



# Health Professionals Insurance Plan

---

Managed by

**AON**

*Aon New Zealand*

PO Box 2517, Wellington

Tel (04) 819 4000 Fax (04) 819 4106

---



WHEREAS the person or persons named in the Schedule (hereinafter referred to as “the Insured”) have made to QBE Insurance (International) Limited (hereinafter referred to as “the Company”) a **Declaration** containing particulars and statements which it is hereby agreed are the basis of this contract and are to be considered as incorporated herein and in consideration of the Insured’s agreement to pay the agreed premium the Company hereby agrees to provide insurance to the Insured subject to the limitations terms and conditions hereinafter mentioned or endorsed hereon.

## **SECTION I MALPRACTICE LIABILITY**

### **A The Insurance**

1. The Company shall indemnify the Insured named in the Schedule in respect of all sums the Insured shall become legally liable to pay and which arise by reason of any negligent act, error or omission of whatsoever kind performed in the course of the Insured’s **Health Profession**.
2. The Company will also indemnify the Insured in respect of **Legal Expenses** incurred with the Company’s consent in defending any claim under Insuring Clause A1 provided that the Company’s consent shall not be unreasonably or arbitrarily withheld.
3. The Company will also indemnify the Insured in respect of **Legal Expenses** incurred in representation and defence before any Medical Board, Medical Council, Tribunal, Committee of Inquiry, Court Martial, Accident Compensation Inquiry, Coroners Court or the like.

### **B The Indemnity**

The maximum amount the Company will pay in respect of any one claim defined in Insuring Clauses A1-3 and in the aggregate during any one Period of Insurance to or on behalf of the Insured shall not exceed the Limit of Indemnity stated in the Schedule.

### **C Retroactive Date Limitation Clause**

The Company will not indemnify the Insured for any act, error, omission or conduct committed or omitted prior to the Retroactive Date specified in the Schedule.

### **D The Exclusions**

The insurance provided by this Section will not indemnify the Insured in respect of any claim which is excluded by virtue of the General Exclusions detailed in the policy.

### **E The Conditions**

The insurance provided by this Section is subject to all the conditions contained in the General Conditions as though such conditions were incorporated in this Section.

## SECTION II

### EXPENSE REIMBURSEMENT AND LOSS OF EARNINGS

#### **A The Insurance**

1. The Company will indemnify the Insured for all reasonable costs incurred by reason of the Insured's attendance at any Medical Board, Medical Council, Tribunal, Committee of Inquiry, Court Martial, Accident Compensation Inquiry, Coroners Court or the like where such expenses are not recoverable from an employer.
2. In addition to the cover provided by Insuring Clause A1 above the Company will indemnify the Insured for **Loss of Earnings** arising from attendance at any Medical Board, Medical Council, Tribunal, Committee of Inquiry, Court Martial, Accident Compensation Inquiry, Coroners Court or the like up to a maximum of \$1,000 per week for a maximum of 13 weeks during any Period of Insurance.

#### **B The Indemnity**

The maximum amount the Company will pay in respect of any one claim defined in Insuring Clause A1 and A2 and in total in the aggregate during any one Period of Insurance to or on behalf of any individual Insured shall not exceed the Limit of Indemnity stated in the Schedule.

#### **C The Exclusions**

The insurance provided by this Section will not indemnify the Insured in respect of any claim which is excluded by virtue of the General Exclusions detailed in this policy.

#### **D The Conditions**

The insurance provided by this Section is subject to all the conditions contained in the General Conditions as though such conditions were incorporated in this Section.

---

## SECTION III

### PUBLIC AND PRODUCTS LIABILITY

(This Section only applies if a Limit of Liability is recorded in the Schedule)

#### A The Insurance

1. The Company will indemnify the Insured for all sums that the Insured shall become legally liable to pay as Damages in respect of Personal Injury or Property Damage happening during the **Period of Insurance** caused by an Occurrence in connection with the **Insured's Profession**.
2. The Company will also indemnify the Insured in respect of **Legal Expenses** incurred with the Company's consent in defending any **Claim** under Insuring Clause A1 provided that the Company's consent shall not be unreasonably or arbitrarily withheld.

#### B The Indemnity

The maximum amount the Company will pay in respect of any one claim defined in Insuring Clause A1 and A2 during any one Period of Insurance shall not exceed the Limit of Indemnity:

1. In respect of any claim, or any series of claims, arising out of one Occurrence: or
2. In the aggregate during the Period of Insurance for any Occurrence involving the Insured's products.

#### C The Exclusions

The insurance provided by this Section will not indemnify the Insured in respect of any claim which is excluded by virtue of the General Exclusions detailed in this policy.

#### D The Conditions

The insurance provided by this Section is subject to all the conditions contained in the General Conditions as though such conditions were incorporated in this Section.

---

## **Definitions**

In this Policy, including any endorsements, unless specifically stated to the contrary:

- 1. "Claim" means:**
  - 1.1 legal proceedings instituted and served on the Insured claiming damages; or
  - 1.2 any allegation of wrongdoing by the Insured or for which the Insured is legally liable, together with a demand for damages; or
  - 1.3 any threat or intimation that legal proceedings will be issued against the Insured.
  
- 2. "Costs and Expenses" means:**
  - 2.1 all necessary and reasonable legal costs, disbursements, witnesses costs, assessors costs or experts costs incurred by the Company solely in investigating, defending or settling any Claim payable under this Policy;
  - 2.2 all necessary and reasonable expenses (other than loss of earnings or profits) that are incurred by the Insured with the prior written consent of the Company solely in assisting the Company or its solicitors in the investigation, defence or settlement of any such Claim payable under this Policy;
  - 2.3 any interest accruing after the date of entry of judgment against the Insured and until the date the Company pays, tenders or deposits in court the judgment sum or such part of that judgment sum as is required to satisfy the Company's liability to the Insured in terms of the Limit of Indemnity.
  
- 3. "Damages" means:**

Any amount payable as compensation including interest
  
- 4. "Health Profession" means:**

The activities undertaken by the Insured as specified in the Schedule
  
- 5. "Insured" means:**

The person specified as the Insured in the Schedule.
  
- 6. "Limit of Indemnity" means:**

The Limit of Indemnity specified in the Schedule.
  
- 7. "Occurrence" means:**

An event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage that is neither expected nor intended from the standpoint of the Insured.

---

**8. "Period of Insurance" means:**

The Period of Insurance specified in the Schedule.

**9. "Personal Injury" means:**

Bodily injury (including resulting death, illness or care) disability, shock, fright, mental anguish or mental injury including such injury arising from the following by the insured:

- 9.1. false arrest, wrongful detention, false imprisonment or malicious prosecution or humiliation;
- 9.2. wrongful entry or eviction or other invasion of the right of privacy;
- 9.3. assault and battery, provided that this was not committed by or at the direction of the insured except for the purpose of preventing or eliminating danger to persons or property;
- 9.4. trespass to the person.

**10. "Policy" means:**

This wording, the Schedule and any endorsements

**11. "Property Damage" means:**

- 11.1 physical injury to or destruction or loss of tangible property including resulting loss of use: or
- 11.2 loss of use of tangible property which has not been physically injured or destroyed.

**12. "Schedule" means:**

The current Schedule to this Policy

**General Exclusions (applicable to all sections)**

This Policy shall not indemnify the Insured in respect of any **Claim**:

**1. Asbestos**

Any actual or alleged liability whatsoever for any claim or claims in respect of loss or Losses directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

**2. Commercial Activities**

Arising out of any commercial activities not directly related to the performance of a Health Profession.

**3. Contractual Liability**

Arising directly or indirectly from any liability assumed by the Insured under a specific contract other than a contract of employment which would not have been assumed in the absence of such contract

---

**4. Directors Liability**

brought against an Insured in his/her capacity as a company director or officer

**5. Employers Liability**

brought by an employer for breach of employment contract

**6. Fraud and Dishonesty**

brought about or contributed materially to by the dishonest fraudulent criminal or malicious act or omission of the Insured.

**7. Insolvency**

as a result of the insolvency, bankruptcy or liquidation (as the case may be) of the Insured

**8. Intellectual Property**

by the owner or assignee or licensee of a copyright design or patent for breach of such copyright design or patent

**9. Jurisdiction**

In respect of any legal action:

- 9.1 first brought in a court outside the jurisdiction of New Zealand; or
- 9.2 brought in a court within the jurisdiction of New Zealand to enforce a Judgment of a court outside New Zealand whether by way of a Reciprocal agreement or otherwise; or
- 9.3 in which the proper law to be applied to the issues or any of them is That of a country other than New Zealand

**10. Nuclear**

alleging or directly or indirectly caused by or contributed to or arising from nuclear energy operations, including but not limited to:

- 10.1 the erection, installation, occupation, repair, maintenance, control, use or ownership of any nuclear power station, similar reactor building or nuclear reactor; or
- 10.2 any process of nuclear fission or fusion or handling radioactive material or irradiated nuclear fuel which operations include but are not limited to:
  - 10.2.1 the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices; or
  - 10.2.2 the use, handling or transportation of radioactive materials; or
  - 10.2.3 the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

---

Except in respect of Section III, this exclusion will not apply to any **Claim** arising from Radioisotopes or radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

**11. Other Insurance**

in respect of which the Insured is entitled to indemnity under any other insurance except in respect of any excess beyond the amount which is payable or would have been payable under such other insurance had this not been effected.

**12. Prior or Pending**

made prior to the commencement of the Period of Insurance stated in the Schedule or in respect of any occurrence of which the Insured is aware or ought reasonably to be aware at the inception of this insurance which may give rise to a **Claim** against the Insured whether notified under any other insurance or not.

**13. Refund of Fees**

for a refund of professional fees, by way of damages otherwise

**14. Sanctions**

for liability arising where the provision of such cover, payment of such **Claim** or provision of such indemnity would expose QBE to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, Australia or New Zealand.

**15. Territorial Limit**

alleging or arising from any negligent act, error, omission or conduct that occurred outside the territorial limits of New Zealand.

**16. Terrorism**

alleging death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this exclusion, "Act of Terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of person(s) whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion will also apply to death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection



---

with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

**17. Vehicles**

arising directly from the ownership, possession or use by or on behalf of the Insured of any land, aircraft, watercraft, vessel or mechanically propelled vehicle.

**18. War**

alleging loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation or nationalisation or requisition or destruction or damage to property by or order of any Government or public or local authority.

## General Conditions

1. The Insured shall as a condition precedent to being indemnified under this Policy give to the Company immediate notice in writing:
  - (a) of any Claim made against the Insured
  - (b) of the receipt of notice from any person of any intention to hold the Insured responsible for the results of an alleged negligent act, error or omission
  - (c) of any circumstance of which the Insured shall become aware which may reasonably be expected to give rise to a Claim or Claims under this Policy.
2. The Insured shall not admit liability for or settle any Claim or incur any costs or expenses in connection therewith without the written consent of the Company who shall be entitled to take over and to conduct in the name of the Insured the defence or settlement of any claim.
3. If the Insured shall refuse to consent to any settlement recommended by the Company and shall elect to contest or continue any legal proceedings in connection therewith the Company's liability for the Claim shall not exceed the amount for which the Claim could have been so settled (less the excess specified in the Schedule), plus the costs and expenses incurred up to the date of such refusal.
4. The Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss hereunder and on request give to the Company or their authorized representatives all such information and assistance as the Company may reasonably require.
5. Where the Insured's breach of or non-compliance with Condition 1, 3 or 4 of this Policy has resulted in prejudice to the handling and/or settlement of any claim or Claims which in all other respects qualify to be indemnified under this Policy the indemnity afforded by this Policy in respect of such Claim or Claims (including costs and expenses) shall be reduced to such sum as would have been payable by the Company in the absence of such prejudice.

- 
6. If, at the time of occurrence of any insured incident or receipt of a Claim, the Insured is entitled to an indemnity for Legal Expenses pursuant to another contract of insurance or certificate or benefit the Company shall only be liable to indemnify the Insured for any excess over and above the sum which is payable under such other contract of insurance or certificate or benefit.
  7. The insurance provided by this Policy ceases absolutely at the time and date stated in the Schedule. However provided that notice referred to in Condition 1 above has been given to the Company prior to the expiration of the Period of Insurance any claim or loss arising from the circumstances thus notified which is subsequently made after the expiration of the Period of Insurance shall be deemed to have been made during the subsistence of this Policy.
  8. If any Claim under this Policy shall be in any respect fraudulent or if any fraudulent means or devices are used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy all benefit hereunder shall be forfeited.
  9.
    - 9.1 The Insured may cancel this Policy at any time by notifying the Company in writing.
    - 9.2 The Company may cancel this Policy at any time by sending 30 days notice in writing to the Insured of the date from which cancellation is to take effect. Such notice may be delivered personally, posted or faxed to the Insured or their representative at the address last notified to the Company.

In either event, the Company will retain or be entitled to the premium for the period during which this Policy has been in force based on the Company's cancellation rates.

10. Where, upon receiving any indemnity payment under this Policy, the Insured is liable to pay tax under section 5 (13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act) and/or under the equivalent legislation in any other jurisdiction specified in the Schedule, the Company will indemnify the Insured for the amount of that tax. The indemnity under this clause is payable by the Company in addition to the Limit of Indemnity.
11. Neither the Company nor the Insured shall require each other to contest any legal proceedings in respect of any Claim against the Insured, unless legal counsel (to be mutually agreed upon by the Insured and the Company, or in default of agreement, nominated by the Company) shall recommend that such proceedings should be contested.

In formulating such recommendation, counsel shall take into account the economics of the matter, the damages and costs that are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the Insured successfully defending the action. The cost of counsel's opinion shall, for the purpose of this Policy, be regarded as part of the Costs and Expenses.

In the event that counsel recommends that, having regard to all the circumstances, the matter should not be contested but should be settled, provided that settlement can be achieved within limits which, in counsel's opinion, are reasonable, then the Insured shall not object to any such settlement and shall cooperate with the Company to effect such settlement in accordance with this Policy, subject to Condition 3 (Insured's Right to Contest).

12. The Company's liability to indemnify the Insured under Section I "A 1 – 3" (Malpractice), and Section II "A 1 – 2" (Expense Reimbursement and Loss of Earnings), in respect of any one Claim or complaint (including all legal costs and expenses for which the Insured shall become legally liable to the claimant), payable under any or all of those insuring clauses, shall not exceed the Limit of Indemnity. Furthermore, the Company's liability to indemnify the Insured in respect of all such Claims or complaints shall not exceed the aggregate limit of indemnity noted in the Schedule.
13. The Insured shall give immediate notice in writing to the Company should their statutory registration be cancelled, suspended or terminated, or should there be any other material alteration to the risk, facts or circumstances.
14. The Company may at any time pay the Limit of Indemnity applying to any one Claim or series of Claims (after deduction of sums already paid) or any lesser amount for which such Claims can be settled and shall then be under no further liability in connection with such Claims.
15. Interpretation of this insurance shall be governed by the laws of New Zealand whose courts shall have exclusive jurisdiction in any dispute that may arise.
16. If any payment is made under the Policy in respect of a Claim, the Company is subrogated to all the Insured's rights of recovery in any way related to the Claim. The Insured shall give all such assistance in the exercise of rights of recovery as the Company may reasonably require. Any such recovery shall be applied first to the Company's defence costs incurred, regardless of how the recovery may be described in any settlement agreement between the Insured and the claimant.

## Extensions

### 1. Prior Insured Persons

Sections I and II of this Policy are extended to indemnify any person who is no longer an Insured under this Policy by reason of that person ceasing to practise Health Profession for any reason but only in respect of claims arising from that person's occupation as a Practising Health Professional whilst they were Insured under this Policy, and only in respect of claims made or reported during the currency of this Master Policy or any replacement thereof.

### 2. Automatic Reinstatement

If a claim or claims shall exhaust the Limit of Indemnity under this Policy, the Company agrees to one reinstatement only of the Limit of Indemnity. Provided always that the Company's total liability under this Policy shall not exceed:

2.1. the Limit of Indemnity, in respect of any one claim or related claims; and

2.2. twice the Limit of Indemnity, in respect of all claims which are not related.

For the purpose of this extension, claims are related if they arise out of the same, identical or a series of acts, errors, omissions or conduct, or arise out of or are attributable to the same originating source or cause.