

invivo 
medical indemnity



- Financial Services Guide
- Product Disclosure Statement
- Policy Terms and Conditions for Professional Indemnity Insurance Policy

 QBE

This Professional Indemnity Insurance policy provides cover for medical practitioners for certain claims against you in connection with your profession and legal costs incurred in connection with the defence or settlement of the claim

This document contains a number of sections that provide information about:

Part 1 – Financial Services Guide

The financial services being provided to you by Invivo

Part 2 – Product Disclosure Statement

Your medical indemnity insurance product

Part 3 – Policy Terms and Conditions for Professional Indemnity Insurance Policy

This policy is underwritten by QBE Insurance (Australia) Limited AFSL 239545 and issued to you by Invivo Medical Pty Ltd, a Corporate Authorised Representative of QBE.

Enquiries and Assistance:

For any enquiries and assistance please contact Invivo on 1800 103 779 or by email enquiries@invivo.com.au.

Invivo acts as the agent of QBE Insurance (Australia) Limited and does not act on your behalf.

Combined Financial Services Guide, Product Disclosure Statement and Policy Wording.

PART 1

Financial Services Guide (FSG) 3

PART 2

Product Disclosure Statement (PDS)..... 7

PART 3

Policy Terms and Conditions for
Professional Indemnity
Insurance Policy 15

What You Are Indemnified For
(Insuring Clauses) 15

Policy Extensions 16

Additional Benefits 18

Exclusions 18

What You Must Do
Regarding a Claim..... 20

General Conditions 21

Definitions 22



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QBE Insurance (Australia) Ltd

ABN 78 003 191 035

AFS Licence No. 239545

82 Pitt Street

Sydney NSW 2000


PART 1
 Financial Services
Guide 

Part 1 – Financial Services Guide

INTRODUCTION

This Financial Services Guide (FSG) is designed to assist you in deciding whether to use any of the financial services that Invivo Medical Pty Ltd (Invivo) provides, as an Authorised Representative of QBE Insurance (Australia) Limited (QBE). It also contains information about who we are, how we are paid and how to make a complaint.

WHO ARE WE?

Invivo is an Authorised Representative of QBE.

Invivo is a 100% Australian owned company in which QBE has a 50% equity holding.

CONTACT DETAILS:

Invivo Medical Pty Ltd
ABN 85 108 316 123
Authorised Representative No. 295534
PO Box 298 St Leonards NSW 1590

Phone: 1800 103 779
Facsimile: 1800 103 777
Freecall: 1800 103 779
Email: enquiries@invivo.com.au
Web: www.invivo.com.au

OUR LICENSEE

QBE Insurance (Australia) Limited
ABN 78 003 191 035
AFS Licence No. 239545
GPO Box 82 Sydney NSW 2001

WHAT FINANCIAL SERVICES DOES INVIVO OFFER?

Invivo is authorised by QBE to deal and advise in QBE's Professional Indemnity insurance product for Medical Practitioners on behalf of QBE. We can directly issue, vary or cancel QBE Professional Indemnity product as their agent in accordance with their underwriting guidelines (this is called a binding authority).

QBE as the insurer of this product and we as their agent, do not act on your behalf.

The Invivo adviser providing you with this FSG is authorised by us to act on our behalf in providing the services that we are authorised to provide for QBE.

We and our advisers have authority to provide you with general or personal advice. That is, we can recommend that the QBE product is appropriate to meet your needs. Our advice is limited to recommendations about the QBE product. We will tell you if the product is not appropriate for your needs.

Please contact us on 1 800 103 779 where our trained and licensed staff will provide you with any additional advice you require regarding the financial products that we are authorised to issue.

INVIVO AND YOUR INTERMEDIARY

Should it be your choice to use an intermediary to provide financial service advice to you as part of your decision to accept our financial product, Invivo will pay a maximum of 10% commission to your intermediary, who you have elected to act as your authorised representative.

HOW ARE INVIVO AND OUR STAFF REMUNERATED?

Invivo will receive a payment not exceeding 25% of the base premium amount from QBE to cover all operating costs and any payments paid to your intermediary. If Invivo refers you to a premium funding company, Invivo will receive a payment not exceeding 0.5% of the total premium amount funded from the premium funding company.

Invivo may also be paid fees by Medicare Australia (formerly Health Insurance Commission) to reimburse the costs associated with administering medical indemnity support schemes on behalf of Medicare Australia and the Commonwealth Government.

Some Invivo staff receive an annual salary and commissions. Staff may become entitled to bonus or rewards based on the overall results of Invivo.

OTHER DOCUMENTS YOU MAY RECEIVE

You may also receive one or more of a Statement of Advice (SOA) or General Advice Warning and a Product Disclosure Statement (PDS).

Statement of Advice (SOA)

The SOA contains information about any personal advice we give you so that you can make an informed decision about whether or not to act upon it. Personal advice is advice that takes into account any one or more of your objectives, financial situation and needs.

The SOA will set out the advice, the basis on which it is given and information about how we are remunerated.

We will provide you an SOA at the same time, or as soon as practicable after the advice is provided.

General Advice Warning

A general advice warning if given will warn you that any advice given is of a general nature and does not take your personal needs, objectives or financial situation into account.

Product Disclosure Statement (PDS)

We will also provide you with a PDS if we make a recommendation that you acquire a particular financial product, or offer to issue or arrange the issue of one to you. The PDS sets out the relevant risks, benefits and significant features of the product and is aimed at assisting you to compare and make informed choices about financial products.

HOW DO WE TREAT YOUR PERSONAL INFORMATION?

The protection of personal information is important to us. Information is gathered as part of the provision to you of financial services. Invivo will maintain records of your personal information and will provide details to QBE as required to effect and manage your insurance policy.

Please visit our website at www.invivo.com.au for further details or request a paper copy of the privacy policy by contacting Invivo on 1 800 103 779.

HOW CAN YOU INSTRUCT US?

We will provide you with a proposal form that must be completed, signed and submitted to us. Other communication with us can be via telephone, fax, mail or email to the addresses listed in this FSG.

WHAT IF YOU ARE NOT SATISFIED WITH THE SERVICE YOU RECEIVE OR WISH TO MAKE A COMPLAINT?

Invivo is committed to dealing openly with all of our clients and to the quick, efficient and fair resolution of any client complaint. Our staff are there to assist you, with the intention of resolving the issues raised. A copy of the dispute resolution procedure can be obtained either from our website www.invivo.com.au or by telephoning Invivo on 1 800 103 779.

Should you wish to lodge a complaint or express dissatisfaction with any aspect of the service we have provided, please contact our client relationship staff via the following:

Phone: 1800 103 779
Facsimile: 1800 103 777
Postal address: PO Box 298, St Leonards NSW 1590
Email: complaints@invivo.com.au

Should we be unable to resolve the issue to our mutual satisfaction, you may refer the matter to QBE's internal dispute resolution scheme. If the complaint remains unresolved to your satisfaction, you can request that it be reviewed by the Financial Ombudsman Service (FOS), an ASIC-approved external dispute resolution body. FOS will provide an independent review at no cost to you. QBE is bound by the determination of FOS, but the determination is not binding on you.

PART 2
 Product Disclosure
Statement (PDS) 

Part 2 – Product Disclosure Statement (PDS)

WHAT IS A PRODUCT DISCLOSURE STATEMENT (PDS)?

This part of the document is a Product Disclosure Statement (PDS) for our Professional Indemnity Insurance Policy. Our Policy Wording is contained in Part 3 Professional Indemnity Policy Wording. Any advice in this document is of a general nature only and has not considered your objectives, financial situation or needs. You should read both the PDS and the Policy Wording carefully and consider the information provided having regard to your personal circumstances to decide if this insurance is right for you.

This PDS contains important information about the professional indemnity insurance policy and will assist you in making a decision about whether to acquire the policy.

UPDATING THIS PDS

We will update the information in this PDS when necessary. A paper copy of any updated information is available to you at no cost by calling Invivo. We will issue you with a new PDS or a Supplementary PDS where the update is to correct a misleading or deceptive statement or an omission, which is materially adverse from the point of view of a reasonable person deciding whether to obtain this insurance.

INSURER

The Policy is underwritten by QBE Insurance (Australia) Limited (QBE) ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street Sydney.

Invivo Medical Pty Ltd (Invivo) has binding authority to issue this policy on behalf of QBE Insurance (Australia) Limited.

APPLYING FOR INSURANCE

To apply for the policy you need to complete a proposal form available from Invivo. You will be advised of the outcome of your application. If your application is successful, Invivo will send you an acceptance letter providing details of the premium quote, incorporating a recent claims declaration. You will need to sign the acceptance letter and return it to Invivo. Your policy of insurance will commence from the later of the commencement date stated on the acceptance letter and the date when we receive the signed acceptance letter, unless otherwise agreed by Invivo.

The standard retroactive cover under our policy covers incidents occurring on or after 1 January 2001, unless otherwise stated in the Policy Schedule. Please contact us if you need a different retroactive date.

You can obtain a proposal form by contacting us on 1 800 103 779 or online at: <http://www.invivo.com.au>.

YOUR POLICY

Your policy is a contract between QBE Insurance (Australia) Limited and you. Your agreement with QBE is set out in:

- The Policy Wording;
- Your Proposal for Insurance;
- Your Insurance Policy Schedule;
- Any written endorsements we provide to you.

The Policy Schedule will be issued to you as confirmation of your cover. The Policy Schedule will include your name (as the medical practitioner covered), various limits of cover and the Deductible that will apply. It will also include any endorsements or other conditions imposed on your policy by Invivo.

These documents make up your policy and should be carefully read together. It is important that they are kept in a safe place.

SUMMARY OF COVER AND SIGNIFICANT BENEFITS AND RISKS

The following is a summary only. As from 1/7/08, the terms and conditions do form part of the PDS. We give examples of some of the significant benefits and risks but you need to read the Professional Indemnity Policy Wording (Part 3 of this document), which sets out the Terms and Conditions of this insurance, and make sure that it matches your needs.

References to Section numbers refer to the relevant Section of the Professional Indemnity Policy Wording part of this document.

WHAT DOES THIS PROFESSIONAL INDEMNITY INSURANCE POLICY COVER?

The policy is an insurance product that indemnifies you, the Medical Practitioner, and your estate for certain claims against you in connection with your profession. Cover includes legal costs incurred in connection with the defence or settlement of a claim. In the event of any claim you must obtain consent from Invivo before the costs are incurred.

The policy is a claims made policy. This means that it covers you only for claims made against you during the period of cover. Plus, in most cases, those claims must also be notified to us during the period of cover. Unless we agree otherwise, it does not provide cover for claims that have already been made against you or circumstances that you are aware of prior to acceptance of our offer that could give rise to a claim against you.

We have highlighted special terms by use of bold print. These terms are defined in Section 7 of the Professional Indemnity Policy Wording.

The policy covers you for:

- claims first made against you during the period of cover and notified to us during the period of cover as a result of malpractice. (Section 1.1)
- claims first made against you during the period of cover and notified to us during the period of cover for any unintentional breach by you of someone else's intellectual property rights. (Section 1.2)
- claims first made against you during the period of cover and notified to us during the period of cover for defamation. (Section 1.3)
- claims first made against you during the period of cover and notified to us during the period of cover for breach of trade practices and related legislation. (Section 1.5)

ADDITIONAL COVER KNOWN AS POLICY EXTENSIONS

The policy will insure you for the following UNLESS they are shown as "Not included" on the policy schedule.

There may be an additional premium payable to provide cover for these items. Where cover selected is provided in addition to the basic cover there may be a limit of cover for that particular extension. See the relevant sections in the Policy Wording for full details, including conditions.

- claims arising from medical assistance provided by you at the scene of an accident, emergency or disaster. (Section 2.1)
- loss of certain documents required by you to fulfil your professional duty. (Section 2.2)
- legal services costs and expenses in relation to certain official investigations and inquiries in relation to the conduct of your profession. (Section 2.3)
- your liability to pay certain fines and penalties arising from a breach of occupational health and safety or environmental legislation. (Section 2.4)
- legal services costs and expenses for the defence or prosecution of matters resulting from certain audits in the course of you carrying out your profession. (Section 2.5)
- costs and expenses arising out of criminal proceedings brought against you in a court of law in Australia, or New Zealand, as a result of the provision of healthcare treatment, advice or services in the conduct of your profession. (Section 2.6)
- claims arising from work performed by you in the conduct of your profession while participating in a clinical trial. (Section 2.7)
- reimbursement, where an identifiable employee has dishonestly or fraudulently obtained money or property belonging to the practice company. (Section 2.8)
- claims made by an employee or prospective employee for discrimination, harassment or wrongful dismissal. (Section 2.9)
- legal services costs and expenses for the defence or pursuit of any dispute arising from a contract or proposed contract between you and a health facility. (Section 2.10)

ADDITIONAL BENEFITS UNDER SECTION 3

The policy will also indemnify you in the following circumstances. We recommend that you read this section and request that you call our office should you have any questions.

- where another person fails to provide full and truthful information as part of the proposal. (Section 3.1)
- where you notify a claim to us outside the policy period in which you first had knowledge of the claim and you have held a policy with us for an uninterrupted period from the date when you first became aware of the claim to the date of your notice to us. (Section 3.2)
- your vicarious liability arising out of the acts, errors or omissions of others. (Section 3.3)
- certain provision of medical services outside Australia. (Section 3.4)

WHAT WE DO NOT COVER

This policy may not meet your expectations (for example because an exclusion applies). Please ask Invivo if you are unsure about any aspect of this policy. If, having purchased the policy, you want to return it, you can do so within 21 days from the date the policy is issued and obtain a refund (less any government charges we cannot recover) as long as you have not notified us of a claim during that period.

POLICY EXCLUSIONS

The policy will not provide insurance cover under certain circumstances. For example, we will not indemnify you for claims brought in a court outside Australia nor for claims by a member of your family. Full details are contained in Section 4 'Exclusions' in the policy wording. You should read the policy wording and ensure that you fully understand these exclusions.

POLICY CONDITIONS

There are things that you must do for your insurance cover to apply. For example:

- you must notify us as soon as practicable of any material change to the risk such as a change in your practice classification. Conditions of cover are contained in Section 6 of the policy wording 'General Conditions'.
- you should make yourself aware of all the conditions that apply by reading the policy wording.
- you must notify us when you first become aware of a claim or of an incident that may give rise to a claim or of any investigation or proceedings against you. There are also other things that you must do regarding a claim or we may be entitled to refuse to indemnify you. These are contained in Section 5 of the policy. For example, you must not make any admission or offer to settle without our written consent. You should read the policy wording and ensure that you fully understand what you need to do in the event of a claim.

MONETARY LIMITS ON THE COVER

A policy limit is the maximum amount we will pay in particular circumstances, less your deductible.

- **General Indemnity – \$20,000,000**
This policy has a general indemnity limit of \$20 million for any one claim or for the total of all claims made during the period of insurance.
The general indemnity limit will be shown on your Policy Schedule.
Unless stated otherwise in your Policy Schedule, other policy limits that apply to this policy are:
- **Loss of documents:** \$100,000 for all claims during the Period of Cover
- **Legal services, costs and expenses in respect of official investigations and enquiries:** \$500,000 for all claims during the Period of Cover
- **Statutory liability fines and penalties:** \$250,000 for all claims during the Period of Cover.
- **Audit:** \$150,000 for all claims during the Period of Cover
- **Employee Dishonesty:** \$50,000 for all claims during the Period of cover
- **Employment Practices Liability:** \$50,000 for all claims during the Period of Cover
- **Health Facility Employment Contract Disputes:** \$150,000 for all claims during the Period of Cover

PAYMENT OF DEDUCTIBLE

The deductible is the amount that you must pay us towards each claim made under this policy. The amount of your deductible will be shown on your Policy Schedule. The circumstances in which it is payable are set out at Section 6.4 of the policy.

OTHER IMPORTANT MATTERS YOU NEED TO CONSIDER

Retroactive Cover

We provide Retroactive Cover from 1 January 2001 as standard cover within our policy. We may need to amend the retroactive date on the basis of information provided by you or otherwise known to us. We will advise you if this change occurs and state the revised date in your policy schedule.

However, Retroactive Cover will not cover:

- claims or incidents (that you could reasonably expect could lead to a claim) already known to you when applying to Invivo for a policy; or
- claims arising from acts, errors or omissions occurring prior to that date.

It is possible that a gap in cover may exist which could leave you personally exposed in the event of a claim. This may arise:

- if at any time you have had a period of professional practice that was not otherwise covered by your employer, a state, territory or federal government indemnity scheme, a medical defence organisation (MDO) or insurer providing indemnity insurance; or
- if you have changed from an occurrence based cover to claims made cover (which this policy is) and that change was made prior to 1 January 2001.

We recommend that you enquire with your current or previous employer/s and any previous insurance carrier to determine what your indemnity arrangements were for past periods. If after making these enquiries you identify or become aware that a 'gap' exists please contact Invivo on 1 800 103 779 to discuss the options available to you.

Run-off Cover

No cover is provided under this policy for claims notified after the term of this policy has expired.

Invivo can provide an insurance policy to provide protection after you cease practice or you cancel this policy. You should contact Invivo to obtain a copy of the PDS and Policy wording for the Professional Indemnity Run-off Insurance Policy. A separate application will be required for the run-off policy.

When considering whether to purchase run-off cover, you need to consider if you are entitled to indemnity under the Australian Government's Run-Off Cover Scheme (ROCS). Further details of ROCS are provided later in this document.

The Cost of this Insurance

The premium is calculated based on the information provided by you:

- if as a prospective new client, in your proposal form;
- if on renewal, in your pre-renewal verification form, renewal of insurance or any subsequent request to change your insurance.

When calculating your premium, the factors that we consider include (but are not limited to):

- your practice classification;
- your claims history;
- the State or Territory in which you practise;
- volume of procedures;
- other commitments that you disclose;
- adoption or use of Invivo loss prevention requirements.

It is important that you select or list the medical activities or procedures that actually describe your area of professional practice.

HOW TO PAY YOUR PREMIUM

The policy premium is payable in one lump sum. We will accept payment by cheque and from all major credit cards, BPAY, direct debit or the premium funding company of your choice.

TAXATION

Premiums are subject to Commonwealth and State taxes and/or charges. These include the goods and services tax and stamp duty. The amount of these taxes and/or charges will be shown on the Tax Invoice that we will forward to you.

You must tell us whether you were entitled to claim an input tax credit on the premium at the time of making a claim under the Policy. If you do not provide us with this information we may deduct up to 1/11th of the amount otherwise payable in settlement of your claim.

If you are registered for GST, this represents the reduction in the cash settlement for claims that would apply based on your entitlement to claim an ITC on the replacement goods or services.

If you were not entitled to an ITC on the premium, this will equal the GST credit to which QBE would have been entitled if you had disclosed your entitlement.

If you are only entitled to a partial ITC on the premium, this represents the reduction in the cash settlement for claims that would apply based on your entitlement to claim an ITC on the replacement goods or services plus the GST credit to which QBE may have been entitled if you had disclosed your entitlement.

RUN-OFF COVER SCHEME (ROCS)

Excerpts from www.health.gov.au

With the introduction of the ROCS, instead of doctors needing to fund their own run-off cover when they stop working, a proportion of each doctor's insurance premium contributes to the scheme via a charge on medical indemnity insurers. The money collected is effectively used to pay run-off claims for eligible doctors – so there is no uncertainty for doctors.

The ROCS covers claims for medical indemnity which are made by "eligible doctors" after they have left private medical practice, or stopped medical practice altogether, for incidents in their medical practice which were covered both at the time of the incident and by their last medical indemnity cover.

ROCS only covers claims where the medical indemnity insurer was first notified of the claim (or the facts giving rise to the claim) on or after 1 July 2004.

Under ROCS, medical indemnity insurers are obliged to give eligible doctors medical indemnity cover on the same terms and conditions, and for the same range of incidents, as the last cover that they had, prior to becoming eligible for ROCS. The ROCS cover must cover the period when the doctor was a registered medical practitioner and had medical indemnity cover with a medical indemnity insurer.

Doctors become eligible for the ROCS when they are:

- 65 years of age or more and have retired permanently from private medical practice;
- under 65 years of age and have left the private medical workforce for 3 years (this group includes those who are no longer in paid employment, those practicing medicine solely in the public sector and those no longer practicing medicine);
- on maternity leave;
- permanently disabled;
- the legal representative of a deceased medical practitioner;
- in another group determined by regulation to be eligible. This group currently includes temporary resident doctors who hold visa subclass 422 or 457.

If you believe you are eligible for cover under ROCS, contact Invivo to obtain a notice of the nature and range of incidents covered under the ROCS and any other terms and conditions.

For further information regarding the Run-off Cover Scheme please refer to the Department of Health at <http://www.health.gov.au>.

HOW DO YOU RENEW YOUR POLICY?

Before your policy expires, renewal documentation will be forwarded to you.

The documentation will include:

- a Tax Invoice showing a premium which will be charged for the renewal provided that no change in your practice has occurred, other than any change which you have told Invivo about;
- a renewal declaration/acceptance form which states that no changes in your practice have taken place, you are unaware of any breach of professional duty happening during the prior period and other details relevant to confirm the premium; and
- any other supporting documentation that you may require in order to effect your renewal.

YOUR DUTY OF DISCLOSURE

Under the Insurance Contracts Act 1984 (the Act), you have a Duty of Disclosure. The Act requires that before a policy is entered into, you must give us certain information we need to decide whether to insure you and anyone else to be insured under the policy, and on what terms. Your Duty of Disclosure is different, depending on whether this is a new Policy or not.

New business

Where you are entering into this Policy for the first time (that is, it is new business and is not being renewed, varied, extended or reinstated) you must tell us everything you know and that a reasonable person in the circumstances could be expected to tell us, in answer to the specific questions we ask.

When answering our questions you must be honest.

Who needs to tell us

It is important that you understand you are answering our questions in this way for yourself and anyone else whom you want to be covered by the Policy.

If you do not tell us

If you do not answer our questions in this way, we may reduce or refuse to pay a claim, or cancel the Policy. If you answer our questions fraudulently, we may refuse to pay a claim and treat the Policy as never having commenced.

Renewals, variations, extensions and reinstatements

Once your Policy is entered into and is no longer new business then your duty to us changes. You are required before you renew, vary, extend or reinstate your Policy, to tell us everything that you know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure you, and anyone else to be insured under the Policy, and if so, on what terms.

You do not have to tell us about any matter:

- that diminishes the risk
- that is of common knowledge
- that we know or should know in the ordinary course of our business as an insurer, or
- which we indicate we do not want to know.

If you do not tell us

If you do not comply with your Duty of Disclosure we may reduce or refuse to pay a claim or cancel your Policy. If your non-disclosure is fraudulent we may treat this Policy as never having commenced.

COOLING-OFF PERIOD

If you want to return your insurance after your decision to buy it, you may cancel it and receive a full refund. To do this you may notify Invivo electronically or in writing within 21 days from the date the Policy is issued.

This cooling-off right does not apply if you have made or are entitled to make a claim. Even after the cooling-off period ends, you still have cancellation rights; however, Invivo may deduct certain amounts from any refund for administration costs or any non-refundable taxes.

CANCELLATION OTHER THAN WITHIN THE COOLING OFF PERIOD

How you may cancel this Policy

- You may cancel this Policy at any time by telling us in writing that you want to cancel it. You can do this by giving the notice to Invivo.
- Where 'you' involves more than one person, we will only cancel the Policy when a written agreement to cancel the Policy is received from all persons named as the insured.

How we may cancel this Policy

- We may cancel this Policy in any of the circumstances permitted by law by informing you in writing.
- We will give you this notice in person or send it to your address last known to us.

If the policy is cancelled after the cooling off period, whether by you or by us, we will provide a pro rata refund of premium for the unexpired period of cover.

IN THE EVENT OF A CLAIM

You must notify Invivo of any circumstance where you believe that a claim may be made against you. You may contact us on 1 800 103 779, but we must receive your formal notification in writing. At this time you do not need to do anything more, except to observe the conditions regarding a claim (Section 5) to ensure that you do not jeopardise the management of the claim should it be made.

To lodge a claim under this policy, you should contact Invivo who will provide you with the necessary documents for completion and put in place the claims management process. At this time you will be required to pay your deductible if stated in your Policy Schedule.

Invivo will manage your claim as the agent of QBE.

WHAT IF YOU ARE NOT SATISFIED WITH THE SERVICE YOU RECEIVE OR WISH TO MAKE A COMPLAINT?

Invivo is committed to dealing openly with all of our clients and to the quick, efficient and fair resolution of any client complaint. Our staff are there to assist you, with the intention of resolving the issues raised. A copy of the dispute resolution procedure can be obtained either from our website www.invivo.com.au or by telephoning Invivo on 1 800 103 779.

Should you wish to lodge a complaint or express dissatisfaction with any aspect of the service we have provided, please contact our client relationship staff via the following:

Phone: 1800 103 779
Facsimile: 1800 103 777
Postal address: PO Box 298, St Leonards NSW 1590
Email: complaints@invivo.com.au

Should we be unable to resolve the issue to our mutual satisfaction, you may refer the matter to QBE's internal dispute resolution scheme. If the complaint remains unresolved to your satisfaction, you can request that it be reviewed by the Financial Ombudsman Service (FOS), an ASIC approved external dispute resolution body. FOS will provide an independent review at no cost to you. QBE Insurance is bound by the determination of FOS, but the determination is not binding on you.

OUR PRIVACY PROMISE

We are committed to safeguarding the privacy and confidentiality of personal information that we obtain about you. We will only collect personal information from you that is relevant to your proposal for insurance or for managing your insurance, including claims made by you. We will only use the information in a way you would reasonably expect.

We or our authorised agent may disclose personal information:

- to an investigator, assessor, accountant, supplier, health service provider, your intermediary, State or Federal Authority (for the purpose of assessing, investigating or processing your claim);
- to a lawyer or recovery agent (for the purpose of defending an action by a third party against you or for the purpose of recovering our costs including your Deductible or for the drafting of policy wording or documentation);
- to another insurer (for the purpose of seeking recovery from them or to assist them to assess insurance risks) or to a reinsurer or reinsurance broker that may be located overseas;
- to an insurance reference bureau (for the purpose of recording any claims you make upon us);
- to a witness or another party in a claim (for the purpose of obtaining a statement from them or seeking recovery from them or to defend an action by a third party);
- to a related company that hosts our computer systems, that may be located overseas;
- to any person who has been specifically authorised by you to receive such information;
- to a family member as defined in your policy but only where you are unable to provide your consent, and it is reasonable for us to do so.

Personal information may also be obtained from the above people or organisations relating to your insurance.

In addition we will:

- give you the opportunity to correct personal information, or obtain access to it (some restrictions and costs may apply); and
- provide our dispute resolution procedures to you in respect of any complaint that you may have regarding your personal information.

Further information can be obtained by contacting the QBE Compliance Manager at: compliance.manager@qbe.com

FINANCIAL CLAIMS SCHEME

This policy is a protected policy under the Financial Claims Scheme (FCS), which protects certain insureds and claimants in the event of an insurer becoming insolvent. In the unlikely event of QBE becoming insolvent you may be entitled to access the FCS, provided you meet the eligibility criteria.

More information may be obtained from APRA – www.apra.gov.au or 1300 13 10 60.


PART 3
 Policy Terms and Conditions
for Professional Indemnity
Insurance Policy 

TABLE OF CONTENTS

PART 3 – POLICY TERMS AND CONDITIONS FOR PROFESSIONAL INDEMNITY

INSURANCE POLICY..... 15

Introduction.....	15
Insurer	15
Our agreement with you	15
Your Policy	15
Paying your annual premium.....	15
Preventing our right of recovery	15

WHAT YOU ARE INDEMNIFIED FOR (INSURING CLAUSES)..... 15

1.1 Malpractice	15
1.2 Intellectual Property.....	15
1.3 Libel and Slander.....	15
1.4 Retroactive Date.....	15
1.5 Trade Practices and Related Legislation	15
1.6 Claim Costs & Expenses	15

POLICY EXTENSIONS..... 16

2.1 Emergency First Aid	16
2.2 Loss of Documents	16
2.3 Legal Services Costs & Expenses.....	16
2.4 Statutory Liability Fines and Penalties	16
2.5 AUDIT.....	17
2.6 Defence of Criminal Proceedings	17
2.7 Clinical Trials.....	17
2.8 Employee Dishonesty.....	17
2.9 Employment Practices Liability	17
2.10 Health Facility Employment Contract Disputes	18

ADDITIONAL BENEFITS

3.1 Severability And Non-imputation	18
3.2 Continuous Cover.....	18
3.3 Liability For The Acts, Errors Or Omissions Of Others.....	18
3.4 Provision Of Medical Services Outside The Commonwealth Of Australia	18

EXCLUSIONS

4.1 Assumed Duty or Obligation	18
4.2 Contagious Disease or Virus	18
4.3 Employed Medical Practitioner	19
4.4 Fines and Penalties.....	19
4.5 Fraud and Dishonesty	19
4.6 Goods Sold, Stored, Supplied, or Distributed	19
4.7 Health Facilities.....	19
4.8 Intoxicants and Drugs	19
4.9 Jurisdictional Limits	19
4.10 Nuclear.....	19
4.11 Obligations to Employees	19
4.12 Occupier's Liability.....	19
4.13 Pharmaceutical Services.....	19
4.14 Pollutants.....	19
4.15 Prohibited Or Deregistered Practitioner.....	19
4.16 Prohibited Substances.....	19
4.17 Prior or Pending	19
4.18 Related Party.....	20

4.19 Stop Notification Breach	20
4.20 Territorial Limits.....	20
4.21 Trading Debts.....	20
4.22 Terrorism.....	20

WHAT YOU MUST DO REGARDING A CLAIM..... 20

5.1 Claims Mitigation and Your Co-Operation	20
5.2 Defence and Settlement of Claims.....	20
5.3 Your Rights to Contest a Claim	21
5.4 Reporting and Notice of Claims to Us	21
5.5 Contesting a Claim	21
5.6 Subrogation	21

GENERAL CONDITIONS..... 21

6.1 Alteration to Risk	21
6.2 Assignment of Interest	21
6.3 Cancellation	21
6.4 Deductible	21
6.5 GST	22
6.6 Limit of Indemnity.....	22
6.7 Multiple Claims.....	22
6.8 Policy Construction and Interpretation	22
6.9 Stop Notification	22

DEFINITIONS

7.1 Bodily Injury	22
7.2 Claim	22
7.3 Classification	22
7.4 Clinical Trials.....	22
7.5 Costs & Expenses.....	22
7.6 Deductible	22
7.7 Documents	22
7.8 Employee.....	23
7.9 Family Member.....	23
7.10 Health Facility	23
7.11 Legal Services Costs & Expenses.....	23
7.12 Limit of Indemnity.....	23
7.13 Locum Doctor.....	23
7.14 Malpractice.....	23
7.15 Medical Practitioner	23
7.16 Patient.....	23
7.17 Penalty	23
7.18 Period of Cover	23
7.19 Policy	23
7.20 Policy Schedule	23
7.21 Pollutants.....	23
7.22 Practice Company.....	24
7.23 Premium	24
7.24 Profession	24
7.25 Proposal	24
7.26 Regulatory Authority.....	24
7.27 Regulatory Authority Costs	24
7.28 The Practitioner	24
7.29 Trainee Doctor Or Registrar Doctor	24
7.30 We, Us, Our	24
7.31 Work Experience Trainee.....	24
7.32 You, Your	24

Part 3 – Policy Terms and conditions for Professional Indemnity Insurance Policy

INTRODUCTION

In return for **You** having paid **Us** a **Premium**, **We** will provide **You** with the indemnity set out in this **Policy**.

INSURER

The **Policy** is underwritten by QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney.

Invivo Medical Pty Ltd has binding authority to issue this **Policy** on behalf of QBE Insurance (Australia) Limited.

OUR AGREEMENT WITH YOU

This **Policy** is a legal contract between **You** and **Us**. **You** pay **Us** the **Premium**, and **We** provide **You** with the cover **You** have chosen as set out in the **Policy**, for the duration of the **Period of Cover** shown on **Your Policy Schedule** or any renewal period.

The **Policy Schedule** will include details of the **Deductible** that applies for each **Claim** under this **Policy**.

The Exclusions detailed in Section 4 and the General Conditions detailed in Section 6 apply to all sections of this **Policy**.

YOUR POLICY

Your Professional Indemnity **Policy** consists of the **Proposal** Form completed by **You**, the Professional Indemnity **Policy** Wording and the **Policy Schedule** **We** give **You**.

Please read **Your Policy** carefully, and ensure that **You** are satisfied that it provides the cover **You** require.

If **You** want more information about any part of **Your Policy**, please ask **Us**, or Invivo.

You should keep **Your Policy** document and **Policy Schedule** together in a safe and convenient place for future reference.

PAYING YOUR ANNUAL PREMIUM

You must pay **Your** annual **Premium**, or have notified **Us** that **You** will use premium funding, by the due date. If **We** do not receive **Your Premium** or the premium funding agreement by this date, or **Your** payment is dishonoured, this **Policy** will not operate and there will be no cover.

PREVENTING OUR RIGHT OF RECOVERY

If **You** have agreed not to seek compensation from another person who is liable to compensate **You** for any loss, damage or liability which is covered by this **Policy**, **We** will not cover **You** under this **Policy** for that loss, damage or liability.

Section 1:

What You Are Indemnified For (Insuring Clauses)

1.1 MALPRACTICE

We agree to indemnify **You** against **Your** civil liability to compensate others arising from any **Claim** first made against **You** during the **Period of Cover** and notified to **Us** during the **Period of Cover** as a result of **Malpractice** in the conduct of **Your Profession**.

1.2 INTELLECTUAL PROPERTY

We agree to indemnify **You** against **Your** civil liability to compensate others arising from any **Claim** first made against **You** during the **Period of Cover** which **You** have notified to **Us** during the **Period of Cover** for any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism or breach of confidentiality in the conduct of **Your Profession**.

1.3 LIBEL AND SLANDER

We agree to indemnify **You** against **Your** civil liability to compensate others arising from any **Claim** first made against **You** during the **Period of Cover** which **You** have notified to **Us** during the **Period of Cover** for actual or alleged defamation, libel or slander made in the conduct of **Your Profession**.

1.4 RETROACTIVE DATE

Where a Retroactive Date is specified in the **Policy Schedule**, then this **Policy** shall only provide indemnity in respect of **Claim(s)** arising from acts, errors or omissions committed or alleged to have been committed after the Retroactive Date.

1.5 TRADE PRACTICES AND RELATED LEGISLATION

We agree to indemnify **You** against **Your** civil liability to compensate others arising from any **Claim** first made against **You** during the **Period of Cover** which **You** have notified to **Us** during the **Period of Cover** for a breach of the terms of the Trade Practices Act 1974, the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria) or similar legislation enacted by the other states or territories of the Commonwealth of Australia or by the Dominion of New Zealand in the conduct of **Your Profession**.

1.6 CLAIM COSTS & EXPENSES

We agree to indemnify **You** for **Costs & Expenses** incurred with **Our** written consent in the defence or settlement of any **Claim** indemnified by this **Policy**.

Section 2: Policy Extensions

We shall provide indemnity as is available under this Section, for no additional **Premium**, PROVIDED ALWAYS THAT:

- a) the indemnity provided by each **Policy Extension** is subject to the **Policy Schedule**, Insuring Clauses, Conditions, Definitions, Exclusions, **Deductible** and other terms of this **Policy** (unless otherwise expressly stated herein);
- b) the inclusion of any **Policy Extension** shall not increase the **Limit of Indemnity**;
- c) where a **Policy Extension** is not specified as included in the **Policy Schedule** then this **Policy** shall not provide any indemnity in relation to coverage specified under such **Policy Extension**.

2.1 EMERGENCY FIRST AID

We agree to indemnify **You** against any **Claim** made against **You** arising from medical assistance voluntarily administered at the scene of any emergency, accident or disaster by **You** PROVIDED THAT the assistance is given at a time when **You** are not engaged in a professional capacity by any other person or entity.

2.2 LOSS OF DOCUMENTS

We agree to indemnify **You** for any **Documents** required by **You** to fulfil **Your** professional duty, which have been destroyed, damaged, lost or mislaid and, after diligent search and attempt to recover, cannot be found, provided that:

- a) the discovery of the loss of **Documents** occurs during the **Period of Cover** and **You** have notified **Us** in writing within twenty eight (28) days after **You** discover that the **Documents** are lost but never beyond the expiry of the **Period of Cover**; and
- b) indemnity is limited to the costs, charges and expenses incurred by **You** in replacing and/or restoring the lost **Documents**. Any claim for costs, charges and expenses for replacement of lost **Documents** must be supported by bills and/or accounts that need to be approved by a person nominated by **Us** with **Your** approval; and
- c) this cover does not include that proportion of any costs, charges and expenses which arises directly or indirectly out of:
 - (i) corruption, erasure, theft, alteration of, or
 - (ii) access or lack of access to, or
 - (iii) interference with
 electronically stored data belonging to **You** or held by **You** and which is wholly or partly caused by;
 - (a) any computer virus; or
 - (b) **You** or any person who is not a current **Employee of Yours**
 where such costs, charges and expenses relate to **You** replacing and/or restoring data after a period of 48 hours following the time when the virus or act took effect; and
- d) We will only indemnify **You** for loss of any **Documents**:
 - (i) which were in **Your** physical custody or control or in the physical custody or control of any person to whom **You** have entrusted, lodged or deposited the lost **Documents** in the course of **Your** usual business; and
 - (ii) which occurred within the territorial limits of the Commonwealth of Australia; and
- e) **Our** total liability in any one **Period of Cover** for all lost **Documents** will not be more than \$100,000 unless otherwise stated in the **Policy Schedule**.

2.3 LEGAL SERVICES COSTS & EXPENSES

We agree to pay **Legal Services Costs & Expenses**:

- a) arising out of any official investigation, examination or inquiry provided that:
 - (i) We can, at **Our** discretion, appoint legal representation to represent **You** in the investigation, examination or inquiry;
 - (ii) the investigation, examination or inquiry, or notice of intended investigation, examination or inquiry is commenced during the **Period of Cover** and is notified to **Us** by **You** during the same **Period of Cover**;
 for the purpose of this cover, an official investigation, examination or inquiry includes an investigation, examination or inquiry by way of a Royal Commission, State or Commonwealth Privacy Commission or Coronial Enquiry or proceedings of any civil court or conducted by a Regulatory Authority such as the Australian Securities and Investments Commission or any disciplinary committee of an association or professional body of which **You** are a member, but does not include any investigation, examination or inquiry conducted by a parliamentary committee.
- b) if **You** have been denied indemnity by any State or Federal authority or by **Your** prior medical indemnity insurer, and we are of the reasonable opinion that **You** are entitled to indemnity. If **We** come to this opinion **We** may take action on **Your** behalf in order to affirm **Your** right to such indemnity and **We** will incur **Legal Services Costs & Expenses** up to the limit of liability. Any such action will be at **Our** sole discretion.
- c) arising out of the defence or pursuit of any complaint made against **You** by any person in the course of **You** carrying on **Your** Profession which threatens the safety of **You** or a Family Member: or
- d) incurred while obtaining legal advice, which relates to proposed healthcare treatment, advice or services provided to patients by the Practitioner, which if undertaken may result in a **Claim**. Any such expenses may be incurred at **Our** sole discretion.

In the event that a claim for payment of **Legal Services Costs & Expenses** is withdrawn or indemnity under this **Policy** is subsequently withdrawn or denied, **We** shall cease to advance **You** **Legal Services Costs & Expenses** and **You** will refund any **Legal Services Costs & Expenses** previously advanced by **Us** to **You** to the extent that **We** are satisfied that **You** were not entitled to **Legal Services Costs & Expenses** from **Us** or unless **We** agree in writing that **You** do not have to repay the **Legal Services Costs & Expenses** that **We** have advanced to **You**.

Our total liability for all **Legal Services Costs & Expenses** in any one **Period of Cover** will not be more than \$500,000, with the exception of any claims brought under Clause 2.5 Audit, where the total liability will not be more than \$150,000, unless otherwise stated in the **Policy Schedule**.

2.4 STATUTORY LIABILITY FINES AND PENALTIES

We agree to indemnify **You** against legal liability, which would otherwise be excluded by reason of Exclusion 4.4 (Fines and Penalties) or Exclusion 4.14(a) & (b) only (**Pollutants**), for

- a) any **Penalty** imposed upon **You** by any **Regulatory Authority** arising from any actual or alleged breach of any occupational health & safety or environmental legislation; and

- b) any costs and expenses incurred with **Our** written consent in the defence or settlement of any **Penalty** indemnified by this Extension.

PROVIDED ALWAYS THAT:

- (i) **You** first became aware of the existence of such **Penalty** during the **Period of Cover** and notified **Us** of such **Penalty** during the **Period of Cover**; and
- (ii) the act, error or omission giving rise to the **Penalty** did not arise from gross negligence or an intentional, wilful, reckless, or deliberate act, error, or omission; and
- (iii) **Our** total liability in respect of all claim(s) made under this **Policy** Extension, in any one **Period of Cover**, shall not exceed \$250,000.

2.5 AUDIT

We agree to pay **Legal Services Costs & Expenses** for the defence or prosecution of matters which arise as a result of any audit of **You** in the course of **Your** carrying out **The Profession** by:

- a) Medicare, the Pharmaceutical Benefits Scheme or any health fund; or
- b) the Australian Taxation Office.

We will only pay **Legal Services Costs & Expenses** if **You** have notified **Us** that the audit is to be carried out and have obtained **Our** prior consent to incur the **Legal Services Costs & Expenses**. **Our** total liability in respect of all claim(s) made under this **Policy** Extension, in any one **Period of Cover**, shall not exceed \$150,000

2.6 DEFENCE OF CRIMINAL PROCEEDINGS

We agree to pay **Costs & Expenses** arising out of any criminal proceeding brought in a court of law in Australia, or New Zealand, which is brought against **You** as a result of the provision of healthcare treatment, advice or services in the conduct of your **Profession**, which would otherwise be excluded by reason of Exclusion 4.5(a) (Fraud & Dishonesty), PROVIDED ALWAYS THAT:

- a) **Our** total liability for all **Costs & Expenses** in any one **Period of Cover** will not be more than \$500,000 for any one criminal proceeding and in the aggregate. Such liability will be a part of, and not in addition to the **Limit of Indemnity**; and
- b) In the event that **You** are found guilty or plead guilty to such criminal proceedings, **We** shall cease to advance any further **Costs & Expenses**, and you shall refund any **Costs & Expenses** previously advanced by **Us** within 14 days; and
- c) In the event that a claim for payment of **Costs & Expenses** is withdrawn or indemnity under this **Policy** is subsequently withdrawn or denied, **We** shall cease to advance **You** **Costs & Expenses** and **You** will refund any **Costs & Expenses** previously advanced by **Us** to **You** to the extent that **We** are satisfied that **You** were not entitled to **Costs & Expenses** from **Us** or **We** agree in writing that **You** do not have to repay the **Costs & Expenses** that **We** have advanced to **You**; and
- d) **We** can at our discretion, appoint legal representation to represent you in such criminal proceedings; and
- e) Such criminal proceedings are commenced during, and notified to **Us** during the same **Period of Cover**; and
- f) **We** have given our prior written consent; and
- g) Should this **Policy** be renewed on expiry, then the indemnity provided under this Clause will not reinstate in respect of a claim for defence of Criminal Proceedings which was brought under this or an earlier **Policy**.

2.7 CLINICAL TRIALS

We agree to indemnify **You** against any **Claim** made against **You** arising from work performed by **You** as a **Medical Practitioner** in the conduct of **Your** **Profession** while participating in a **Clinical Trial**, PROVIDED ALWAYS THAT:

- a) **You** are not the sponsor of the **Clinical Trial**; and
- b) **You** are indemnified by the sponsor of the **Clinical Trial**; and
- c) the **Clinical Trial** is Phase II or greater; and
- d) the **Clinical Trial** does not involve:
 - (i) minors (those under the age of 18 years), or any persons who lack the legal capacity to consent; or
 - (ii) persons at any stage of pregnancy, including persons attempting to become pregnant; or
 - (iii) genetic modification, gene therapy or stem cell research.

In all other instances, **You** will need to request cover from **Us** for the **Clinical Trial** and additional premium may be applicable.

2.8 EMPLOYEE DISHONESTY

Notwithstanding Exclusion 4.5 (Fraud and Dishonesty), where an identifiable **Employee**, other than a partner, principal or director of the **Practice Company**, has dishonestly or fraudulently obtained money or property belonging to the **Practice Company**, **We** agree to reimburse **You** for such money or property, PROVIDED ALWAYS THAT:

- a) the dishonest or fraudulent conduct is first discovered, and notified to **Us**, during the **Period of Cover**; and
- b) the **Practice Company's** payment functions were subject to dual signatory control and reconciled by someone who did not control the **Practice Company's** bank accounts at the time of the dishonest or fraudulent conduct; and
- c) **You** bear the burden of providing satisfactory proof to substantiate any loss claimed under this extension and **We** will be under no obligation to reimburse **You** until such time as **We** are satisfied that the loss has, in fact, been sustained; and
- d) **We** will not be liable for any loss sustained after the date of discovery of the dishonest or fraudulent conduct on the part of the **Employee** concerned or, if earlier, the first date when there was reasonable cause for suspicion of such conduct; and
- e) a deductible of \$5,000 applies to any one event or series of events caused by the dishonest or fraudulent conduct of the same identifiable **Employee**; and
- f) **Our** total liability under this **Policy** Extension in any one **Period of Cover** shall not exceed \$50,000.

2.9 EMPLOYMENT PRACTICES LIABILITY

Notwithstanding Exclusion 4.1 (Assumed Duty or Obligation) and 4.11 (Obligations to Employees), **We** agree to indemnify **You** against

- a) any **Claim** first made against **You** or the **Practice Company** during the **Period of Cover** by an **Employee** or prospective **Employee**, other than a **Medical Practitioner** or partner, principal or director of the **Practice Company**, for actual or alleged discrimination, harassment or wrongful dismissal; and
- b) any **Costs & Expenses** incurred with **Our** written consent in the defence or settlement of any **Claim** indemnified by this extension.

PROVIDED ALWAYS THAT **Our** total liability in respect of all **Claim(s)** made under this **Policy** Extension in any one **Period of Cover** shall not exceed \$50,000.

2.10 HEALTH FACILITY EMPLOYMENT CONTRACT DISPUTES

We agree to pay **Legal Services Costs & Expenses** for the defence or pursuit of any dispute arising from a contract or proposed contract between **You** and a **Health Facility** relating to:

- a) **Your** employment with the **Health Facility**; or
- b) **Your** engagement as a visiting **Medical Practitioner** at the **Health Facility**

We will only pay **Legal Services Costs & Expenses** if **You** have notified **Us** of the dispute and have obtained **Our** prior consent to incur the **Legal Services Costs & Expenses**. **Our** total liability in respect of all claim(s) made under this **Policy Extension**, in any one **Period of Cover**, shall not exceed \$150,000.

Section 3:

Additional Benefits

We shall provide indemnity as is available under this Section, for no additional **Premium**, PROVIDED ALWAYS THAT:

- a) the indemnity provided by each Additional Benefit is subject to the **Policy Schedule**, Insuring Clauses, Conditions, Definitions, Exclusions, **Deductible** and other terms of this **Policy** (unless otherwise expressly stated herein);
- b) the inclusion of any Additional Benefit shall not increase the **Limit of Indemnity**.

3.1 SEVERABILITY AND NON-IMPUTATION

We agree that, where this **Policy** insures more than one party, any conduct on the part of any party or parties whereby such party or parties:

- a) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
- b) made a misrepresentation to **Us** before this contract of insurance was entered into; or
- c) failed to comply with any terms or conditions of this **Policy**;

shall not prejudice the right of the remaining parties to indemnity as may be provided by this **Policy**.

PROVIDED ALWAYS THAT such remaining parties shall:

- (i) be entirely innocent of and have had no prior knowledge of any such conduct; and
- (ii) as soon as is reasonably practicable upon becoming aware of any such conduct, advise **Us** in writing of all known facts in relation to such conduct.

3.2 CONTINUOUS COVER

We agree that, notwithstanding Exclusion 4.17 (Prior or Pending), should **You** notify **Us** of a **Claim** which should have been notified, or a fact or circumstance which could have been notified, to **Us** under an earlier Professional Indemnity Insurance **Policy** issued by **Us**, **We** will accept the notification of such **Claim**, fact or circumstance under this **Policy**.

PROVIDED ALWAYS THAT:

- a) **We** have continuously been the insurer under a Professional Indemnity Insurance **Policy** between the date when such notification should have been given and the date when such notification was, in fact, given; and
- b) the terms and conditions applicable to this Additional Benefit and to that notification shall not be those of this **Policy** but shall be the terms and conditions (including the **Limit of Indemnity** and **Deductible**) applicable to the Professional Indemnity Insurance **Policy** issued by **Us**, under which the notification should have been given.

3.3 LIABILITY FOR THE ACTS, ERRORS OR OMISSIONS OF OTHERS

We agree to indemnify **You** for **Claim(s)** arising from an act, error or omission committed or alleged to have been committed by a **Trainee Doctor, Registrar Doctor, Locum Doctor or Work Experience Trainee**, whilst working at **Your** practice, at **Your** instruction or direction and for which **You** are held vicariously liable.

For clarification this clause does not include indemnity to the individual who has committed the act, error or omission.

3.4 PROVISION OF MEDICAL SERVICES OUTSIDE THE COMMONWEALTH OF AUSTRALIA

We agree to indemnify **The Practitioner** for any **Claim** that arises from the provision of medical services by **The Practitioner**, including emergency first aid, outside the Commonwealth of Australia PROVIDED ALWAYS THAT:

- a) the **Claim** arises directly from medical services provided in **Your Profession**; and
- b) the **Claim** is first made against **You** during the **Period of Cover**; and
- c) **You** first notified the **Claim** to **Us** during the **Period of Cover**.

However this Additional Benefit will not provide any indemnity:

- (i) if the duration **The Practitioner** will be outside the Commonwealth of Australia exceeds 120 days in any one **Period of Cover**, unless **We** have agreed in writing to extend cover to **You** for a longer time; or
- (ii) for any **Malpractice** arising directly or indirectly from the provision of, or failure to provide, medical services by **The Practitioner** in Canada or the United States of America or any jurisdiction where the laws of Canada or the United States apply.

For clarification this clause does not affect Exclusion 4.9 Jurisdictional Limits.

Section 4:

Exclusions

We will not be liable under this **Policy** to provide indemnity in respect of any claim:

4.1 ASSUMED DUTY OR OBLIGATION

(other than as provided under section 2.9) against **You** directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by **You** by way of contract, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability that **You** would have incurred in the absence of such contract, warranty, guarantee or indemnity.

4.2 CONTAGIOUS DISEASE OR VIRUS

that arises in any way from **Your** transmission of a notifiable contagious disease or virus when, at the time of transmission, **You** knew or should have reasonably known that **You** were carrying the disease or virus.

4.3 EMPLOYED MEDICAL PRACTITIONER

against **You** for any liability, however it may arise, for any act, error or omission of another **Medical Practitioner**, other than the Additional Benefit provided in section 3.3.

4.4 FINES AND PENALTIES

(other than as provided under section 2.4) against **You** for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law including, but not limited to, civil penalties.

4.5 FRAUD AND DISHONESTY

(other than as provided under section 2.6 or section 2.8) against **You** directly or indirectly based upon, attributable to, or in consequence of:

- a) any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission by **You** or **Your** consultants, sub-contractors or agents; or
- b) any act, error or omission by **You** or **Your** consultants, sub-contractors, or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof; or
- c) any wilful breach of any statute, contract or duty by **You** or **Your** consultants, sub-contractors or agents.

4.6 GOODS SOLD, STORED, SUPPLIED, OR DISTRIBUTED

against **You** arising directly or indirectly based upon, attributable to, or in consequence of:

- a) the sale, storage, supply or distribution of any good or product; or
- b) any actual, or alleged, provision of advice in connection with the sale, storage, supply or distribution of any good or product.

Except however that this Exclusion shall not apply in respect of **Claim(s)** arising directly from:

- (i) the provision of treatment advice; or
- (ii) an act, error, or omission in provision of prescription by **You**; or
- (iii) an act, error, or omission in dispensing a good or product by **You**; or
- (iv) an act, error, or omission in administering a good or product by **You**.

4.7 HEALTH FACILITIES

against any **Health Facility** controlled or conducted by **You** or through which **The Practitioner** may conduct the **Profession**.

4.8 INTOXICANTS AND DRUGS

against **You** arising directly or indirectly based upon, attributable to, or in consequence of the rendering of, or failing to render, competent medical services while under the influence of intoxicants or drugs.

4.9 JURISDICTIONAL LIMITS

against **You**:

- a) brought in a court of law outside the territorial limits of the Commonwealth of Australia or its territories or protectorates; or
- b) arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of any country outside the Commonwealth of Australia or its territories or protectorates.

4.10 NUCLEAR

against **You** arising from radioactive materials of any type except when used in the ordinary course of radiotherapy, radiology or nuclear medicine.

4.11 OBLIGATIONS TO EMPLOYEES

(other than as provided under section 2.9) directly or indirectly based upon, attributable to, or in consequence of **Bodily Injury** of any **Employee** or damage to or destruction of any property of any **Employee**, including loss of use of property, arising out of, or in the course of, their employment.

4.12 OCCUPIER'S LIABILITY

directly or indirectly based upon, attributable to, or in consequence of any liability incurred or alleged to have been incurred as a result of occupation, control, management or ownership of any real property by **You** or **Your** business.

4.13 PHARMACEUTICAL SERVICES

that arises in any way out of **You** providing services to a pharmaceutical company that have not been approved by **Us** in writing.

4.14 POLLUTANTS

(other than as provided under section 2.4) directly or indirectly based upon, attributable to, or in consequence of:

- a) the actual or alleged discharge, release or escape of **Pollutants**; or
- b) any enforcement action or proceeding in connection with the containment, clean up, removal or treatment of such **Pollutants**; or
- c) asbestos or asbestos products in whatever form or quantity.

4.15 PROHIBITED OR DEREGISTERED PRACTITIONER

that arises in any way out of the provision of medical services:

- a) when **You** are prohibited from practising or have been deregistered as a **Medical Practitioner**; or
- b) which are outside conditions that were imposed upon **Your** registration.

4.16 PROHIBITED SUBSTANCES

or investigation that arises in any way out of the unlawful sale, supply, use or application of a substance declared to be prohibited by Legislation.

4.17 PRIOR OR PENDING

(other than as provided under section 3.2) made, threatened or intimated against **You** prior to the **Period of Cover**; or directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:

- a) of which written notice has been given, or ought reasonably to have been given, under any previous **Policy**; or
- b) of which **You** first became aware prior to the **Period of Cover**, and **You** knew or ought reasonably to have known had potential to give rise to a **Claim**.

4.18 RELATED PARTY

brought or maintained by or on behalf of any person who, at the time of the alleged breach of professional duty giving rise to the **Claim**, was a **Family Member**.

4.19 STOP NOTIFICATION BREACH

directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any procedure, treatment or advice that is the subject of a notice given to **You** by **Us** in accordance with clause 6.9 Stop Notification.

4.20 TERRITORIAL LIMITS

(other than as provided under section 3.3 or section 3.4) directly or indirectly based upon, attributable to, or in consequence of a breach of professional duty occurring outside the territorial limits of the Commonwealth of Australia or its territories or protectorates.

4.21 TRADING DEBTS

directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by **You** or any guarantee given by **You** for a debt.

4.22 TERRORISM

directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any:

- a) act of terrorism, as defined herein, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

An act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- (i) involves violence against one or more persons; or
- (ii) involves damage to property; or
- (iii) endangers life other than that of the person committing the action; or
- (iv) creates a risk to health or safety of the public or a section of the public; or
- (v) is designed to interfere with or to disrupt an electronic system.

- b) action in controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism.

However, this exclusion shall not apply to any medical procedure performed as a result of any injuries arising out of any act of terrorism as described in the above or any act of controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism.

Section 5:

What You Must Do Regarding A Claim

5.1 CLAIMS MITIGATION AND YOUR CO-OPERATION

- a) If **You**, either prior to or during the **Period of Cover**, become aware of a situation which could, if not rectified, lead to a **Claim** or increase the quantum of a **Claim**, **You** shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.
- b) **You** must frankly and honestly disclose to **Us** all relevant information and in addition shall provide assistance to **Us** as **We** may require to enable **Us** to investigate and to defend any **Claim** under this **Policy** and/or to enable **Us** to determine **Our** liability under this **Policy**.
- c) Other than **Costs & Expenses** incurred by **Us** to enable **Us** to determine **Our** liability under this **Policy**, compliance with this condition shall be at **Your** own cost, unless otherwise agreed in writing by **Us**.

5.2 DEFENCE AND SETTLEMENT OF CLAIMS

- a) **You** must agree not to settle any **Claim**, incur any **Costs & Expenses** or **Legal Services Costs & Expenses**, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **Claim** or loss without **Our** written consent, such consent not to be unreasonably withheld. **We** will not be liable for any settlement, **Costs & Expenses**, **Legal Services Costs & Expenses**, admission, offer or payment, or assumed obligation to which **We** have not agreed in writing.
- b) **We** will be entitled if **We** desire to take over and conduct, in **Your** name, the defence or settlement of any **Claim** at any time. In the event that this occurs, **We** will then have sole control of the **Claim**.
- c) **We** may, if **We** believe that any **Claim** will not exceed **Your Deductible**, instruct **You** to conduct the defence of the **Claim**. In this situation, **We** will reimburse **You** for all reasonable **Costs & Expenses** in the defence of the **Claim** in the event that any payment made to dispose of the **Claim** exceeds the **Deductible**.
- d) If **We** retain lawyers in **Your** name to conduct the investigation, defence or settlement of any **Claim**, those lawyers will only act on behalf of **Us** in relation to any issue regarding **Your** entitlement to indemnity from **Us** and they will not act on **Your** behalf in respect of any such issue. Any information that is received by lawyers retained by **Us** in the course of investigating, defending or settling any **Claim** against **You** can be provided to **Us** and relied upon by **Us** in relation to any issue that may arise regarding **Our** liability to indemnify **You**. In relation to any such information, **You** will waive any **Claim** that **You** may have for legal professional privilege as between **You**, **Us** and the lawyers retained by **Us**.
- e) The lawyers retained by **Us** to conduct the investigation, defence or settlement of any **Claim** may provide advice to **Us** on any issue regarding **Our** liability to indemnify **You** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **Claim** on behalf of both **You** and **Us**.
- f) **You** agree that all communications between **Us** and lawyers **We** have retained to act in the conduct of the investigation, defence or settlement of any **Claim** which relate to **Your** entitlement to indemnity from **Us** are privileged as between **Us** and the lawyers and **You** agree that **You** are not entitled, under any circumstances, to access or obtain any such communications.
- g) If any actual or apparent conflict arises between **Our** interests and **Your** interests, the lawyers retained by **Us** to conduct the investigation, defence or settlement of any **Claim** may cease to act on **Your** behalf and may continue to act on **Our** behalf in relation to any dispute between **You** and **Us** with respect to **Your** entitlement to indemnity from **Us**.

5.3 YOUR RIGHTS TO CONTEST A CLAIM

In the event that **We** recommend a settlement in respect of any **Claim** and **You** do not agree that the **Claim** should be settled, then **You** may elect to contest the **Claim** provided that **Our** liability in connection with the **Claim** shall not exceed the amount for which the **Claim** could have been settled plus the **Costs & Expenses** incurred with **Our** written consent up to the date when **You** elected to contest the **Claim**, less the **Deductible**.

5.4 REPORTING AND NOTICE OF CLAIMS TO US

- a) **You** must give **Us** written notice as soon as practicable of any **Claim** made against **You** provided that written notice must be given to **Us** during the **Period of Cover** in which the **Claim** is first made against **You**.
- b) Notice of any **Claim** shall be given in writing to **Our** agent Invivo, and delivered to:
 - The Claims Manager
 - Invivo
 - PO Box 298
 - St Leonards NSW 1590

5.5 CONTESTING A CLAIM

We have the right to defend any **Claim** against **You**, even if the allegations of the **Claim** are groundless, false or fraudulent, and may make such investigation or such settlement of any **Claim** as **We** deem necessary.

5.6 SUBROGATION

In respect of any **Claim** indemnified by this **Policy**, and without limiting **Our** rights at law, **We** will be subrogated all of **Your** rights of recovery, and **You** must execute all papers required and must do everything necessary to secure and preserve these rights, including the execution of **Documents** necessary to enable **Us** effectively to bring suit in **Your** name.

You must not, without first obtaining written consent from **Us**, do anything or fail to do anything which excludes, limits or prejudices **Our** rights of subrogation. In particular, without limiting the operation of this provision, **You** must not enter into any contract or agreement which excludes, limits or prejudices a right of recovery **You** may have in respect of any **Claim** covered by this **Policy**.

Section 6:

General Conditions

6.1 ALTERATION TO RISK

You must give **Us** written notice as soon as practicable of any material alteration to the risk during the **Period of Cover** including but not limited to:

- a) **You** going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or **You** failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- b) any material change in the nature of the professional services **You** provide or in **Your Classification**.

Where this notice is given and/or where there is any material alteration to the risk, **We** are entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

6.2 ASSIGNMENT OF INTEREST

No change in, or modification of, or assignment of interest under this **Policy** shall be effective except when made by written endorsement to this **Policy** and signed by **Our** authorised employee or agent.

6.3 CANCELLATION

- a) **You** may cancel this **Policy** at any time by notifying **Us** in writing, and **We** will allow a pro rata refund of **Premium** for the unexpired **Period of Cover**.
- b) **We** may cancel this **Policy** in accordance with the provisions of the Insurance Contracts Act (Cth) 1984, and **We** may provide a pro rata refund of the **Premium** for the unexpired **Period of Cover**.

6.4 DEDUCTIBLE

- a) In respect of each **Claim** made against **You** the amount of the **Deductible** shall be borne by **You** at **Your** own risk and **We** shall only be liable to indemnify **You** for that part of any **Claim** (or other loss indemnified by this **Policy**) which is in excess of the **Deductible**.
- b) In the event of a **Claim** by **You** under this **Policy**, **You** shall, if directed by **Us**, pay to **Us** (or as is directed by **Us**) the **Deductible** within seven (7) working days. Any delay, failure or refusal by **You** to pay the **Deductible** will entitle **Us** to deduct such amount from any amount(s) required to settle any **Claim** or judgment, order, or any other payment to be made by **Us** under this **Policy**. In the event that a failure or refusal to grant access to monies for any **Deductible** results in a failure of a settlement or an increase in **Costs & Expenses**, **Our** liability in connection with a **Claim** shall not exceed the amount for which the **Claim** could have been settled plus the **Costs & Expenses** incurred with **Our** written consent up to the date of **Your** failure or refusal to pay the **Deductible**, less the **Deductible**.
- c) Where **We** have elected to pay all or part of the **Deductible** in respect of any **Claim** (or other loss indemnified by this **Policy**), **You** shall, within seven (7) working days from the date of such payment, reimburse **Us** for such payment.
- d) In respect of any **Claim** (or other loss indemnified by this **Policy**) where the amount of the **Claim** (or other loss indemnified by this **Policy**) is less than the amount of the **Deductible**, **You** shall bear all **Costs & Expenses** associated therewith unless **We** shall have agreed to meet such **Costs & Expenses** pursuant to Clause 1.6 (**Claim Costs & Expenses**).
- e) Where the **Deductible** is expressed in the **Policy Schedule** to be inclusive of **Costs & Expenses** then **You** will pay all **Costs & Expenses**, up to the amount of the **Deductible**, incurred by **Us** pursuant to the engagement of advisers considered necessary by **Us** to determine **Your** liability and to resolve the **Claim**.
- f) Any **Costs & Expenses** incurred by **Us** to determine whether **We** have a liability to indemnify **You** under this **Policy** shall not be subject to the **Deductible** but shall be borne by **Us**.

6.5 GST

Where **You** pay an amount for any acquisition relevant to a **Claim** covered under this insurance which includes GST, or where **You** would pay such an amount were **You** to make a relevant acquisition, **We** will indemnify **You** for that GST less any input tax credit that **You** are or would be able to claim for it (the "GST amount").

We will pay the GST amount in addition to the **Limit of Indemnity** shown in the **Policy Schedule**.

We will only provide indemnity to **You** for the GST amount that relates to **Our** proportion of **Your Claim**. This means that, in the event that the **Limit of Indemnity** is not sufficient to cover the total amount of the **Claim**, **We** will only provide indemnity to **You** for the GST that relates to the amount of the payment under the **Policy**.

We will not indemnify **You** for any GST liability that arises out of **Your** failure to notify **Us** of **Your** entitlement or correct entitlement to an input tax credit on the **Premium**.

"GST", "input tax credit" and "acquisition" have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999.

6.6 LIMIT OF INDEMNITY

Our total liability under this **Policy** for any one **Claim**, including **Costs & Expenses**, and in the aggregate in respect of all **Claim(s)**, including **Costs & Expenses**, shall not exceed the **Limit of Indemnity** specified in the **Policy Schedule**.

6.7 MULTIPLE CLAIMS

- a) All causally connected or interrelated breaches of professional duty shall jointly constitute a single breach of professional duty under this **Policy**.
- b) Where a single breach of professional duty gives rise to more than one **Claim**, all such **Claim(s)** shall jointly constitute one **Claim** under the **Policy**, and only one **Deductible** shall be applicable in respect of such **Claim**. Furthermore, if there is an Aggregate **Limit of Indemnity**, only one **Limit of Indemnity** will be applicable in respect of such **Claim**.

6.8 POLICY CONSTRUCTION AND INTERPRETATION

- a) The construction, interpretation and meaning of the provisions of this **Policy** shall be determined in accordance with the law of the state, territory or country in which this **Policy** is issued, being the Place of Issue specified in the **Policy Schedule**, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country. If no Place of Issue is shown in the **Policy Schedule** it is agreed that the Place of Issue is Sydney, New South Wales, Australia.
- b) The marginal notes and titles of paragraphs in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or interpretation.
- c) Under this **Policy**, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.

6.9 STOP NOTIFICATION

If after having regard to **Your Profession We** consider that a procedure, treatment or advice poses an unreasonable risk of **Claim**, investigation or inquiry **We** may give you 14 days notice asking **You** to cease such procedure, treatment or advice.

Where this notice is given and **You** continue to undertake such procedure, treatment or advice then, in accordance with Exclusion 4.19 (Stop Notification Breach) **We** will not cover any claim, incident, investigation, healthcare complaint, disciplinary action or other circumstance that arises out of your failure to cease such procedure, treatment or advice and **We** are entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

Section 7: Definitions

7.1 BODILY INJURY

"**Bodily Injury**" shall mean physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.

7.2 CLAIM

"**Claim**" shall mean:

- a) The receipt by **You** of any written notice of demand for compensation made by a third party against **You** or
- b) Any writ, statement of **Claim**, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon **You** which contains a demand for compensation made by a third party against **You**.

7.3 CLASSIFICATION

"**Classification**" shall mean the classification as declared by **You** on **Your Proposal**, including any prior classification declared by **You** on **Your Proposal**.

7.4 CLINICAL TRIALS

"**Clinical Trials**" shall mean any study or research project that is approved by, and conducted in accordance with the guidelines of, an ethics committee that is registered with the National Health and Medical Research Council.

7.5 COSTS & EXPENSES

"**Costs & Expenses**" shall mean the reasonable legal costs and expenses incurred by **You** or on **Your** behalf or by **Us**

- a) arising out of any **Claim**; or
- b) arising out of the defence of any criminal proceedings requested by **You** under clause 2.6 of this policy.

7.6 DEDUCTIBLE

"**Deductible**" shall mean the amount shown as the **Deductible** in the **Policy Schedule**.

7.7 DOCUMENTS

“**Documents**” shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

7.8 EMPLOYEE

“**Employee**” shall mean any person :

- a) employed by **You** providing administration or clinical support to **You** including under an apprenticeship or traineeship or as a trainee during, or before commencement of, the **Period of Cover**; or
- b) not employed by **You** but working on **Your** behalf providing administration but not clinical support for no more than 3 consecutive weeks.

7.9 FAMILY MEMBER

“**Family Member**” shall mean:

- a) any spouse, domestic partner, or companion;
- b) any parent, or parent of the spouse, domestic partner or companion; or
- c) any sibling or child;

of **Yours**.

7.10 HEALTH FACILITY

“**Health Facility**” shall mean a facility to which patients are admitted and discharged to undergo diagnostic, surgical or other procedures performed by a **Medical Practitioner**. Where **Your** consultation or professional room is contained within the **Health Facility We** will indemnify the **Practice Company** but only in respect to consultations or procedures performed by **You** within **Your** consultation or professional room.

7.11 LEGAL SERVICES COSTS & EXPENSES

“**Legal Services Costs & Expenses**” shall mean legal costs and/or other expert expenses incurred by or on behalf of **You** or by **Us**. “**Legal Services Costs & Expenses**” does not include any fine, **Penalty**, agreement to pay monies owing or order for the payment of monetary compensation.

7.12 LIMIT OF INDEMNITY

“**Limit of Indemnity**” shall mean the limit of **Our** liability under this **Policy** as specified in the **Policy Schedule**.

7.13 LOCUM DOCTOR

“**Locum Doctor**” shall mean any person who is a registered **Medical Practitioner** and who at the time of the act, error or omission was directly engaged in the absence of **The Practitioner** by **The Practitioner** or the **Practice Company** to provide services normally provided by **The Practitioner** in the conduct of **Your Profession** and

- a) was not an **Employee** of **The Practitioner** or the **Practice Company**; and
- b) performed **The Practitioner**'s professional duties for no more than 3 consecutive weeks; and
- c) charged for and billed a **Patient** either independently or on **Your** behalf in accordance with a written agreement between **The Practitioner** or the **Practice Company** and the **Locum Doctor**.

7.14 MALPRACTICE

“**Malpractice**” shall mean a breach of professional duty of care in the provision of healthcare treatment, advice and services in the course of carrying out **The Profession**.

7.15 MEDICAL PRACTITIONER

“**Medical Practitioner**” is a person with a doctor's qualification or higher, including but not limited to a medical practitioner as defined in Section 4 of the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003.

7.16 PATIENT

“**Patient**” shall mean any person who is in your care, or the care of another **Medical Practitioner**, and is provided with medical services by **You** or on **Your** behalf and:

- a) is not a public patient in a public hospital or,
- b) is a public patient in a public hospital, and
 - (i) **You** are not an employee of that hospital, and
 - (ii) **You** do not have indemnity cover from that hospital.

7.17 PENALTY

“**Penalty**” shall mean any monetary sum payable by **You** to any **Regulatory Authority** pursuant to any occupational health & safety or environmental legislation as a result of a breach by **You** but excluding:

- a) any amounts payable as compensation;
- b) any compliance, remedial, reparation or restitution costs;
- c) any damages, including any exemplary or punitive damages;
- d) any consequential economic loss; and
- e) any legal costs and associated expenses.

7.18 PERIOD OF COVER

“**Period of Cover**” shall mean the period specified in the **Policy Schedule**.

7.19 POLICY

“**Policy**” shall mean:

- a) the **Policy Schedule**, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein;
- b) any endorsement attaching to and forming part of this **Policy** either at inception or during the **Period of Cover**; and
- c) the **Proposal**.

7.20 POLICY SCHEDULE

“**Policy Schedule**” shall mean the schedule to this **Policy**.

7.21 POLLUTANTS

"Pollutants" shall mean:

- a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis and chemicals; or
- b) any waste materials including materials recycled, reconditioned or reclaimed; or
- c) any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.

7.22 PRACTICE COMPANY

"Practice Company" shall mean a corporation (however incorporated), other than a **Health Facility**, that is controlled or conducted by **The Practitioner** and by means of which **The Practitioner** conducts their own personal medical practice.

7.23 PREMIUM

"Premium" shall mean the **Premium** specified in the **Policy Schedule** or in any endorsement to the **Policy Schedule**.

7.24 PROFESSION

"Profession" shall mean the provision by **You** of healthcare treatment, advice and services to **Patients** which is associated with **Your Classification** and shall include written or verbal advice provided by **The Practitioner** to others relating to the "**Profession**", regardless of whether or not it is provided for financial gain or other benefit. For the avoidance of doubt, "**Profession**" also extends to treatment, advice and services provided by **The Practitioner** while they are:

- a) being trained
- b) training others
- c) involved in:
 - (i) root cause analysis
 - (ii) morbidity conferences
 - (iii) peer reviews
 - (iv) providing medico-legal opinions or expert advice or opinions in disciplines directly relevant to the Profession.

7.25 PROPOSAL

"Proposal" shall mean the written proposal made by **You** to **Us** containing particulars and statements which, together with other information provided by **You**, are the basis of this **Policy** and are considered as incorporated herein.

7.26 REGULATORY AUTHORITY

"Regulatory Authority" shall mean a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or other Act.

7.27 REGULATORY AUTHORITY COSTS

"Regulatory Authority Costs" shall mean reasonable legal costs and other expenses payable by **You** to any **Regulatory Authority** upon the imposition of a **Penalty** covered by this **Policy**.

7.28 THE PRACTITIONER

"The Practitioner" shall mean

- a) the **Medical Practitioner** specified in the **Policy Schedule**; and
- b) **Your** estate, heirs, legal representatives or assigns in the event of **Your** death or incapacity for any civil liability that would have been covered by Section 1 if **You** were alive or had capacity. As far as possible **Your** estate, heirs, legal representatives or assigns must observe and be subject to all the terms of this **Policy**.

7.29 TRAINEE DOCTOR OR REGISTRAR DOCTOR

"Trainee Doctor" or "Registrar Doctor" shall mean any person who, at the time of the act, error or omission:

- a) was a registered **Medical Practitioner** engaged by **The Practitioner** or the **Practice Company**; and
- b) was undergoing an accredited training program approved by the **Trainee Doctor's** or **Registrar Doctor's** college or institution; and
- c) provided health care treatment, advice or service in the course of **Your Profession**; and
- d) was authorised by **You** to charge and bill the **Patient** on **Your** behalf.

7.30 WE, US, OUR

"We", "Us" or "Our" shall mean QBE Insurance (Australia) Limited (ABN 78 003 191 035)

7.31 WORK EXPERIENCE TRAINEE

"Work Experience Trainee" shall mean any student practitioner who during, or prior to the commencement of, the **Period of Cover** obtains practical work experience with **The Practitioner** or the **Practice Company** as part of the academic accreditation of a university, college of advanced education or a TAFE but then only in respect of work performed for and on behalf of **The Practitioner** or the **Practice Company**, and under **Your** supervision while doing so.

7.32 YOU, YOUR

"You" and "Your" shall mean

- a) **The Practitioner**
- b) The **Practice Company**
- c) Employees of **The Practitioner** or **Practice Company**, other than a **Medical Practitioner**.



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