

**MEDICAL TECHNOLOGY ASSOCIATION OF AUSTRALIA
FORM OF INDEMNITY FOR CLINICAL INVESTIGATIONS**

STANDARD

(For use where the Indemnified Party is providing premises for the conduct of the Study and HREC Review, or is providing premises only. NOTE there is a separate Form of Indemnity for use where the Indemnified Party is providing HREC review ONLY of the study)

This Form has been developed by the Medical Technology Association of Australia (MTAA) and is an adaptation of the form developed by Medicines Australia, for use in Australia. It is to be regarded as the basis for agreements between medical technology companies sponsoring clinical investigations and the institution that hosts the study to be conducted. Non-members of MTAA are encouraged to use this Form of Indemnity.

To: [Name and address of the legal entity (hospital, institution or authority) in which the Study is to be conducted ("the Indemnified Party")
Only a single legal entity should be named. Where more than one legal entity is to be indemnified, separate Forms of Indemnity should be used for each legal entity to be indemnified.

From: [Name, registered address and Australian Business Number of sponsoring company] ("the Sponsor")

Re: Clinical Investigation Plan No. [], [Clinical Investigation Plan title including name of product]

- 1 The Indemnified Party agrees to participate in the above sponsored clinical investigation ("the Study") involving [{patients of the Indemnified Party} {non-patient volunteers}] ("the Subjects") to be conducted by [name of investigator(s)] ("the Investigator") in accordance with the clinical investigation plan annexed, as amended in writing from time to time with the agreement of the Sponsor and the Indemnified Party ("the Clinical Investigation Plan"). The Sponsor confirms that it is a term of its agreement with the Investigator that the Investigator shall obtain all necessary approvals from the applicable Human Research Ethics Committee ("HREC") and the Indemnified Party, where appropriate.
- 2 The Indemnified Party agrees to participate by allowing the Study to be undertaken on its premises or as otherwise agreed, utilising such facilities, personnel and equipment as may reasonably be required for the Study.
- 3 In consideration of such participation by the Indemnified Party, subject to paragraph 4 below, the Sponsor indemnifies and holds harmless the Indemnified Party and its employees, agents, and members of and advisors to its HREC in respect of and against all claims and proceedings (including any settlements or ex gratia payments made with the consent of the parties hereto and reasonable legal and expert costs and expenses) made or brought (whether successfully or otherwise) by or on behalf of Subjects (including their dependants and children injured *in utero* through the participation of the child's mother in the Study) against the Indemnified Party or any of its employees, agents or members of and advisors to its HREC for personal injury (including death) to Subjects (and children injured *in utero* through the participation of the child's mother in the Study) arising out of or relating to the use of the product(s) under investigation or any clinical intervention or procedure provided for or required by the Clinical Investigation Plan to which the Subjects would not have been exposed but for the participation of the Subjects in the Study.

- 4 The above indemnity by the Sponsor will not apply to any such claim or proceeding referred to in paragraph 3 above:
- 4.1 to the extent that such personal injury (including death) is caused by the negligent or wrongful acts or omissions or breach of statutory duty of the Indemnified Party or any of its employees, agents or members of and advisors to its HREC.
 - 4.2 to the extent that such personal injury (including death) is caused by the failure of the Indemnified Party, its employees, or agents to conduct the Study strictly in accordance with the Clinical Investigation Plan.
 - 4.3 unless as soon as reasonably practicable following receipt of notice of such claim or proceeding, the Indemnified Party notifies it to the Sponsor in writing and at the Sponsor's request, and cost, has permitted the Sponsor to have full care and control of the claim or proceeding using legal representation of its own choosing.
 - 4.4 if the Indemnified Party, its employees, agents, or members of and advisors to its HREC have made any admission in respect of any such claim or proceeding or taken any action relating to any such claim or proceeding prejudicial to the defence of any such claim or proceeding without the written consent of the Sponsor. Such consent will not be unreasonably withheld. This condition will not be treated as breached by any statement properly made by the Indemnified Party, its employees, agents, or members of and advisors to the HREC in connection with the operation of the Indemnified Party's internal complaint procedures, accident reporting and quality assurance procedures or disciplinary procedures or where such statement is required by law.
- 5 The Sponsor will keep the Indemnified Party and its legal advisers fully informed of the progress of any such claim or proceeding, consult fully with the Indemnified Party on the nature of any defence to be advanced and not settle any such claim or proceeding without the written approval of the Indemnified Party which approval is not to be unreasonably withheld.
- 6 Without prejudice to the provisions of paragraph 4(3) and 4(4) above, the Indemnified Party will use reasonable endeavors to inform the Sponsor promptly of any circumstances of which it has knowledge and which may reasonably be thought likely to give rise to any such claim or proceeding and will keep the Sponsor informed of developments in relation to any such circumstances even where the Indemnified Party decides not to claim indemnity from the Sponsor. Likewise, the Sponsor will use reasonable endeavors to inform the Indemnified Party of any such circumstances and will keep the Indemnified Party informed of developments in relation to any such claim or proceeding made or brought against the Sponsor alone.
- 7 The Sponsor and the Indemnified Party will each give to the other such help as may reasonably be required for the efficient conduct and prompt handling of any claim or proceeding by or on behalf of Subjects (including their dependants and children injured in utero through the participation of the child's mother in the Study).
- 8 Without prejudice to the foregoing, if injury is suffered by a Subject while participating in the Study, the Sponsor agrees to adhere to the "Guidelines for Compensation for Injury Resulting From Participation in a Company-sponsored Clinical Investigation" published by MTAA and will request the Investigator to make clear to the Subjects that the Study is being conducted subject to those Guidelines.

- 9 For the purpose of this indemnity, the expression "agents" is deemed to include, but is not limited to:
- (1) any person carrying out activities for the Indemnified Party under a contract connected with such of the Indemnified Party's facilities and equipment as are made available for the Study under paragraph 2 above; and
 - (2) any health professional providing services to the Indemnified Party under a contract for services or otherwise.
- 10 This indemnity will be governed by and construed in accordance with the laws applicable in the State or Territory in which the Indemnified Party is established.

DATED the day of in the year .

SIGNED by a duly authorised representative of the Sponsor

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(Signature)

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(Position)

SIGNED by the Chief Executive or a duly authorised representative of the Indemnified Party

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(Signature)

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(Position)