,000.00 for any one occurrence. Malicious damage is excluded under this section.

5.2 **In Home Care and In Venue Care**

The Policy automatically extends to indemnify Educators providing care from a venue other than the educator's place of residence.

5.3 **Fundraising Events, Fetes, Excursions, Training, PlayGroups**

The Policy automatically extends to indemnify educators when attending fundraising and promotional events, fetes, festivals, playgroups and similar events whilst undertaking excursions with or without children in care.

6. EXCLUSIONS

We shall not be liable for claims in respect of:

6.1 **Aircraft Hovercraft and Watercraft**

Personal Injury or Property Damage arising out of or caused by, through, or in connection with:

6.1.1 the ownership, legal possession, legal control or use by You or the use on Your behalf of:

(a) Aircraft or Hovercraft; or

(b) any Watercraft, other than manually propelled Watercraft not exceeding 8 metres in length, or mechanically propelled Watercraft that do not require registration and/or that do not require the operator to be licensed not exceeding 3 metres in length.

6.1.2 the selling or manufacturing of Aircraft or the manufacture, assembly and or supply of any products that are used with Your knowledge in Aircraft or aerial device;

6.1.3 the leasing, hiring or chartering of Aircraft to or from You; or

6.1.4 the repair, service or maintenance of Aircraft or Aircraft products or the installation of any products into Aircraft.

6.2 **Asbestos**

Personal Injury or Property Damage caused by or arising out of exposure to asbestos or alleged exposure to asbestos or materials or products containing asbestos.

6.3 **Communicable Disease**

6.3.1 Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause

contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

6.3.2 For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.

6.4 **Contracts and Agreements**

Liability assumed by You under any contract or agreement except to the extent that such liability would have been implied by law.

This Exclusion 6.4 shall not apply to:

6.4.1 the written contracts specified in the Schedule;

6.4.2 liability assumed by You under a warranty of fitness or quality as regards Your Products;

6.4.3 liability assumed by You under any lease or agreement of real or personal property;

6.4.4 liability assumed by You under any agreement or contract signed by You with your coordination unit and/or sponsoring body with respect to the provision of family day care.

6.5 **Cyber and Data**

6.5.1 Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy does not apply to any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:

1.1 Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident; or

1.2 loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any Data, including any amount pertaining to the value of such Data;

regardless of any other cause or event contributing concurrently or in any other sequence thereto.

6.5.2 In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

6.5.3 This endorsement supersedes any other wording in the Policy or any endorsement thereto having a bearing on a Cyber Act, Cyber Incident or Data, and, if in conflict with such wording, replaces it.

6.5.4 If the Underwriters allege that by reason of this endorsement that loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

6.6 **Employees**

6.6.1 Personal Injury to any of Your employees, deemed employees or the employees of sub contractors arising out of or in the course of his/her employment in Your Business;

6.6.2 Personal Injury to any person in Your service arising from a liability imposed by an industrial award or agreement or determination;

6.6.3 Any liability in respect of which You are entitled to seek compensation under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation whether or not You have effected such a policy;

6.7 **Erection and Alteration to Buildings**

The erection, demolition of and/or alteration or addition to buildings or structures by You or on Your behalf except where the completion value of such work does not exceed AUD$50,000.00 unless some other sub-limit is stated in the Schedule.

6.8 **Faulty Workmanship**

The cost of performing, completing, correcting or improving any work undertaken by You.

6.9 **Fines and Penalties**

Punitive, aggravated, exemplary damages or criminal damages, fines or penalties or the like imposed by the law.

6.10 **Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons**

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

6.10.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel

6.10.2 The radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof

6.10.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

6.10.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes

6.10.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

6.11 **Legal Jurisdiction**

Personal Injury or Property Damage where the action is brought against You in any country outside Australia.

6.12 **Libel and Slander**

Liability arising out of the publication or utterance of a libel or slander:

6.12.1 made prior to the commencement date of this Policy; or

6.12.2 made by You or at Your discretion with the knowledge that it is false; or

6.12.3 related to advertising, broadcasting, printing, publishing or telecasting activities by You or on Your behalf.

6.13 **Loss of use**

Loss of use of tangible property which has not been physically injured or destroyed resulting from:

6.13.1 a delay in or lack of performance by You or on Your behalf of any contract or agreement;, or

6.13.2 the failure of Your Products to meet the level of performance, quality fitness or durability expressly or impliedly warranted or represented by You, but this exclusion does not apply to loss of use of other tangible property resulting from the sudden or accidental physical damage to or destruction of Your Products after such Products have been put to use by any person or organisation other than You.

6.14 **Nuclear Fuel/Weapons**

Personal Injury or Property Damage caused by or arising from:

6.14.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion, combustion shall include any self-sustaining process of nuclear fission;

6.14.2 nuclear weapons material.

6.15 **Pollution**

6.15.1 Personal Injury or Property Damage arising out of Pollution occurring in its entirety during the Period of Insurance as stated in the Schedule but this exclusion shall not apply if You can demonstrate that such Pollution:

(a) was the direct result of a sudden specific and identifiable event occurring during the Period of Insurance;

(b) was not the direct result of You failing to take reasonable precautions to prevent such Pollution.

(c) However, notwithstanding Exclusion 6.15.1 above, cover does not apply in respect of Pollution for:

(d) Property Damage to premises presently or at any time previously owned or tenanted by You;

(e) Property Damage to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by You or

otherwise in Your care custody or control.

6.16 **Professional Advice**

The rendering of or failure to render professional advice or service by You or any error or omission connected therewith.

This Exclusion 6.16 will not apply to the rendering of or failure to render professional medical advice by Non Medical Persons employed by You to provide first-aid and other medical services on Your premises.

6.17 **Property Damage:**

6.17.1 to Property owned by or leased or rented to You; or

6.17.2 to Property in Your physical or legal control.

This Exclusion 6.17 shall not apply to liability for Property Damage to:

(a) Property in Your physical or legal control up to a maximum of AUD$15,000.00 for any one Occurrence and in the aggregate unless some other sub-limit is stated in the Schedule. However We shall not be liable for Property Damage to that part of any property upon which You are or have been working where such Property Damage arises from Your such work;

(b) Premises which are leased or rented to You for the purposes of carrying on Your Business provided the liability does not arise from Your failure to insure the Premises as required in the lease or rental agreement;

(c) employees' property;

(d) vehicles (not belonging to or used by You or on Your behalf) in Your physical or legal control where such Property Damage occurs whilst any such vehicle is in a car park owned or operated by You provided that You do not own or operate a car park for reward as part of Your Business;

(e) keys in Your physical or legal control up to a maximum of AUD$2,500.00 any one occurrence and in the aggregate for the cost of replacing locks and keys.

Where cover is extended You shall bear an Excess in respect of such Property Damage.

6.18 **Property Damage to Your Products**

Property Damage to Your Products if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof.

6.19 **Recall of Products**

Damages, costs or expenses claimed for the withdrawal, recall, inspection, repair, replacement or loss of use of Your Products or of any property of which such Products form a part if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

6.20 **Territorial Limits**

Personal Injury or Property Damage:

6.20.1 claims made and actions instituted within the United States of America or Canada or any other territory coming within the jurisdiction of the Courts of the United States of America or Canada;

6.20.2 claims and actions to which the laws of the United States of America or Canada apply;

provided that:

6.20.3 this exclusion shall not apply to claims and actions arising from presence outside of Australia of any person who is normally resident in Australia and who is not a manual worker or a supervisor of work;

6.20.4 this exclusion shall not apply to claims and actions arising from the Your Products where they are unwittingly exported or distributed to the United States of America or Canada.

It is further noted and agreed that the Limit of Liability is inclusive of all law and expenses in respect of claims and actions arising from the presence outside of Australia of any person who is normally resident in Australia and who is not a manual worker or a supervisor or work.

6.21 **Terrorism**

Personal Injury or Property Damage or costs or expenses caused by or arising directly or indirectly out of or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

Terrorism shall mean an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Also excluded is loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If We allege that by reason of this exclusion, any loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon You. In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

6.22 **Tobacco**

Personal injury caused directly or indirectly by the inhalation or ingestion of or exposure to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco;

6.23 **HIV/AIDS Exclusion**

Personal Injury or Property Damage arising out of or in connection with HIV (human immunodeficiency syndrome) or the mutants derivatives or variations thereof or in any way related to AIDS (Acquired Immune Deficiency Syndrome) or AIDS related complex (ARC) or any condition of a similar kind howsoever it may be named.

6.24 **Vehicles**

Personal Injury or Property Damage arising out of the ownership, maintenance, possession of and use by You of any Vehicle:

6.24.1 which is registered, or which is required to be registered; or

6.24.2 in respect of which insurance is required by virtue of any legislation; or

6.24.3 which is otherwise insured in respect of the same liability.

This Exclusion shall not apply to Personal Injury or Property Damage arising from:

(a) the delivery or collection of goods to or from any Vehicle where such

Personal Injury or Property Damage occurs beyond the limits of any road, carriageway or thoroughfare;

(b) the loading or unloading of any Vehicle.

6.25 **War**

Personal Injury or Property Damage arising out of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, insurrection, military or usurped power, or requisition or Damage to property by or under order of government or public or local authority in preventing or attempting to prevent any such act or in minimising the consequences of any such act or confiscation or nationalisation.

6.26 **Pure Financial Loss**

Liability arising out of financial loss not consequent upon Personal Injury and/or Property Damage.

7. CONDITIONS

7.1 **Eligibility**

You must meet all statutory requirements as outlined in the Education and Care Services National Regulations 2010 and National Regulations and any other relevant law.

For in-home carer educators only, You must meet all statutory requirements for the safety of persons and property.

7.2 **Cross Liability**

Where You are comprised of more than one person or entity, each shall be considered as a separate legal entity.

The words You and Your shall apply to each person or entity as if a separate policy had been issued to each.

This Condition does not increase the Limit of Liability under this Section in respect of any Occurrence or Period of Insurance.

7.3 **Claims Procedure**

7.3.1 When an event occurs which could give rise to a claim You must:

(a) as soon as possible notify Us of the Occurrence;

(b) within 30 days of notifying Us, give Us a statement in writing with as much detail as You can about the cause, description and amount of the loss or damage;

(c) forward details and copies of any claim or legal proceedings including any prosecutions by any party brought against You to Us as soon as possible after receipt;

(d) preserve any property which may be needed as evidence in any claim against You and make it available for inspection by Us and Our representatives.

7.3.2 You must not make admissions, settle or attempt to settle or defend any claim against You without Our written consent.

7.3.3 We may at Our option take over the defence of any claim or legal proceedings brought against You. If We do so, We may settle or defend the claim or proceedings as we see fit. You must give Us any reasonable assistance and information that We require in the defence or settlement of

any such claim.

7.3.4 We may at any time pay to You the Limit of Liability (after deduction of any sum or sums already paid) in respect of any claim(s) made against You or any lesser sum for which the claims(s) can be settled. Upon such payment, We will have no further liability under this Policy in connection with that claim(s) except for costs, charges and expenses recoverable from You or incurred by Us or by You with Our consent prior to the date of such payment.

7.4 **Cancellation by You**

You may cancel this Policy at any time. To do so You must tell Us in writing that You want to cancel the policy and the future date from which the cancellation is to apply.

We will retain the premium which applies to the days the Policy has been in force and an amount for Our expenses of the cancellation, subject to minimum premium provisions.

7.5 **Cancellation by Us**

7.5.1 We may cancel this Policy by giving written notice to You if:

(a) You failed to comply with:

(i) the duty of utmost good faith; or

(ii) a provision of this Policy, including a provision with respect to the payment of premium; or

(b) before this Policy was entered into You failed to comply with the duty of disclosure or made a misrepresentation to Us; or
You have made a fraudulent claim under this or any other policy of insurance with us or any other insurer; or
You did not tell Us about anything which this Policy required You to tell it.

7.5.2 Cancellation by Us will take effect from the earlier of:

(a) the day on which You arrange other insurance to replace this Policy; or

(b) 16:00 hours on the third business day after the day on which notice of cancellation was given to You or any later date shown in the notice of cancellation.

7.5.3 The cancellation will be effective unless You can prove that, through no fault of Yours, You did not receive the notice of cancellation.

7.5.4 If We cancel the policy, We will retain the premium which applies to the days this Policy has been in force, subject to minimum premium provisions.

7.6 **Hold Harmless Agreements**

You must not enter into an agreement with another person which excludes or reduces Your rights to make a claim against that person at any time without Our written consent.

If you do, We may reduce the amount of any claim You make under this Policy by the extent to which Your agreement prevents Us making a claim against that person under Our rights of subrogation.

7.7 **Joint Insured**

Where the Policy covers the interest of more than one person or entity:

7.7.1 any information supplied to or withheld from Us in relation to entering into,

renewing or extending this Policy or any claim under the Policy will be deemed to have been supplied or withheld by all persons or entities insured by this Policy; but

7.7.2 an action or omission of one which increases the risk of Damage will not prejudice the rights of the others, provided that immediately on becoming aware of the increase in the risk of Damage, the others give Us written notice and pay any reasonable additional premium charged by Us.

7.8 **Australian Non-Litigation Dispute Resolution Endorsement**

This insurance does not comply with the Insurance Council of Australia's General Insurance Code of Practice. Any enquiry or complaint relating to this insurance should be referred to Family Day Care Australia Limited in the first instance:

Family Day Care Australia Limited
C/o- The Complaints Officer
PO Box 571
Gosford NSW 2250
Australia
Telephone Number: 1800 658 699
Email: memberservices@fdca.com.au

and/or

Howden Insurance Brokers Limited
One Creechurch Place
London EC3A 5AF
United Kingdom

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.
If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Underwriters' General Representative in Australia
Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000
Telephone Number: (02) 8298 0783
Email: idraustralia@lloyds.com

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.
You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:
Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: www.afca.org.au

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

7.9 **Australian Litigation Dispute Resolution Endorsement**
This insurance does not comply with the Insurance Council of Australia's General Insurance Code of Practice. We hereon agree that:

7.9.1 If a dispute arises under this Insurance, this Insurance will be subject to

Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

7.9.2 Any summons notice or process to be served upon Us may be served upon:

Lloyd's General Representative in Australia, Lloyd's Australia Limited,

Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

In respect of Sompo Japan Australian Branch, Sompo Japan (Australia Branch), c/o Littlewoods Service Pty Limited, Level 21, 264 George Street, Sydney NSW 2001

who has authority to accept service and to enter an appearance on Our behalf, and who is directed at Your request to give a written undertaking to You that You will enter an appearance on the Our behalf.

7.9.3 If a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

The amount of premium specified herein is the amount due to Us and any commission allowed by them is to be regarded as remuneration of Howden Insurance Brokers Limited placing this insurance.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to:

Family Day Care Australia Limited
2/22 Willesee Crescent
Kincumber NSW 2251
memberservices@fdca.com.au

7.10 **Other Insurance**

You must tell Us in writing and supply copies to Us as soon as possible about any other insurance which covers the risks insured by this Policy.

The insurance afforded by this Policy is excess over and reduced by any other valid and collectable insurance available to You. Valid and collectable insurance includes any self insurance plan which would be applicable to the loss.

7.11 **Our Rights of Inspection**

You must allow Us and Our representatives to inspect or examine any property and documents of Your Business insured by this Policy at any reasonable time.

7.12 **Currency**

All amounts referred to in this Policy are in Australian Dollars. If You incur liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by Us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the applicable currency rate of exchange on the date on which the payment is made, subject to the Limit of Liability.

7.13 **Law and jurisdiction**

Should any dispute arise concerning this Policy, the dispute will be determined in accordance with the law of the applicable State or Territory of Australia. In relation to any such dispute We agree to submit to the jurisdiction of any competent court in a State or Territory of Australia.

7.14 **Premium Adjustment**

If the premium for this Policy has been calculated on estimates by You, You shall within 30 days after expiry of the Period of Insurance provide Us with such particulars and information relevant to the Policy as We may reasonably require. The premium for the period shall be adjusted and any difference paid by or allowed to You as the case may be. Provided that the adjusted premium shall not be lower than the minimum premium normally charged by Us.

7.15 **Reasonable Precautions**

7.15.1 You must take all reasonable precautions to:

(a) prevent Personal Injury or Damage to property;

(b) prevent the manufacture, sale or supply of defective Products.

7.15.2 You must at Your own expense, trace or recall or modify any of Your Products which contain any defect or deficiency of which You are aware or have reason to suspect.

7.15.3 You and Your employees, servants and agents must comply with the requirements of any statutory authority for the safety of persons and property.

7.16 **Recovery**

We will not pursue any claim to recover any amount paid to You or on Your behalf under this Policy against:

7.16.1 any entity (and its directors, officers, employees or servants) which is Your subsidiary, which You own or control or which co-owns any property insured by this Policy;

7.16.2 any Insured (and its directors, officers, employees or servants) named or described in this Policy.

7.17 **Subrogation**

(a) We are entitled to pursue under claim to recover any amount paid to You or on Your behalf under this Policy in Your name at Our expense and for Our benefit.

(b) You must give Us all the reasonable assistance and information that We require in pursuing any such claim.

8. DEFINITIONS

The following words will have the meaning set out below wherever they appear in the Policy.

Act
Means:

- Education and Care Services National Law Act 2010;
- any corresponding act passed by or adopted by any State or Territory;
- Education and Care Services National Regulations 2011;
- any corresponding regulation passed by or adopted by any State or Territory;
- Child Services Act 2007 (WA) and any corresponding regulation;
- any amendment, consolidation or re-enactment of those Acts or regulations.

Advice Provider

Means Solicitors appointed by the Underwriters.

ADR
Means any form of legal dispute resolution alternative to or outside a proceeding in a Court or Tribunal agreed to by You and Claims Administrator, including a mediation presided over by an independent mediator who is both accredited by LEADR, or registered with or endorsed by the

Law Society or corresponding body of the appropriate State, and agreed to by You and the other party.

ADR Cost
Means the portion payable by You, or for the purposes of Commercial Legal Expense Endorsement clause 4.4 by the Employee, of the fees, charges, expenses and disbursements in connection with a Claim which have been reasonably and properly charged by a mediator and/or other person appointed for the purposes of ADR including a Preferred Practitioner.

Advertising Injury
Means injury arising out of:

- libel, slander or defamation; or
- any infringement of copyright or passing off of title or slogan; or
- unfair competition, piracy, idea misappropriation contrary to an implied contract; or

- invasion of privacy

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of Your advertising activities.

Aircraft
Means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

Appointed Solicitor
Means the solicitor appointed under Claims Condition Representation to act for an Insured Person.

ATO
Means the Australian Taxation Office or appropriate government authority or state authority or agency authorised to conduct the relevant activity.

ATO Investigation
Means an investigation into Your taxation affairs by the ATO under Income Tax Legislation.

Attendance Expenses
Means, subject to a limit of AUD$10,000 per Legal Action, the Limit of Indemnity and the Annual Aggregate Limit, the salary or wages up to AUD$300 per person per day of an Employee, Partner or Director paid by You for the period he or she is absent from work to attend a hearing before a Court or Tribunal at the request of the Preferred Practitioner:

- as a witness on behalf of You in a Legal Action in respect of a Claim; or
- as a party to a Legal Action in respect of a Claim.

Business
Means the business specified in the Schedule.

Business includes the following:

- the ownership or tenancy of premises; and
- the provision and management of canteens, social and welfare organisations and first aid and safety services for Your employees.

Business Premises
Means the business premises for which You are legally responsible and used by You for the purposes of the Normal Business Activities.

Claim (or Claims)
Means:

- any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issue against or serviced upon You; or
- the receipt by You of any written or verbal notice of demand for compensation made by a third party against You.

Claims Administrator
Means Syndicate 1902.

Communicable Disease
Means any disease which can be transmitted by means of any substance or agent from any

organism to another organism where:

- the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
- the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

Competition and Consumer Act
Means:

- Competition and Consumer Act 2010 (Cth);
- any legislation of an Australian State of Territory to the extent that it concerns matters dealt with in the named legislation above.

Computer System
Means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

Court or **Tribunal**
Means a court, tribunal or other statutory body of competent jurisdiction within the Territorial Limits as agreed to by the Claims Administrator.

Criminal Legal Costs and Expenses
Means legal costs, fees and disbursements reasonably and properly charged or incurred by the Appointed Solicitor in accordance with the appropriate statutory or court scale of fees and may be determined by taxation or should We deem it appropriate by a legal costs consultant approved by Us.

Cyber Act
Means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

Cyber Incident
Means:

- any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
- any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.

Data
Means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

Director
Means a director or other board member of Yours where You are a company.

Discrimination Legislation
Means:

- Age Discrimination Act 2004 (Cth), Disability Discrimination Act 1992 (Cth), Australian Human Rights Commission Act 1986 (Cth), Sex Discrimination Act 1984 (Cth), Racial Discrimination Act 1975 (Cth), Equal Opportunity for Women in the Workplace Amendment Act 1999 (Cth); or similar legislation; and

- any legislation of an Australian State of Territory to the extent that it concerns matters dealt with in any of the named legislation above.

Employee
Means an existing or former employee of Yours.

Employee's Costs
Means the legal fees and disbursements and ADR Costs incurred by the Employee and charged by the Employee's solicitor in respect of the Legal Action and/or ADR and payable by You in its capacity as employer, which have been incurred with the prior written consent of the Claims Administrator and whose reasonable amount is determined by taxation or assessment of costs or by agreement of the Claims Administrator, but excludes any such fees and disbursements and ADR Costs recovered by the Employee.

Excess
Means the amount which You must pay towards any claim under this Policy which will be deducted before any amount is paid to You or paid on Your behalf.

Fine
Means any monetary sum payable by You to any Regulatory Authority pursuant to the Act for a Violation by You but excluding:

- any amounts payable as compensation;

- any damages, including any exemplary or punitive damages;

- any consequential economic loss;

- any remedial, restitution costs, reparation or compliance.

First Period of Insurance
Means the period of insurance of Your first Commercial Legal Expenses Insurance extension with Us provided that the insurance was renewed continuously every year up to this Policy.

Fringe Benefits Dispute
Means a dispute with the ATO regarding the amount of tax payable by You or an Employee under Income Tax Legislation in respect of fringe benefits where there are reasonable grounds for such dispute.

GST Dispute
Means a dispute with the ATO regarding the amount of GST payable by You where there are reasonable grounds for such dispute.

Hovercraft
Means any vessel or craft or thing made or intended to float on or in or travel on or through the atmosphere or water.

Income Tax Legislation
Means The Income Tax Assessment Act 1936; The Income Tax Assessment Act 1997; The Fringe Benefits Tax Assessment Act 1986 and Fringe Benefits Act 1986; Sales Tax Assessment Act 1992; Taxation Administration Act 1953; Superannuation Charge Act 1992; A New Tax System (Goods and Services Tax) Act 1999; any other Commonwealth, State or Territory legislation dealing with income tax or any other legislation replacing the above legislation.

Inquiry
Means any investigation, examination, inquiry, coronial inquest, royal commission or other proceeding ordered or commissioned by any statutory body of competent jurisdiction within the Territorial Limits as agreed to by the Claims Administrator.

Insured
Means the policyholder specified as 'Insured' in the Schedule, whose registered office or principal trading address is within the Territorial Limits.

Insured's Costs
Means the legal fees and disbursements payable by You to the Preferred Practitioner in respect of the Legal Action or ATO Investigation and ADR Costs, which have been incurred with the prior written consent of the Claims Administrator and whose reasonable amount is determined by taxation or assessment of costs or by agreement of the Claims Administrator, but excludes any such fees and disbursements and ADR Costs recovered by You.

Insured Event
Means any actual or alleged criminal act or omission in Australia committed or alleged to have been committed by You arising out of and in the course of the normal conduct by You of the Business as stated in the Schedule.

Legal Action
Means:

(a) a civil proceeding in a Court or Tribunal, including:

(i) any necessary steps approved by the Claims Administrator taken before the commencement of that proceeding;

(ii) any appeal to a Court or Tribunal with the Claims Administrator's written consent;

(b) in respect of Commercial Legal Expense cover at clause 4.4.6(a) and 4.4.7, a criminal prosecution in a Court or Tribunal;

(c) in respect of Commercial Legal Expense cover at clause 4.4.10, any proceeding in the nature of an Inquiry;

(d) in respect of Commercial Legal Expense cover at clause 4.4.11, a proceeding in the appropriate forum for a Fringe Benefits Dispute, a GST Dispute or an ATO Investigation.

Limit of Indemnity
The Limit of Indemnity shall be the amount specified in the schedule for any one claim and is always subject to the Annual Aggregate Limit specified during any one policy period.

Limit of Liability
Means the amounts shown in the Schedule for which You have chosen to insure.

Loss
Means any Fine or Penalty.

Medical Persons
Means qualified medical practitioners, dentists, nurses and first-aid attendants.

Normal Business Activities
Means Your normal business activities as an approved family day care service.

Occupational Health and Safety Legislation
Means:

- Occupational Health and Safety Act 1991 (Cth);
- any legislation of an Australian State or Territory to the extent that it concerns matters dealt with in the named legislation above.

Occurrence
Means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage or Advertising Injury neither expected nor intended from Your standpoint.

Opponent
Means a party to a Legal Action other than You, an Employee, Partner or Director.

Opponent's Costs
Means the legal fees and disbursements of the Legal Action incurred by the Opponent and payable by You pursuant to a judgement of the Court or Tribunal or a settlement agreed to by the Claims Administrator, whose reasonable amount assessed on the standard basis is determined by taxation or assessment of costs or by agreement of the Claims Administrator.

Partner
Means where You are a partnership, any of the partners within that partnership.

Period of Insurance
Means the period of insurance shown in the current Schedule.

Personal Injury
Means:

- bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation;
- libel, slander, defamation of character or invasion of right of privacy; and
- assault and battery not committed by or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property.

Policy
Means the contract of insurance between Us and You as set out in this document.

Pollution
Means pollution or contamination of the atmosphere or of any water land or other tangible property.

Preferred Practitioner
Means the lawyers or suitably qualified tax advisers designated to act on behalf of You in respect of the resolution of a Claim.

Privacy Act
Means:

- Privacy Act 1988 (Cth) and the Privacy Amendment (Enhancing Protection) Act 2012 (Cth);
- any legislation of an Australian State or Territory to the extent that it concerns matters dealt with in the named legislation above.

Products Liability
Means Your legal liability for Personal Injury and/or Property Damage caused by or arising out of Your Products or the reliance upon a representation or warranty made at any time with respect to Your Products;

Property Damage
Means:

- physical injury to or destruction of tangible property including the loss of use thereof at any time resulting therefrom; or
- loss of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an Occurrence.

Prospects of Success
Means in the Claims Administrator's reasonable opinion:

- it is more probable than not that at a determination at a final hearing You will be successful in obtaining the outcome in respect of the Claim that You are seeking; and
- Your interests cannot be better achieved by other means.

Regulatory Authority
Means a person or entity appointed, constituted or acting under a delegation pursuant to the Act for the purposes of enforcement of the Act, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

Retroactive Date
Is the date specified in the Schedule.

Schedule
Means the schedule issued by Us in connection with this Policy.

Statutory Licence
Means a Declared and Accepted licence issued under statute or statutory instrument or by government or local authority to You where the licence is necessary for the Normal Business Activities.

Territorial Limits
Means the Commonwealth of Australia and its external territories and an Australian State or

Territory.

Vehicle
Means any type of machine on wheels or on self-laid tracks which is made or intended to be propelled by other than manual or animal power.

Vehicle includes any trailer or caravan or other implement made or intended to be drawn by any such machine.

Violation
Violation means any act, error or omission which occurs:

8.1.2 in Your capacity as a family day care educator;

8.1.3 within the Territorial Limits; and

8.1.4 after the Retroactive Date,

WHEREBY:

8.1.5 You commit an offence pursuant to the Act;

8.1.6 You contravene the Act or are involved in the contravention of the Act; or

8.1.7 such act, error or omission is prohibited under the Act and is the subject of the imposition of a Fine under the Act.

Watercraft
Means any vessel or craft made or intended to float on or in or travel on or through water.

We/Our/Us
Means certain Lloyd's Syndicates who are the Underwriters of this Insurance.

You/Your

Means each of the following, to the extent set forth below:

the named Insured, Family Day Care Australia Limited, it's members, Family Day Care schemes, in home care schemes, Family Day Care associations, in home care associations, Family Day Care educators and relief educator, in home care educators, in venue care educators working with a Family Day Care scheme: volunteers, servants, agents and employees.

(a) all subsidiary companies (present and future) of the named Insured whose places of incorporation are within Australia (including their Mandated Territories and Protectorates);

(b) any director, executive officer, employee or partner of the named Insured or of a company designated in (b) but only whilst acting within the scope of their duties in such capacity;

(c) any principal in respect of the liability of such principal arising out of the performance by the named Insured or by a company designated in (b) of any contract or agreement for the performance of work for such principal to the extent required by such contract or agreement but limited to the coverage provided by this Policy;

(d) any office bearer or member of social or sporting clubs or welfare organisations formed with the consent of the Insured (other than an Insured designated in (d) in respect of claims arising from duties connected with activities of any such club or organisation.

(e) any "assistant educator" in the provision of care or the provision of fund raising or other administration activities performed on behalf of Family Day Care Australia, a family day care coordination unit or family day care educator.

(f) any 'relief educator', defined as an educator who has been approved by the appropriate coordination unit to provide relief care to a primary educator. A relief educator generally provides less than 50% of relief care to the primary educator. Relief Educators can also be provided by a Service to more than one educator.

(g) any work experience candidate or youth training candidate performing activities on behalf of the Family Day Care Australia Limited or in home care scheme or Family Day Care or in home care association or Family Day Care or in home care educator.

(h) any adult family member (over the age of 18 years) of a family day care or in–home care educator in respect of the Criminal Defence Expense Extension.

(i) any adult providing emergency relief care to family day care children in an emergency situation.

Your Products

Means anything (after it has ceased to be in Your possession or under the control) manufactured, grown, extracted, produced, processed, constructed, erected, assembled, installed, repaired, serviced, treated, sold, supplied or distributed by You (including any container thereof other than a vehicle).

9. SPECIAL CANCELLATION CLAUSE

In the event that an insurer hereon ceases underwriting whether entirely or in the class of business which includes this policy or ceases accepting new business or enters into a run-off arrangement or is subject to a scheme of arrangement, appointment of an administrator, provisional liquidators or announces an intention to take any of the foregoing actions or if the Standard & Poors security rating is lowered below BBB and/or A. M. Best security rating is lowered below B+ then the Insured is entitled at its option to cancel that Insurers participation in this policy as at any date thereafter. In the event, the premium due to such Insurer shall be the proportion of the premium allocated to the risk covered under the policy up to the date of cancellation and after deduction of claims under the policy.

The premium due shall be determined by the underwriters insofar as otherwise unaffected by this clause.

10. SANCTIONS SUSPENSION CLAUSE

It is a condition of this (re)insurance, and the (re)insured agrees, that the provision of any cover, the payment of any claim and the provision of any benefit hereunder shall be suspended, to the extent that the provision of such cover, payment of such claim or provision of such benefit by the (re)insurer would expose that (re)insurer to any sanction, prohibition or restriction under any:

United Nations' resolution(s); or

the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Japan, Australia or United States of America.

Such suspension shall continue until such time as the (re)insurer would no longer be exposed to any such sanction, prohibition or restriction.

LMA3200(amended)

05 October 2023