



... Policy Terms and Conditions  
for Professional Indemnity  
Insurance Policy



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## 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 withelectronically 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**.