

Run-Off Cover Scheme (ROCS) Insurance Policy

Combined Financial Services Guide and Product Disclosure Statement



Avant
INSURANCE

Australia's Leading MDO

Table of Contents

Financial Services Guide	3
Product Disclosure Statement	6
Policy Wording	15
Sum Insured	15
How much We will pay	16
Part A – Professional indemnity insurance cover	17
1. Division 1 – Unpaid Healthcare	17
2. Division 2 – Healthcare	17
3. Division 3 – Public Patient optional cover	17
4. Automatic extensions – Part A	18
4.1 Unpaid Volunteer during extreme activities	18
4.2 Practice Staff of Sole Traders	18
4.3 Breaches of privacy	18
4.4 Breaches of consumer protection legislation	18
4.5 Defamation	19
4.6 Telehealth activities	19
4.7 Cover outside of Australia	19
4.8 Clinical Trial cover	20
4.9 Continuous cover	20
4.10 Actions of others	20
4.11 Severability	21
4.12 Personally controlled electronic health records	21
5. Exclusions – Part A	21

Part B – Legal Fees and Expenses cover	25
6. Division 1 – Cover for disciplinary, coronial and criminal proceedings and investigations	25
7. Division 2 – Cover for other actions, Complaints, proceedings and inquiries	26
7.1 Inappropriate practice defence	26
7.2 Health or medical fund defence	26
7.3 Appeal pursuit or defence	26
8. Automatic extensions – Part B	26
8.1 Legal Fees and Expenses cover outside of Australia	26
8.2 Continuous cover	26
9. Exclusions – Part B	27
10. Conduct of Claims and Requests for Indemnity	30
11. Conditions	34
12. Definitions	37

Financial Services Guide

Who will provide the service?

This Financial Services Guide (FSG) is intended to assist You in deciding whether to obtain any of the financial services that Avant Insurance Limited ABN 82 003 707 471 and AFS Licence 238765 is authorised to provide or arrange under its AFS Licence.

When reading this FSG, Product Disclosure Statement (PDS) and the Policy some of the terms that We use have a special meaning. Those words begin with capital letters and their meanings are explained in the definitions section of the Policy.

Our contact details

Our contact details are as follows:

Avant Insurance Limited
Level 28 HSBC Centre, 580 George Street Sydney NSW 2000

PO Box 746, Queen Victoria Building NSW 1230
DX 11583 Sydney Downtown

Phone: Freecall 1800 128 268
Fax: Freefax 1800 228 268

Email: memberservices@avant.org.au
Website: www.avant.org.au

How You can contact Us?

You can contact Us via telephone, facsimile transmission, mail or electronic-mail to the address which is listed above.

Why We provide You with an FSG

The FSG is designed to:

- ▶ assist You in understanding what You can expect when You contact Us regarding one of Our financial services;
- ▶ advise You about the remuneration We, Our staff and any other related persons receive in connection with the financial services We provide;
- ▶ describe how We deal with any complaints; and
- ▶ provide You with key contact details and information about how to lodge a complaint.

A copy of this FSG will generally be provided to You when We provide personal financial services to You or You obtain a financial product from Us.

What financial services do We offer?

We provide general insurance, life insurance and other insurance and related products.

We are an Australian Prudential Regulatory Authority (APRA) regulated insurer holding an Australian Financial Services Licence authorising Us to provide financial product advice in relation to, and deal in, general insurance and life risk insurance products. General insurance products are underwritten by Us. We provide these products and related services through Our trained employees and authorised representatives.

How We are remunerated

We charge premiums for the insurance products We provide.

We are paid a fee by Medicare Australia to reimburse the ongoing costs associated with administering medical indemnity support schemes on behalf of Medicare Australia and the Commonwealth Government. We receive a monthly management fee from other companies within the Avant Group.

We may receive referral fees or commissions from licensed brokers or other service providers with whom We may enter into an agreement to offer members other financial services.

Further details of fees or costs associated with the issue of Our products, if any, are contained in the PDS.

How Our staff are remunerated

All staff employed by Us receive salaries. Our staff do not receive commissions. Some of Our staff may receive an incentive or bonus payment based on meeting business targets.

How other parties are remunerated

We are a wholly-owned subsidiary of Avant Mutual Group Limited ABN 58 123 154 898 (Avant) and may pay a member access fee to Avant. The payment of this fee does not affect the amount of any benefit under Our policies.

We may pay referral fees or commissions to licensed brokers, agents or other intermediaries with whom We may enter into an agreement to distribute Our products.

Related documents You may receive

You may also receive other documents when We provide You with financial services in relation to one or more of Our financial products.

General advice

In the ordinary course of Our business, We will only provide general financial product advice. Our staff do not take personal circumstances into consideration when providing general financial product advice. It is important for You to consider Your objectives, financial situation and needs before making a decision to hold a policy with Us.

Product disclosure statement

A PDS will be provided to You when We provide, arrange or issue a financial product (other than for wholesale products) to You. The PDS will contain information about the financial product, including its features, benefits, exclusions and any fees or costs associated with the product to enable You to make an informed decision about it.

How is Your personal information dealt with?

For information about how We may deal with Your personal information, please refer to the 'Personal information and Your privacy' section of this PDS.

What if You have a complaint?

If You have any complaints about the product or service provided to You, then You should inform Us immediately. Our service staff should be able to resolve the issues You raise satisfactorily. However, if the matter has not been resolved to Your satisfaction You may, under Our internal dispute resolution (IDR) process, forward a complaint to Us. A copy of Our dispute resolution procedure can be obtained either from Our website or by contacting Us.

If Your complaint is not satisfactorily resolved or answered by Our IDR process You may refer the matter to the Financial Ombudsman Service (FOS). We are a member of the independent dispute resolutions service the FOS provides.

If You wish to make a complaint to the FOS please either contact Us or contact the FOS direct. The FOS' contact details are:

Telephone numbers:

Hotline: 1300 78 08 08

National Relay Service: 1800 555 677

Fax number: 03 9613 6399

Email: info@fos.org.au

Web address: <http://www.fos.org.au>

Mailing address: GPO Box 3, MELBOURNE VIC 3001.

Product Disclosure Statement

What is a Product Disclosure Statement?

This PDS will assist You in making an informed choice about whether this product meets Your insurance requirements.

You should read the Policy wording carefully, as it contains more detailed information about some of the matters referred to in this PDS.

Who is the insurer?

Avant Insurance Limited ABN 82 003 707 471 AFS Licence 238765 is the insurer and the issuer of this PDS and the Policy. Please refer to the FSG, which contains Our contact details.

What is the ROCS Insurance Policy?

The Australian Government introduced the Run-Off Cover Scheme (ROCS) on 1 July 2004 to provide run-off cover free of charge to medical practitioners who have ceased private medical practice and who satisfy specified eligibility criteria, and to the estates of deceased medical practitioners.

Under ROCS, the government guarantees to pay the cost of medical indemnity claims against eligible medical practitioners covered by the scheme.

When a medical practitioner becomes eligible for ROCS cover, their last medical indemnity insurer issues a ROCS insurance policy. The government will reimburse the insurer for any valid claims it pays under that ROCS policy.

When is a medical practitioner eligible for the ROCS Insurance Policy?

ROCS indemnifies medical practitioners who have ceased private practice. A medical practitioner becomes eligible for ROCS when they:

- ▶ are 65 or over and have retired from private practice; or
- ▶ are under the age of 65 who have not engaged in private practice at any time for the preceding period of 3 years; or
- ▶ are under the age of 65 who have not engaged in medical practice at any time for the preceding period of 3 years; or
- ▶ have ceased practising due to permanent disability; or
- ▶ are deceased (their estate is eligible for ROCS); or
- ▶ leave Australia after working under Visa Class 422 or 457 and who have left Australia permanently; or
- ▶ are on maternity leave.

Preserving your eligibility

Engaging in any private practice for payment immediately cancels your eligibility. You will not be covered for any claims notified after the date that your eligibility ceased. You should be aware that your ROCS policy will cease if:

- ▶ You perform even one paid consultation or locum session; or
- ▶ You work in a public hospital and the hospital bills against your Medicare Australia provider number; or
- ▶ You write a prescription and claim it against your Medicare Australia provider number.

Working in the public sector

If Your eligibility for a ROCS policy is based on maternity leave or permanent disability you cannot engage in any paid medical practice including practice in the public sector.

If You are eligible for ROCS on the grounds of having ceased all medical practice and you return to work in the public sector, you are expected to inform Us that Your circumstances have changed so that We can change Your eligibility category and in turn inform Medicare Australia.

If You are eligible on the grounds of having ceased private medical practice, working in the public sector does not affect Your eligibility status. You should inform Us though if and when You cease all medical practice.

Providing medical services at no cost

As long as You do not receive any payment or gratuity You may provide Unpaid Healthcare without jeopardising your ROCS eligibility. However, as ROCS does not cover You for any ongoing Unpaid Healthcare and as You are required to hold insurance as a part of Your registration, You need to contact Us to arrange cover for any ongoing Unpaid Healthcare that You provide after Your ROCS eligibility date.

Covering a period of past medical practice that was not indemnified

If Your Final Policy included additional retroactive cover to protect a gap in Your past cover, that gap will also be covered by Your Policy. Additional retroactive cover is clearly stated on Your Policy Schedule.

However, if there is a gap in Your indemnity history that You did not cover with Your Final Policy, You could be personally exposed in the event of a claim. You can protect yourself by arranging a Practitioner Indemnity Run-off Insurance Policy (PIRO) with Us. After You have held the PIRO for a year, the cover can be transferred to Your Policy.

What does the Policy cover?

Subject to the terms, definitions, exclusions, limitations and conditions contained in it, the Policy covers the following:

Part A – Professional Indemnity Insurance Cover	
Division 1	Unpaid Healthcare Professional indemnity insurance, including Legal Defence Costs, for certain specified Unpaid Healthcare activities provided by You during the Run-Off Period
Division 2	Healthcare Professional indemnity insurance, including Legal Defence Costs, for specified paid and/or private Healthcare activities provided by You during the Run-Off Period where You are not otherwise indemnified or entitled to be indemnified by Your employer. This section only applies where You have declared the billings You generated during the Run-Off Period from these activities on Your Final Policy.
Division 3	Public Patient optional cover
Part B – Legal Fees and Expenses Cover	
Division 1	Disciplinary, coronial and criminal proceedings and investigations
Division 2	Other actions, Complaints, proceedings and inquiries

Public Patient optional cover

The optional cover available under Part A Division 3 includes cover for Healthcare to Public Patients provided by You during the Run-Off Period where You are not indemnified or entitled to be indemnified by a hospital, area health service or a government scheme. You are only eligible for this cover if Your Final Policy had this optional cover.

Volunteer extreme activities

We cover You for amounts which You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in relation to Unpaid Healthcare provided by You during the Run-Off Period which was performed by You as an Unpaid Volunteer during extreme activities.

Breaches of privacy

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You for an actual or alleged breach of privacy or confidentiality, where the act, error or omission occurred in connection with Healthcare or Unpaid Healthcare provided by You during the Run-Off Period.

Breaches of consumer protection legislation

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You by Your patient for an actual or alleged breach of Commonwealth, State or Territory consumer protection legislation, where the act, error or omission occurred in connection with Healthcare or Unpaid Healthcare provided by You during the Run-Off Period.

Defamation

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You by Your patient or Your patient's family for actual or alleged defamation, libel or slander, where the act, error or omission occurred in connection with Healthcare or Unpaid Healthcare provided by You during the Run-Off Period.

Telehealth activities

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You by Your patient or Your patient's family in relation to You providing Telehealth during the Run-Off Period.

Cover outside of Australia

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in relation to Healthcare or Unpaid Healthcare outside of Australia provided by You during the Run-Off Period.

Clinical Trial cover

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in relation to Healthcare or Unpaid Healthcare provided by You during the Run-Off Period as a result of Your participation in a Clinical Trial. This automatic cover is subject to the Clinical Trial being approved by a properly constituted ethics committee registered with the National Health and Medical Research Council and the Clinical Trial being conducted in compliance with the guidelines, conditions and approvals set by that ethics committee. The automatic Clinical Trial cover does not apply to Clinical Trials involving: pregnant women, gene therapy, use of stem cells or children under the age of 16.

What We do not cover (Exclusions)

There are a number of situations in which We do not cover You. They are contained in the Policy under the headings 'Exclusions – Part A' and 'Exclusions – Part B' of the Policy. You should ensure that You fully understand these exclusions and if You do not please contact Us.

How much We will pay (Sum insured)

The sum insured is the maximum amount We will pay under this Policy for any Claim or Request for Indemnity and for all Claims and Requests for Indemnity in the Period of Eligibility.

Some Claims and Requests for Indemnity are subject to a sub-limit. For these Claims and Requests for Indemnity, the sub-limit is the maximum amount We will pay.

The sum insured and sub-limits that apply are set out in this Policy or in Your Policy Schedule.

All Claims or Requests for Indemnity under this Policy which arise from, or are attributable to, a single act, error, omission or occurrence or series of similar or related single acts, errors, omissions or occurrences will be treated under this Policy as one Claim or Request for Indemnity.

Claims made cover

Part A of the Policy covers You for compensation Claims (including Legal Defence Costs) first made against You and which You notify to Us within the Period of Eligibility where the Incident giving rise to the Claim occurred during the Run-Off Period.

Part B of the Policy provides Legal Fees and Expenses cover. Part B of the Policy requires that the matter or proceedings are commenced and notified to Us in the Period of Eligibility.

This Policy does not provide cover in relation to:

- ▶ Claims against You arising from Incidents that occurred outside the Run-Off Period; or
- ▶ Claims against You or Incidents notified to Us after the end of the Period of Eligibility; or
- ▶ Claims made, threatened or intimated against You prior to the Period of Eligibility; or
- ▶ facts or circumstances of which You first became aware prior to the Period of Eligibility, and which You knew or ought reasonably to have known had the potential to give rise to a Claim or Request for Indemnity under this Policy.

Notification of facts, which might give rise to a Claim

You must notify Us as soon as practicable of any Claim against You or Incident involving an error and You must also advise Us of any outcome which may lead to a Claim against You. To the extent provided in section 40(3) of the *Insurance Contracts Act 1984* (Cth) where You give notice to Us of facts that might give rise to a Claim as soon as was reasonably practicable after You become aware of those facts but before the Period of Eligibility expires, You are covered for any Claim made against You arising from those facts even if it is not made against You until after the Period of Eligibility has expired.

Continuous cover

We will cover You if You fail to tell Us about a Claim or Incident that You knew, or a reasonable person in Your position should reasonably have known might result in a Claim or allegation against You. To qualify for this cover You must have been continuously insured by Us from the date the Incident occurred to the date on which the Claim or Request for Indemnity is made. The Claim against You must be covered by the Policy and You must not have given notice under any other policy.

Applying for Your Policy

The estate of a deceased Medical Practitioner will need to provide Us with a copy of the death certificate and the name of the legal representative.

All other Medical Practitioners need to complete an eligibility declaration form, available by contacting Us. You may also be required to supply supporting evidence.

Making changes to Your Policy

You must notify Us if:

- ▶ Your personal details change; or
- ▶ You return to practice; or
- ▶ You require changes to Your cover; or
- ▶ You are no longer eligible for ROCS.

You must notify Us as soon as practicable. If You fail to do so, We may refuse Your Claim or Request for Indemnity, reduce Our liability in respect of a Claim or Request for Indemnity or cancel Your Policy. You can notify Us by contacting Our Member Services team on 1800 128 268. If We require You to give Us notification in writing We will inform You once You contact Us.

Please refer to the 'Your duty of disclosure' section of this PDS for full details of Your duty of disclosure.

Your Policy

The Policy comprises this PDS (and the documents that form part of it) and any supplementary PDS We have provided to You the Policy Wording and Your Policy Schedule.

Each of these documents is sent to You with this PDS. If You require a further copy of any of these documents at any time, please contact Us and We will provide You with a copy free of charge.

You must read each of these important documents carefully and keep them together in a safe place.

Your Policy Schedule

Your Policy Schedule sets out any special conditions which may apply to You and Your Policy Period, personal details, Your professional practice details, sums insured, sub-limits, Deductibles and any optional covers you have chosen. It will also set out Your Run-Off Period. If special modifications are required to Your Policy We may issue an endorsement. Please check Your Policy Schedule to ensure that all the details are correct and that You have the insurance cover You require.

Deductibles

Your Deductible, if any, is the amount that You must bear at Your own risk in relation to any cover under Your Policy. The Deductibles that apply will be set out in this PDS or in Your Policy Schedule. One or more Deductibles may apply. In the event that We elect to pay all or part of a Deductible on Your behalf in respect of any cover under the Policy, You are obliged to reimburse Us within 14 days of a request for reimbursement.

Termination of Your Policy

This Policy will terminate and cease to provide cover to You after any termination date for the Run-Off Cover Scheme set by the Commonwealth by a regulation made under the *Medical Indemnity Act 2002* (Cth).

If Your circumstances change and You no longer meet the eligibility criteria You will not be covered for any Claims or Requests for Indemnity first notified from the date You cease to be eligible. You should immediately inform Us if You no longer meet the eligibility criteria.

If You wish to maintain cover when You cease to be eligible for ROCS, You should purchase separate medical indemnity insurance cover.

Cooling off period

Please read the documents that make up Your Policy carefully. If You decide that Your Policy does not meet Your requirements, You can cancel it by notifying Us by post or electronically within 14 days, starting at the end of the fifth day after the day on which the Policy was issued to You.

However, Your cancellation rights do not apply if, during the cooling off period under Your Policy, You:

- ▶ have made a Request for Indemnity under the Policy; or
- ▶ notified Us of a Claim or Incident.

Special conditions

Special conditions may be applied to Your Policy. If so, such special conditions will be set out in Your Policy Schedule We provide You. These conditions may relate to, but are not limited to, Healthcare or Incidents that We may not cover, extensions of cover or Deductibles which may apply to Your cover.

Your duty of disclosure

Under the *Insurance Contracts Act 1984* (Cth), before You enter into a contract of insurance with Us You have a duty to disclose every matter that You know, or could reasonably be expected to know, that is relevant to Our decision to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to Us before You renew, extend or vary Your insurance Policy with Us and a continuing obligation of disclosure whilst the Policy is in force.

Disclosure is not limited to matters applying to You under Your insurance contract with Us, but includes other past businesses or private insurances. However, You do not have to tell Us about:

- ▶ a matter that diminishes the risk undertaken by Us; or
- ▶ a matter that is considered to be common knowledge; or
- ▶ facts that We know or should know in the ordinary course of Our business; or
- ▶ matters that We tell You We do not need to know.

If in doubt You should disclose a matter to Us.

Non-disclosure

If You fail to comply with Your duty of disclosure, depending on the prejudice caused by Your failure to comply, We may:

- ▶ reject Your Request for Indemnity; or
- ▶ reduce Our liability in respect of a Claim, Complaint or matter; or
- ▶ cancel Your Policy.

If Your non-disclosure is fraudulent, We may avoid the Policy entirely (that is, We may treat the Policy as never being of any force or effect).

Personal information and Your privacy

We may require You to provide certain personal information to determine Your eligibility for membership of Avant, for insurance and for the provision of ongoing services. When You provide Your personal information, You acknowledge and consent to Us and other companies in the Avant Group using Your information in accordance with this privacy statement and Our privacy policy.

Purpose of collection

We collect personal information from You, and as necessary from third parties, in relation to the products and services We provide. Where necessary We also collect personal information relating to patients or other persons. We will use Your personal information in accordance with Our privacy policy and the *Privacy Act 1988* (Cth), such as for the purpose for which it was collected, to provide You with products and services, and for marketing purposes.

Accessing, updating and complaints about personal information

We will take reasonable steps to ensure that the information We hold about You is accurate, complete and up-to-date. For access to personal information We hold about You, if You believe that the information We have about You is not accurate, complete or up-to-date, or if You have a complaint about the privacy of Your personal information, We ask that You contact Us.

Disclosure

We may share Your personal information with other companies in the Avant Group. We may also need to disclose Your personal information to third parties including Our distributors, agents and brokers, other insurers and reinsurers, solicitors, actuaries, regulatory bodies, tribunals, courts of law, hospitals, doctors and other ancillary providers, debt collection agents, those involved in managing corporate risk or strategies, and outside contractors.

We will ensure that all Your personal information collected by Us is treated in accordance with the *Privacy Act 1988* (Cth) and Our privacy policy. Our privacy policy is posted on Our website at www.avant.org.au. You can request a printed copy of Our privacy policy by contacting Us.

Our dispute resolution process

Please refer to the FSG which contains details of how You can make a complaint about the products or services provided to You.

Financial Claims Scheme

This Policy may be a 'protected policy' under the Federal Government's Financial Claims Scheme (FCS) which is administered by the Australian Prudential Regulation Authority (APRA).

The FCS only applies in the extremely unlikely event of an insurer becoming insolvent and the Federal Treasurer making a declaration that the FCS will apply to that insurer.

The FCS entitles certain persons, who have valid claims connected with certain protected policies issued by that insurer to be paid certain amounts by APRA.

Information about the FCS can be obtained from APRA at www.apra.gov.au or by calling 1300 55 88 49.

Policy Wording

Sum Insured

The maximum sum insured under this Policy for any one Claim and for all Claims in the aggregate in any Period of Eligibility is \$20 million. This includes Legal Defence Costs.

This sum insured is subject to sub-limits as set out below:

Part A – Professional Indemnity Insurance Cover	Amount in the aggregate for any one Claim and all Claims in any Period of Eligibility
Maximum sum insured for Claims including Legal Defence Costs incurred with Our consent and any claimant's legal costs that You have been ordered to pay	\$20 million for Medical Practitioners
Part B – Legal Fees and Expenses Cover	Amount in the aggregate for any one Request for Indemnity and all Requests for Indemnity in any Period of Eligibility
	Sub-limits
Division 1 – Cover for disciplinary, coronial and criminal proceedings and investigations	\$500,000
Division 2 – Cover for other actions, Complaints, proceedings and inquiries	\$150,000

Introduction

We will cover You in accordance with the definitions, terms, conditions, sum insured, sub-limits of indemnity, Deductibles, exclusions and endorsements, if any, of this Policy.

Some of the words used in this Policy are specially defined. These words begin with capital letters and their meanings are explained in the definitions section. The headings used in the Policy are included solely for reference and do not in any way amend the terms and conditions of the Policy.

We have relied on information provided by You in the eligibility declaration form and other forms of disclosure in determining whether to enter into this contract of insurance and on what terms. If this information is incorrect, We may be able to reject a Claim or Request for Indemnity, reduce Our liability under the Policy or void this Policy from inception.

How much We will pay

- (a) The most We will pay for any one Claim or Request for Indemnity under this Policy, and in the aggregate for all Claims and requests for indemnity during the Period of Eligibility is the sum insured.
- (b) Any sub-limit that applies to a cover is the most We will pay against that cover for any one Claim or Request for Indemnity and in the aggregate for all Claims or Requests for Indemnity during the Period of Eligibility and in such cases the sub-limit applies in place of the sum insured. Any sub-limit will be specified in the Policy Schedule or within the clause providing cover.
- (c) The sum insured and any sub-limit are exclusive of the Deductible.
- (d) The sum insured and any sub-limit are inclusive of Legal Defence Costs.
- (e) Nothing in this Policy operates to increase the sum insured or any sub-limit.
- (f) All Claims or requests for indemnity under this Policy, which arise from, or are attributable to, a single act, error, omission or occurrence or series of similar or related single acts, errors, omissions or occurrences, will be treated under this Policy as one Claim or one Request for Indemnity.

Part A

Professional Indemnity Insurance Cover

Part A of the Policy provides professional indemnity insurance run-off cover for Medical Practitioners who are eligible for cover under the ROCS. You are automatically covered for Part A Division 1 and if Your Final Policy covered You for Part A Division 2 this Policy will cover You for Healthcare You performed during the Run-Off Period. If Your Final Policy had Part A Division 3 cover this Policy will cover You for Public Patients if specified on Your Policy Schedule.

1. **Division 1 – Unpaid Healthcare**

We cover You for amounts which You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in the Period of Eligibility in relation to Unpaid Healthcare provided by You during the Run-Off Period.

2. **Division 2 – Healthcare**

We cover You for amounts which You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in the Period of Eligibility in relation to Healthcare in private practice provided by You during the Run-Off Period when You have declared to Us the gross billings You generated in the Run-Off Period from Healthcare and where the Healthcare provided was of a type normally associated with Your Category of Practice.

3. **Division 3 – Public Patient optional cover**

We cover You for amounts which You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in the Policy Period in relation to Healthcare to a Public Patient provided by You during the Run-Off Period where You are not indemnified or entitled to be indemnified by a hospital, area health service, a government scheme, or another person for Public Patient care. You are not covered for any amount for which You are indemnified or entitled to indemnity (other than by this Policy) for Healthcare provided to a Public Patient.

4. Automatic extensions – Part A

4.1 *Unpaid Volunteer during extreme activities*

We cover You for amounts which You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in the Period of Eligibility in relation to Unpaid Healthcare provided by You during the Run-Off Period as an Unpaid Volunteer during extreme activities.

4.2 *Practice Staff of Sole Traders*

If You were a Sole Trader cover under clause 2, 4.3, 4.4, 4.5 4.6, 4.9 and 4.12 is extended to cover Your Practice Staff (but not a Locum) for amounts which they become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against them in the Period of Eligibility for Healthcare they provided during the Run-Off Period. This clause does not apply if You employed or engaged more than 1 full-time equivalent Practice Staff (not being Administrative Staff) who provided Healthcare to Your patients and/or 3 full-time equivalent Administrative Staff.

Cover extended under this clause:

- (a) excludes Healthcare as defined in sub-clauses 12.11 (b) – (e);
- (b) excludes Claims that arise as a result of Cosmetic Procedures performed by Your Practice Staff;
- (c) only applies if the Claim would be covered by the Policy as if it had been made against You; and
- (d) requires Your Practice Staff to do all of the things that You would have been required to do if the Claim had been made against You.

4.3 *Breaches of privacy*

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in the Period of Eligibility for actual or alleged breaches of privacy or confidentiality, where the act, error or omission occurred in connection with the provision of Healthcare or Unpaid Healthcare provided by You during the Run-Off Period.

4.4 *Breaches of consumer protection legislation*

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in the Period of Eligibility by Your patient for actual or alleged breaches of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory consumer protection legislation, where the act, error or omission occurred in connection with the provision of Healthcare or Unpaid Healthcare provided by You during the Run-Off Period.

4.5 *Defamation*

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in the Period of Eligibility by Your patient or Your patient's family for actual or alleged defamation, libel or slander, where the act, error or omission occurred in connection with the provision of Healthcare or Unpaid Healthcare provided by You during the Run-Off Period.

4.6 *Telehealth activities*

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in the Period of Eligibility by Your patient or Your patient's family in relation to You providing Telehealth during the Run-Off Period.

Cover extended under this clause excludes Claims that:

- (a) arise as a result of Telehealth provided to or in respect of a patient who is outside of Australia at the time of the Incident; or
- (b) involve court or other proceedings brought against You in a court or tribunal outside of Australia or involving proceedings brought in a court or tribunal which is applying the laws of another country other than Australia.

4.7 *Cover outside of Australia*

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in the Period of Eligibility in relation to Healthcare or Unpaid Healthcare provided by You outside of Australia during the Run-Off Period, or in relation to court or other proceedings that are brought or held outside of Australia, where:

- (a) the period You were outside of Australia, whether or not You were practising, was less than 120 days in any prior policy period whether continuously or in aggregate; or
- (b) You were participating as a trainee in a Healthcare Training Program for a period of less than 2 years; or
- (c) the act was a Good Samaritan Act, for which You are covered worldwide.

Cover extended under subsections (a) and (b) of this clause excludes Claims that arise as a result of Healthcare or Unpaid Healthcare provided by You in the United States of America ('the USA') or involving proceedings brought in a court or tribunal of the USA, or any court or tribunal which is applying the law of the USA.

This extension does not apply to clause 4.6.

4.8 *Clinical Trial cover*

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You in the Period of Eligibility in relation to Healthcare provided by You during the Run-Off Period as a result of Your participation in a Clinical Trial, provided the Clinical Trial is one that does not involve pregnant women, gene therapy, use of stem cells or children under the age of 16 years unless You have advised Us in advance and We have agreed to provide cover.

4.9 *Continuous cover*

Notwithstanding clause 5.17, We will cover You where:

- (a) You failed to tell Us about an Incident which You knew about or a person in Your position should reasonably have known might result in a Claim or Request for Indemnity; and
- (b) We were the professional indemnity insurer of You at the time You first knew or ought to have known of the Incident; and
- (c) We continued without interruption to be the professional indemnity insurer of You from the time You knew or ought to have known of the Incident to the date of actual notification to Us; and
- (d) the Incident is notified to Us by You under this Policy and the Incident is covered under this Policy; and
- (e) had We been notified by You of the Incident when You first knew of it, You would have been covered under the policy in force at that time; and
- (f) the Incident has not been previously notified to Us.

Our liability under this automatic extension for any one occurrence and in the aggregate for all Claims under this extension shall not exceed the lesser of the sum insured under this Policy, or the sum insured under the previous policy under which the Incident should have been notified.

We may reduce Our liability to the extent of any prejudice We may suffer in connection with Your failure to notify Us as soon as practicable after You first knew of the Claim or circumstance.

4.10 *Actions of others*

We cover You for amounts that You become legally liable to pay as compensation for civil liability including Legal Defence Costs in respect of Claims made against You which arise as a result of any care, treatment, advice, service or goods provided in respect of the physical or mental health of Your patient during the Run-Off Period, that was associated with Your Category of Practice, by:

- (a) another person who You were observing, supervising, mentoring or teaching; or
- (b) a Locum.

The other person (in the event this person is a Healthcare Professional) or the Locum (as the case may be) must hold their own professional indemnity insurance at all relevant times. For clarity, this clause does not indemnify any person who is not insured under the Policy.

4.11 *Severability*

The exclusions in clauses 5.3, 5.7, 5.18, 5.19 and 5.21 will not apply to the extent that You did not commit, contribute to, or condone the act, error, or omission, or You had no prior knowledge, provided that a reasonable person in Your position would have had no prior knowledge of the act, error or omission by Your Practice Staff.

4.12 *Personally controlled electronic health records*

We cover You for amounts for which You become legally liable to pay for civil liability, including Legal Defence Costs, in respect of Claims made against You in the Period of Eligibility which arise as a result of an infringement or alleged infringement of a third party's intellectual property rights arising out of Your (and, if relevant Your Practice Staff's) use during the Run-Off Period of the Personally Controlled Electronic Health Records system, as defined in the *Personally Controlled Electronic Health Records Act 2012* (Cth).

5. **Exclusions – Part A**

There is no cover under Part A of the Policy for any Claim or Legal Defence Costs, which arise out of or in connection with:

5.1 *Indemnified Healthcare or Unpaid Healthcare*

any Healthcare or Unpaid Healthcare for which You are entitled to be indemnified by Your employer, a hospital, area health service or government scheme or under another policy of professional indemnity insurance.

5.2 *Public Patients*

any Healthcare or Unpaid Healthcare involving Public Patients.

5.3 *Breach of registration or lack of qualifications*

any Healthcare or Unpaid Healthcare You provide:

- (a) which was provided when You were not registered as a Healthcare Professional and You were required to be so registered; or
- (b) which is in breach of terms, conditions, undertakings or limitations on Your registration as a Healthcare Professional; or
- (c) where You have not completed the recognised training for or lack the qualifications to provide such Healthcare.

5.4 *Legal costs incurred without consent*

any legal costs and other costs that We do not incur on Your behalf or that are incurred by You without Our prior written consent.

5.5 *Outside Run-Off Period*

Healthcare or Unpaid Healthcare provided outside the Run-Off Period.

5.6 *Corporate entity*

any corporate practice, collective practice including a partnership or association, unless it is Your Practice Entity.

- 5.7 *Sexual, bullying or discriminatory conduct***
sexual harassment, sexual misconduct or any form of bullying or discriminatory conduct.
- 5.8 *Public liability***
the ownership, use or occupation or state of premises, or the contents of such premises or anything done or omitted to be done in respect of the state of any premises owned, leased or occupied by You or the contents of such premises.
- 5.9 *Property damage***
any physical loss of or damage to property, including loss of use of property.
- 5.10 *Injury to employees/contractors***
personal injury or property damage suffered or allegedly suffered by any of Your employees or contractors in the course of their employment or engagement.
- 5.11 *Fines, penalties or punitive damages***
any punitive, aggravated or exemplary damages, fines or civil penalties.
- 5.12 *Contractual liability***
any Claim under a contract, other than a contract to provide Healthcare or Unpaid Healthcare, except to the extent that liability would have attached in the absence of such a contract.
- 5.13 *Outside Category of Practice***
Healthcare or Unpaid Healthcare (except for Good Samaritan Acts and acts in emergency situations) that was not normally associated with Your Category of Practice.
- 5.14 *Outside of Australia***
any Healthcare or Unpaid Healthcare provided by You outside Australia, or court or other proceedings that are brought or held outside Australia, except as provided by clause 4.7.
- 5.15 *Other Healthcare Professional***
any Healthcare provided by another Healthcare Professional, or any Claims made against You as a result of any association or arrangement You have with another Healthcare Professional, except as provided by clause 4.10.
- 5.16 *Product liability***
the design, manufacture, distribution, promotion or sale of any goods or products.
- 5.17 *Prior or pending Claim or circumstances***
any Claim or circumstances, except as provided by clause 4.9, which:
- (a) You knew about or a person in Your position ought reasonably have thought might result in a Claim or allegation being made against You; or
 - (b) You notified Us, or failed to notify Us, of before the Period of Eligibility commenced; or
 - (c) You notified or ought reasonably to have notified to another insurer before the Period of Eligibility commenced.

5.18 Intoxication

the provision of any Healthcare or Unpaid Healthcare while You are under the influence of an intoxicant, narcotic or other drugs affecting or which may affect neuro-cognitive competence.

5.19 Transmission of contagious disease

the transmission of a contagious disease or virus by You if You knew or should reasonably have known or suspected that You were carrying the disease or virus.

5.20 War or terrorism

any liability, loss, damage or expense of whatsoever nature directly or indirectly caused by, resulting from, happening through or in connection with any of the following.

- (a) act of terrorism, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage or expense; or
- (b) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war; or
- (c) mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power.

This exclusion does not apply to a Claim which arises from the treatment of a person or persons affected by any act of war or terrorism.

5.21 Criminal or dishonest act

any criminal or dishonest act or omission or deliberate or wilful breach of any statute, contract or duty of care by You.

5.22 Breach of duty by employees/contractors

a breach of duty by any of Your employees or contractors except as provided by clause 4.2 or 4.10.

5.23 Radioactive materials

radioactive materials of any type except when used in the ordinary course of radiotherapy, radiology or nuclear medicine.

5.24 Inappropriate practices

You engaging in inappropriate practice within the meaning of the *Health Insurance Act 1973* (Cth).

5.25 Capacity as director, trustee or manager

Your duties or liability as a past or current director, secretary, officer, principal, committee member, manager, trustee, auditor, receiver, treasurer, liquidator, or employee of a body corporate or association.

5.26 Asbestos, pollution or intellectual property

asbestos or pollution or the infringement of any type of intellectual property, except as provided by clause 4.12.

5.27 *Defamation*

defamation, except as provided by clause 4.5.

5.28 *Clinical Trial*

Healthcare You provided within a Clinical Trial, where that trial is not specified on Your Policy Schedule, except as provided by clause 4.8.

5.29 *Refund patient fee*

a request by a patient to refund fees they have paid to You, or to waive fees due to You.

Part B

Legal Fees and Expenses Cover

You are automatically covered under Part B for Legal Fees and Expenses that We incur with the Lawyer or Other Person up to the sub-limits specified in Your Policy Schedule for the defence or pursuit of matters arising from Healthcare or Unpaid Healthcare provided by You during the Run-Off Period as set out in Divisions 1 and 2 of Part B when the matter or proceedings are commenced and notified to Us in the Period of Eligibility.

6. Division 1 – Cover for disciplinary, coronial and criminal proceedings and investigations

We cover Legal Fees and Expenses that We incur with the Lawyer or Other Person in relation to:

- (a) defending a prosecution, responding to a commission, inquiry, inquest, investigation or Complaint brought by or before a registration board, tribunal or complaints unit; or
- (b) defending or responding to a criminal inquiry, investigation or proceeding; or
- (c) a coronial inquiry or inquest,

arising from the provision of Healthcare or Unpaid Healthcare by You during the Run-Off Period and commenced and notified to Us in the Period of Eligibility .

We will also cover You for any legal costs You may be ordered to pay by a court or tribunal in relation to the above matters.

7. Division 2 – Cover for other actions, Complaints, proceedings and inquiries

We cover Legal Fees and Expenses that We incur with the Lawyer or Other Person in relation to any of the following actions, Complaints, proceedings and inquiries arising from Healthcare or Unpaid Healthcare provided by You during the Run-Off Period and commenced and notified to Us in the Period of Eligibility:

7.1 *Inappropriate practice defence*

defending a civil or criminal action or responding to an investigation or Complaint or appearing at an inquiry or interview related to an allegation of inappropriate practice within the meaning of the *Health Insurance Act 1973* (Cth) and brought or made under that Act (including a Medicare Australia audit or inquiry).

7.2 *Health or medical benefit fund defence*

defending a prosecution or responding to an inquiry brought by a health or medical benefit fund.

7.3 *Appeal pursuit or defence*

defending or pursuing an appeal from a judgment in proceedings where cover is provided in Divisions 1 or 2 of Part B where We consider that the appeal has merit and reasonable prospects of success.

8. Automatic extensions – Part B

8.1 *Legal Fees and Expenses cover outside of Australia*

We cover Legal Fees and Expenses that We incur for You in respect of matters covered by clause 6 that are brought or held outside of Australia where:

- (a) the period You were outside of Australia, whether or not You were practising, was less than 120 days in any prior policy period whether continuously or in aggregate; or
- (b) You were participating as a trainee in a Healthcare Training Program for a period of less than 2 years; or
- (c) the act was a Good Samaritan Act, for which You are covered worldwide.

Cover extended under subsections (a) and (b) of this clause excludes matters that arise as a result of Healthcare or Unpaid Healthcare provided by You or Your practice as a Healthcare Professional in the USA or involving proceedings brought in a court or tribunal of the USA, or any court or tribunal which is applying the law of the USA.

8.2 *Continuous cover*

Notwithstanding clause 9.9, We will cover You where:

- (a) You failed to tell Us about an Incident which You knew about or a person in Your position ought reasonably to have thought might result in a Claim or Request for Indemnity; and
- (b) We were the professional indemnity insurer of You at the time You first knew or ought to have known of the Incident; and

- (c) We continued without interruption to be the professional indemnity insurer of You from the time You knew or ought to have known of the Incident to the date of actual notification to Us; and
- (d) the Incident is notified to Us by You under this Policy and the Incident is covered under this Policy; and
- (e) had We been notified by You of the Incident when You first knew of it, You would have been covered under the policy in force at that time; and
- (f) the Incident has not been previously notified to Us.

Our liability under this automatic extension for any one occurrence and in the aggregate for all Requests for Indemnity under this extension shall not exceed the lesser of the sum insured under this Policy or the sum insured under the previous policy under which the Incident should have been notified.

We may reduce Our liability to the extent of any prejudice We may suffer in connection with Your failure to notify Us as soon as practicable after You first knew of the Incident.

9. Exclusions – Part B

There is no cover under Part B of this Policy for any Complaint or matter which arises out of or is in connection with:

9.1 *Legal costs incurred without consent*

any Legal Fees and Expenses and related expenses We do not incur on Your behalf or that are incurred by You without Our prior written consent.

9.2 *Recovery of money*

any action in relation to the recovery of money.

9.3 *Sale of business*

any dispute arising in connection with the sale of Your practice or business including any dispute arising in connection with any employment contract or contract for services that results from the sale or is negotiated as part of the sale.

9.4 *Director, partner or shareholder*

any Complaint, hearing or matter in relation to a dispute between You and Your existing or former partners, associates, or Your fellow shareholders, members or directors.

9.5 *Criminal act*

a criminal act once You have been found guilty or admitted guilt to a court in a criminal prosecution, but this exclusion does not apply to:

- (a) sentencing; or
- (b) any other claim under Part B Division 1.

9.6 *Outside of Australia*

any Complaint, hearing or matter that is made or conducted outside of Australia, except as provided by clause 8.1.

9.7 Breach of registration

any Complaint, hearing or matter where You were:

- (a) in breach of terms or conditions on Your registration as a Healthcare Professional; or
- (b) in breach of any undertaking or limitation on Your registration as a Healthcare Professional.

9.8 Outside Period of Eligibility

any Complaint, hearing or matter that is first notified to Us outside of the Period of Eligibility.

9.9 Prior or pending circumstances

any circumstances which might give rise to a Complaint, hearing or matter that You knew about or a person in Your position ought reasonably have thought might result in a Complaint or allegation being made against You which You failed to tell Us about prior to the commencement of this Policy, except as provided by clause 8.2.

9.10 Fines, penalties or compensation

any compensation, damages (including punitive, aggravated or exemplary), fines or civil penalties or repayment or reimbursement to Medicare Australia.

9.11 Asbestos, pollution or intellectual property

a Complaint, hearing or matter that is based on an allegation of loss or damage arising from any of the following:

- (a) asbestos; or
- (b) pollution; or
- (c) infringement of any type of intellectual property.

9.12 Collusion

Complaint, hearing or matter that You solicit or that results from Your collusion with someone else.

9.13 Capacity as director, trustee or manager

Your liability in Your capacity as a past or current director, secretary, officer, principal, committee member, manager, trustee, auditor, receiver, treasurer, liquidator, or employee of a body corporate or association.

9.14 Partnership liability

Your liability as a partner, or former partner, of a partnership.

9.15 Personal injury or property damage

a Complaint, hearing or matter in respect of any type of personal injury (including assault, detention, eviction, prosecution and humiliation) or property damage (including any consequential loss of any kind).

9.16 *Public liability*

the ownership, use or state of premises or the contents of such premises, or anything done or omitted to be done in respect of the state of any premises or their contents owned, leased or occupied by You.

9.17 *Property damage or Injury to employee*

any personal injury or property damage suffered or allegedly suffered by any of Your employees or contractors in the course of their employment or engagement.

9.18 *Unregistered practise*

a Complaint, hearing or matter in respect of any Healthcare or Unpaid Healthcare which was performed when You were not registered as a Healthcare Professional and You were required to be so registered.

Conduct of Claims and Requests for Indemnity

10.1 *No admission*

You must not make, and must ensure that Your Practice Staff, employees or contractors do not make, any admission, offer or compromise in relation to any Claim or Request for Indemnity covered by this Policy without Our prior written consent.

10.2 *You must notify Us of a Claim or Incident*

10.2.1 You must notify Us in writing as soon as practicable of any Claim or Incident, including, but not limited to, an Incident in respect of which:

- (a) You receive a letter from a solicitor indicating dissatisfaction or requesting a patient record; or
- (b) You are concerned that an Incident has occurred which You think may lead to a Claim or Request for Indemnity.

10.2.2 If You do not notify Us of a Claim or Incident as soon as practicable, You may not be covered under this Policy and Your right to indemnity may be prejudiced.

10.2.3 To report a Claim or Incident You must notify Us in writing to:

Avant Insurance Limited
PO Box 746 Queen Victoria Building NSW 1230.

10.2.4 Your notification must include Your details, the details of the Claim or Incident, including the date of the Incident, the patient's name and the details of any Claim or Incident.

10.3 *Other things of which You must notify Us*

- 10.3.1 You must notify Us in writing as soon as practicable of any civil or criminal action, prosecution, inquiry, inquest, investigation or Complaint, judgment, appeal or tax audit brought or made by a registration board, tribunal, complaints unit, criminal court, civil court, coronial court, Medicare Australia or the Australian Taxation Office directly relating to Your practice as a Healthcare Professional.
- 10.3.2 If You do not notify Us of the matters set out in clause 10.3.1 above as soon as practicable, You may not be covered under the Policy and Your right to indemnity may be prejudiced.

10.4 *Conduct of Claims or requests for indemnity*

- 10.4.1 You agree that We have the conduct of a Claim or Request for Indemnity covered under this Policy including its investigation, pursuit, defence, avoidance, reduction or settlement and We may do so in Your name.
- 10.4.2 We may defend or settle a Claim, Complaint or matter as We think fit.
- 10.4.3 You may defend any Claim or Request for Indemnity which We believe should be settled but We will not pay any more in relation to that Claim or Request for Indemnity than We would have been required to pay if it had been settled or resolved as We believed it could or should have been.

10.5 *We will appoint the Lawyer or Other Person*

- 10.5.1 We will appoint the Lawyer or Other Person to provide services to Us for the benefit of You. When We appoint the Lawyer or Other Person, We do so in Our own capacity and not as agent for You.
- 10.5.2 The Lawyer or Other Person appointed by Us supplies services to Us and not to You for the purposes of the Goods and Services Tax (GST). We are entitled to claim a GST input tax credit on services supplied by the Lawyer or the Other Person.

10.6 *The Lawyer's or Other Person's account*

The Lawyer or Other Person will provide Us with an account for fees, charges, expenses and disbursements reasonably incurred. We will pay the account subject to the limit of Our liability set out in the Policy Schedule and subject to reimbursement by You to Us within 14 days of a request for all or any part of any Deductible under the Policy. In the event that You fail to reimburse Us within 14 days of a request for all or any part of the Deductible, the amount due will become a debt due and payable by You to Us.

10.7 *We do not accept responsibility for the Lawyer or Other Person*

We do not accept any responsibility for anything done or not done by the Lawyer or Other Person. He or she is not Our agent or employee. We make no representation of any kind about the Lawyer's or Other Person's ability.

10.8 *You must cooperate*

- 10.8.1 You must cooperate with the Lawyer or Other Person in resolving the Claim or Request for Indemnity in a satisfactory, timely and cost-effective way. In particular, You must:
- (a) give Us and the Lawyer a full and truthful account of the relevant facts;
 - (b) give Us and the Lawyer any relevant information or documents in Your possession that he or she asks for;
 - (c) obtain any other relevant information or documents that You can;
 - (d) execute any documents We or the Lawyer reasonably ask You to; and
 - (e) attend any meetings We or the Lawyer reasonably ask You to.
- 10.8.2 You agree at Your expense to give Us, the Lawyer or Other Person all information, documents and assistance We reasonably required and co-operate fully with Us, the Lawyer or Other Person.
- 10.8.3 You further agree to waive any claim for legal professional privilege or confidentiality to the extent only that the privilege or confidentiality would otherwise prevent the Lawyer from disclosing information to Us. The Lawyer will keep Us properly informed on all relevant matters.

10.9 *We are not liable if You do not cooperate with Us and the Lawyer*

We will not be liable for Legal Fees and Expenses if:

- (a) You do not give Us or the Lawyer adequate instructions; or
- (b) You do not follow the advice of the Lawyer; or
- (c) You cause a delay which, in Our or the Lawyer's reasonable opinion, prejudices the outcome of the case.

10.10 *You must be reasonable in relation to settlement*

Notwithstanding clause 10.4.2 You must not act unreasonably in rejecting a settlement, compromise or an offer of settlement, which We or the Lawyer recommend to You.

10.11 *Defending a Request for Indemnity that We want to settle*

- 10.11.1 We may decide not to incur any further Legal Fees and Expenses for pursuing, defending or responding to a Request for Indemnity under Part B if We believe that there are no reasonable grounds for pursuing, defending or responding to the Complaint, matter or prosecution or there are no reasonable prospects of success if We do. We will take account of the Lawyer's advice in making that decision. If We do that, We will tell You in writing. We will pay the Legal Fees and Expenses incurred prior to the date on which We write to You telling You of Our decision.

- 10.11.2 You may continue pursuing, defending or responding to the Complaint, matter or prosecution. If We subsequently decide to assist You We will appoint the Lawyer to act on Our behalf. After We cease paying the Legal Fees and Expenses, We will only pay You thereafter for Legal Fees and Expenses (not including the GST component if You are registered for GST) that You have incurred if You are successful in pursuing, defending or responding to a Complaint, matter or prosecution.

10.12 Appeals

- 10.12.1 If You are dissatisfied with any decision by a court or other decision making body and You seek to appeal against that decision, You must seek Our consent to the appeal within 14 days after the date of the decision, or such shorter period as may be reasonable having regard to the time limit for an appeal.
- 10.12.2 The application must be in writing and must fully set out the reasons for bringing an appeal. We will inform You in writing if We consent to the appeal.
- 10.12.3 If We do not consent to the bringing of an appeal, You may conduct the appeal at Your own expense.
- 10.12.4 If We decide to appeal against any decision made in a Claim or Request for Indemnity then You must reasonably co-operate with Us in the bringing of such an appeal.

10.13 Claims acceptance

The acceptance of a Claim or Request for Indemnity by Us under this Policy can be subsequently withdrawn if facts come to Our attention that trigger or satisfy a Policy exclusion, or the Policy does not cover the Claim or Request for Indemnity.

Conditions

These conditions apply to Parts A and B this Policy except where otherwise stated in these conditions.

11.1 *Loss prevention and mitigation*

You must not do, and must ensure that Your Practice Staff, employees or contractors do not do, anything recklessly or wilfully that might give rise to a Claim or Request for Indemnity. You must take all reasonable steps to avoid or reduce the chance of any Claim or Request for Indemnity and to mitigate the cost or other adverse impact of any Claim or Request for Indemnity. You must not do, or fail to do anything which You know or should reasonably be expected to know will result in any Claim or Request for Indemnity.

11.2 *Subrogation and other insurance*

11.2.1 If We make a payment or incur legal costs and expenses under this Policy We are subrogated to all Your rights of contribution, indemnity or recovery without the need for Your consent. You agree not to surrender any right to, or settle any claim for, contribution, indemnity or recovery without Our prior written consent.

11.2.2 You must tell Us in writing when making a Request for Indemnity if You have any other insurance policies or entitlement to indemnity which may also cover You in respect of anything covered by this Policy.

11.2.3 To the extent allowed by law, We will not pay under this Policy any part of a liability in relation to which You are entitled to be indemnified under another policy of insurance.

11.3 **Fraud**

We may reject any fraudulent Claim or Request for Indemnity or any part of a Claim or Request for Indemnity that is fraudulent or is supported by fraudulent, untrue or exaggerated evidence. We may also recover from You any payments that have been made by Us to a third party based on any fraudulent Claim or Request for Indemnity.

11.4 **Clinical records**

You must maintain clinical records for Healthcare provided to Your patients that:

- (a) are of a standard expected of a competent Healthcare Professional;
- (b) were prepared and updated on or reasonably proximate to each occasion of the provision of Healthcare; and
- (c) if computerised, the integrity of the records can be verified by reference to the security features of the software.

11.5 **Payment of Deductible**

The following conditions apply to the payment of the Deductible set out by endorsement in Your Policy Schedule:

- (a) You shall bear the amount of the Deductible at Your own risk;
- (b) where We have paid all or any part of any Deductible on Your behalf You must reimburse Us all or any part of the Deductible You owe within 14 days from the date We request payment from You;
- (c) in the event that You fail to reimburse Us in response to a request under (b) above, the sum requested will, at the expiration of 14 days after the request, become a debt due and payable by You to Us; and
- (d) in the event that You fail to reimburse Us in response to a request under (b) above, and if such failure leads to a failure of settlement and to an increase in costs or liability, Our liability under the Policy will not exceed the amount for which the Claim or matter could have been settled up to the date of Your failure or refusal to reimburse all or part of the Deductible.

11.6 **Cancellation**

11.6.1 We may cancel this Policy by giving You 14 days' notice in writing:

- (a) if You are in breach of any of the conditions of this Policy; or
- (b) for any other reason available to Us under the *Insurance Contracts Act 1984* (Cth).

11.6.2 If We give notice to cancel the Policy then We must give that notice to You personally, or send it to You by certified mail at the last address of which You notified Us. Unless You prove otherwise, You will be deemed to have received the notice when it would have arrived in the ordinary course of the post.

11.7 **Termination**

This Policy will terminate and cease to provide cover to You after any termination date for the run-off cover scheme set by the Commonwealth by a regulation made under the *Medical Indemnity Act 2002* (Cth).

11.8 *Governing Law*

- 11.8.1 Any interpretation of this Policy relating to its construction, validity or operation shall be made in accordance with the laws of the Australian state or territory in which it is issued. The parties to this Policy will submit to the exclusive jurisdiction of the courts of that state or territory in which the Policy is issued.
- 11.8.2 A reference to a statute, regulation, code or other law or a provision of any of them or a professional body or organisation includes any amendment or replacement of it and/or another regulation or other statutory instrument made under it, or made under it as amended or replaced.

11.9 *Currency*

All Deductibles and limits and other amounts under this Policy are expressed and payable in Australian currency.

11.10 *GST*

The limit of sum insured and sub-limits are GST exclusive.

12. Definitions

12.1 *Administrative Staff*

A member of Your Practice Staff whose role was restricted to performing clerical, administrative or other similar duties.

12.2 *Avant Group*

Avant Mutual Group Limited (ABN 58 123 154 898) and its related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) from time to time.

12.3 *Category of Practice*

The Category of Practice which was specified in Your Final Policy.

12.4 *Claim*

A demand for or an assertion of a right to compensation or damages or an intimation of an intention to seek compensation or damages in relation to an Incident which:

- (a) is first made against You during the Period of Eligibility; and
- (b) You tell Us about in writing during the Period of Eligibility.

12.5 *Clinical Trial*

A Clinical Trial or research project approved by a properly constituted ethics committee in accordance with National Health and Medical Research Guidelines and conducted in accordance with any conditions and approvals made by that ethics committee.

12.6 *Complaint*

An allegation of unlawful or actionable conduct, misconduct, unsatisfactory conduct or inappropriate practice.

12.7 *Cosmetic Procedures*

Operations, procedures and treatments that revise or change the appearance, colour, texture, structure or position of normal bodily features with the sole intention of improving the patient's appearance or self-esteem. It includes nonsurgical cosmetic medical procedures and cosmetic surgical procedures.

12.8 Deductible

The Deductible is the sum specified in an endorsement on Your Policy Schedule. You must pay before there is any cover under this Policy.

12.9 Final Policy

Your last practitioner medical indemnity cover issued to You and underwritten by Us.

12.10 Good Samaritan Act

Healthcare that is provided by You in coming to the aid of a person in an emergency or accident that is necessary to stabilise that person's medical condition or to prepare that person for transfer, without expectation of payment or other consideration.

12.11 Healthcare

Means:

- (a) any care, treatment, advice, service or goods provided by You in respect of the physical or mental health of a patient that was associated with Your Category of Practice;
- (b) a medical examination, medical report or medical opinion prepared by You at the request of a third party, such as a Lawyer, insurer or statutory body;
- (c) You providing education, giving a paid presentation or address or the publication of an article written by You in a newspaper, newsletter or journal to the extent that it provides medical information or medical advice;
- (d) any care, treatment, advice, service or goods provided by You to a person in an emergency that is necessary to stabilise that person or to prepare that person for transfer notwithstanding that it is not normally associated with Your Category of Practice; or
- (e) You acting in an administrative capacity,

in each case above only to the extent that it is associated with Your Category of Practice.

12.12 Healthcare Professional

A person who provides Healthcare. The person must be either:

- (a) a Medical Practitioner; or
- (b) a Health Practitioner; or
- (c) any person who is practising in a recognised healthcare vocation in Australia where he or she is not required to be registered.

12.13 Healthcare Training Program

A training program where You were being supervised or trained as a Healthcare Professional for the purpose of registration, specialist recognition or ongoing education.

12.14 Health Practitioner

A person, other than a Medical Practitioner, who practises a healthcare related vocation and is registered under the laws of the Commonwealth or a State or Territory of Australia to practise that vocation.

12.15 Incident

Any act, error, omission or circumstance in relation to the provision of Healthcare or Unpaid Healthcare that may give rise to a Claim or Request for Indemnity under this Policy.

12.16 Lawyer

The legal practitioner or Other Person contracted by Us to provide legal services to Us in relation to the Policy.

12.17 Legal Defence Costs

The necessary and reasonable costs of investigating, defending or settling a Claim made against You and covered by this Policy.

12.18 Legal Fees and Expenses

The necessary and reasonable fees and expenses incurred in the defence, pursuit, conduct of or response to matters covered by Part B of this Policy.

12.19 Locum

A Healthcare Professional within Your Category of Practice engaged by You as an employee or independent contractor to temporarily cover Your practice during Your absence from it.

12.20 Medical Practitioner

A person who was registered to practise medicine in accordance with the laws of the Commonwealth, state or territory of Australia in which that person practised and who fulfils one or more of the eligibility criteria for the Run-Off Cover Scheme specified in section 34ZB(2) of the *Medical Indemnity Act 2002* (Cth).

12.21 Other Person

An accountant, an actuary, an expert witness, a witness as to fact, or any Other Person required to assist Us in any matter covered under this Policy.

12.22 Period of Eligibility

The period when You fulfil one or more of the eligibility criteria for the Run-Off Cover Scheme specified in section 34ZB(2) of the *Medical Indemnity Act 2002* (Cth). The commencement of the Period of Eligibility is the ROCS eligibility start date on Your Policy Schedule. The end of the Period of Eligibility is the date that You no longer fulfil one of the eligibility criteria for the Run-Off Cover Scheme.

12.23 Policy

This Run-Off Cover Scheme (ROCS) Insurance Policy and any documents that form part of it.

12.24 Policy Schedule

The current schedule to this Policy.

12.25 Practice Entity

Any corporate entity that was in the business of providing Healthcare and which was wholly controlled or wholly owned by You.

12.26 Practice Staff

A person engaged or employed by or otherwise who worked for You, other than a Medical Practitioner or Healthcare Professional who was working in the same Category of Practice as You, who was supervised or instructed in their activities by You at the time of an Incident.

12.27 Public Patient

A person to whom a hospital or area health service has agreed to provide medical care, including medical, nursing and diagnostic services.

12.28 Request for Indemnity

Any request by You for indemnity under this Policy in relation to a matter or Claim that is covered under this Policy including a request for Legal Fees and Expenses cover or cover under the optional covers.

12.29 Run-Off Cover Scheme (ROCS)

The run-off cover scheme detailed in Division 2B of the *Medical Indemnity Act 2002* (Cth).

12.30 Run-Off Period

The period specified in Your Policy Schedule as the Run-Off Period. There may be more than one Run-Off Period.

12.31 Sole Trader

You are a Sole Trader if You were a Healthcare Professional conducting a business (including through Your Practice Entity) and there was no other Healthcare Professional working in the same Category of Practice engaged or employed by or otherwise practising in the business (except for a Locum).

12.32 Telehealth

Healthcare or Unpaid Healthcare to, or in respect of a patient who was not in the same place, that used any form of technology, to enable it to be provided, including video-conferencing, internet and telephone.

12.33 Unpaid Healthcare

Any care, treatment, advice, service or goods provided by You in respect of the physical or mental health of a patient and which is restricted to:

- (a) a Good Samaritan Act;
- (b) the writing of a prescription or a referral;
- (c) You providing education, giving an unpaid presentation or address or the publication of an article written by You in a newspaper, newsletter or journal to the extent that it provides medical information or healthcare advice;

(d) any care, treatment, advice, service or goods provided by You as an Unpaid Volunteer.

In relation to paragraph (b), (c) and (d) You must have only be providing Unpaid Healthcare that was associated with Your Category of Practice.

In the event that the act, error or omission is a result of services provided in (c) above it is not a requirement that there was a patient.

12.34 *Unpaid Volunteer*

A person who provides Healthcare without expectation or entitlement to payment or other consideration, apart from reimbursement or receipt of reasonable expenses such as airfares, accommodation or meal allowances.

12.35 *Us, We, Our*

Avant Insurance Limited ABN 82 003 707 471 and AFS Licence 238765.

12.36 *You, Your*

The Medical Practitioner named as the insured on the Policy Schedule or the insured's Practice Entity.

Avant Insurance Limited ABN 82 003 707 471 AFSL 238765

Registered Office

Level 28 HSBC Centre 580 George Street Sydney NSW 2000
PO Box 746 Queen Victoria Building Sydney NSW 1230

DX 11583 Sydney Downtown **Website** avant.org.au

Telephone 02 9260 9000 **Facsimile** 02 9261 2921

Freecall 1800 128 268 **Freefax** 1800 228 268

A subsidiary of Avant Mutual Group Limited ABN 58 123 154 898

Version 3.0
December 2013

2541/12-13

