

**Medical Malpractice Insurance**  
**This is a Claims Made Aggregate Policy**  
**(With Defence Costs Included Within the Limit of Indemnity)**

**INSURING CLAUSE**

1. WHEREAS the Assured, as defined herein, has made to Underwriters a written Proposal or Declaration bearing the date stated in the Schedule, a copy of which is attached, containing particulars and statements which are hereby agreed to be the basis of this Policy and are to be considered as incorporated herein, and the Premium (as stated in the Schedule) being received by Underwriters
  
2. WE, THE UNDERWRITERS, to the extent and in the manner hereinafter provided, and subject to the Terms and Conditions of this Policy HEREBY AGREE to Indemnify the Assured for Claims made against the Assured during the Period of this Insurance against all sums which the Assured shall become legally liable to pay as damages in accordance with the law of any country but not in respect of any judgment, award or settlement made within countries which operate under the laws of the United States of America or Canada (or any order made anywhere in the world to enforce such judgment, award or settlement either in whole or in part), unless the Assured has requested that there shall be no such limitation and has accepted the terms offered by Underwriters in granting such cover which offer and acceptance must be signified by specific endorsement (including any reinstatement provision) to this Policy, arising out of

any bodily injury, mental injury, illness, disease or death of any patient caused by any negligent act, error or omission committed by the Assured in or about the conduct of the Assured's occupation or business as stated in the Proposal or Declaration, or Good Samaritan Acts, (hereinafter referred to as "Malpractice")

and pay all Defence Costs incurred with the Underwriters' consent, such consent not being unreasonably withheld, in connection with any Claim which falls within this Policy, provided that the total amount payable in respect of damages and Defence Costs shall not exceed the Limit of Indemnity as stated in the Schedule.

IT IS FURTHER provided that Underwriters shall not be obligated to pay any Claim, judgment, award, Defence Costs, or to undertake or continue the defence of any suit or proceeding after the Limit of Indemnity has been exhausted by payment or agreement to pay any Claim, judgment, award, settlement, and Defence Costs, or after deposit of the applicable Limit of Indemnity in a court of competent jurisdiction, and that in such a case Underwriters shall have the right to withdraw from the further defence thereof by tendering control of said defence to the Assured subject however to any reinstatement conditions which may be endorsed to this Policy.

**PROVIDED ALWAYS THAT:**

- a. Such Malpractice results in a Claim being first made against the Assured during the Period of Insurance as stated in the Schedule and of which notice has been given in accordance with General Condition 2
- b. There shall be no indemnity hereunder for any Claim made against the Assured for Malpractice committed prior to the Retroactive Date specified in the Schedule.

**DEFINITIONS**

1. The expression "the Assured" shall be deemed to mean:
  - i. the individual, partnership, corporation, institution or such other entity (named in the Schedule) which has legal capacity
  - ii. any person who is, has been or may become during the period specified in the Schedule, a principal, partner, director, a member of any ethics committee, employee or volunteer of the Assured named in the Schedule but only in respect of Claims arising from work undertaken on behalf of the Assured
  - iii. the personal representatives of the estate of any person who would otherwise be indemnified under this Policy.

2. The expression "Good Samaritan Act" shall mean treatment administered at the scene of a medical emergency, accident or disaster by the Assured who is present either by chance, or in response to a S.O.S. call following a disaster.
3. The expression "Claim" shall mean any event or series of events arising from one originating cause and for which the Assured is required to give notice to Underwriters in accordance with General Condition 2.
4. The expression "Defence Costs" shall mean all costs, fees and expenses (including representation at Coroners Inquest) incurred in the defence or settlement of any Claim.
5. The expression "Products" shall mean any solid, liquid or gaseous substance or component part thereof.
6. Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders.

## EXCLUSIONS

### **UNDERWRITERS shall not be liable for:**

- a. Any Claim arising out of any Malpractice occurring prior to the inception date of this Policy if the Assured on such date knew or could have reasonably foreseen that such Malpractice might be expected to be the basis of a Claim.
- b. Any Claim arising from any circumstance or occurrence which has been notified to any Medical Defense Organization and/or Insurers prior to inception of this Policy.
- c. Any Claim which is the subject of Insurance, Indemnity or Assistance provided by any Medical Defense Organization. This Policy shall not be drawn into contribution thereto.
- d. Any Claim arising from public liability which will be deemed to include any bodily injury, mental injury, illness disease or death to any person or loss of or damage to tangible property of any person.
- e. any Claim made upon the Assured for work carried out by the Assured (for and in the name of any other company or association formed of which the Assured forms part for the purpose of undertaking any joint venture) UNLESS Underwriters' agreement has been obtained and the inclusion of such work endorsed upon this Policy with the acceptance of such other Terms and Conditions as may be imposed.
- f. any Claim arising out of a specific liability assumed by the Assured under contract (which goes beyond the duty to use such skill and care as is usual in the exercise of the Assured's activities stated in the Proposal Form) UNLESS Underwriters' prior agreement has been obtained and such specific liability is endorsed upon the Policy with the acceptance of such other Terms and Conditions as may be imposed.
- g. any Claim arising out of the manufacture of any Products, or the construction, alteration, repackaging, repair, servicing, or treating of any Products sold, supplied or distributed by the Assured, or any Claim arising out of the failure of any product to fulfill the purpose for which it was designed, or to perform as specified, warranted or guaranteed.
- h. any Claim made against any Director or Officer or Employee of the Assured arising from any unlawful or negligent act, error or omission, actual or alleged breach of trust, breach of warranty of authority, or breach of duty committed or attempted by such Director or Officer or Employee where such Claim is made solely by reason of his holding the position of Director or Officer or Employee and having acted in that capacity.
- i. any Claim by any person for bodily injury, mental injury, disease or death incurred, contracted or occurring while under a contract of service or apprenticeship with the Assured, or for any breach of any obligation owed by the Assured as an employer to any employee, or any Claim in respect of which compensation is available under any Workers' Compensation Scheme and or similar legislation. However, this Exclusion shall not apply to any Claim arising out of any

bodily injury, mental injury or death of an employee which is caused by any negligent act, error or omission of an Assured, where the employee is a patient of the Assured

- i. any Claim directly or indirectly caused by or contributed to by:
  - ii. any act in violation of any law or ordinance
  - iii. any dishonest, fraudulent or criminal act of the Assured
  - iv. the performance of the activities of the Assured whilst under the influence of intoxicants or narcotics
- j. any Claim directly or indirectly caused by, or contributed to by, or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- k. any Claim arising from 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 of or damage to property by, or under the order of, any government or public or local authority
- l. any Claim arising from:
- i. personal injury or bodily injury or loss of or damage to, or loss of the use of property directly or indirectly caused by seepage, subsidence, pollution or contamination
  - ii. the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances
- m. any fines, penalties, punitive or exemplary damages
- n. The Excess stated in the Schedule.

## GENERAL CONDITIONS

General Conditions 1, 2, 3, and 4 are Conditions precedent to the right of the Assured to be defended or indemnified under this Policy:

### It is understood and agreed that:

1. All statements, particulars and documents referred to or contained in the Proposal attached are true, and during the Period of Insurance the Assured shall give as soon as practicable notice in writing of any alteration which materially affects the risk.
2. During the period of the Insurance the Assured shall give immediate notice in writing to Underwriters via the Broker or Agent named herein of;
  - a. every letter of claim writ summons or process for Malpractice or alleged Malpractice against the Assured; or
  - b. the receipt of notice from any person of an intention to hold the Assured responsible for any Malpractice; or
  - c. any conduct or circumstance which is likely to give rise to a Claim for Malpractice being made against the Assured.

If the Assured gives notice as required by (b) or (c), any Claim subsequently made against the Assured shall be deemed to have been made during the Period of Insurance.

3. The Assured shall at all times:
  - a. maintain accurate descriptive records of all professional services and equipment used in procedures which shall be available for inspection and use by Underwriters or their duly appointed representatives insofar as they pertain to any Claim hereunder, and
  - b. Retain the records referred to in 3. (a) above for a period of at least Ten (10) years from the date of treatment and, in the case of a minor, for a period of at least Ten (10) years after that minor attains majority, and
  - c. give to the Underwriters or their duly appointed representatives such information, assistance, signed statements or depositions as Underwriters may require, and
  - d. assist in the defence of any Claim without charge to the Underwriters

4. The Assured shall, at all times, in addition to their obligations set out above afford such information to and co-operation with the Underwriters, or their appointed representatives, to allow the Underwriters to be able to comply with such relevant Practice Directions and Pre-Action Protocols as may be issued and approved from time to time by the Head of Civil Justice.
5. The Assured shall not disclose to any person the terms of this Policy, no liability shall be admitted, no arrangement, offer, promise, or payment, shall be made or cost or expense incurred by the Assured without the written consent of the Underwriters. Underwriters shall be entitled to take control of the defence of any Claim or to prosecute in the name of the Assured for their own benefit any Claim for indemnity or damages or otherwise against any third party and shall have full discretion in the conduct of any negotiations or proceedings on the settlement of any Claim. The Underwriters will not settle any Claim without the consent of the Assured. However, if the Assured refuses to consent to any settlement recommended by the Underwriters or their legal representatives and elects to contest or continue any legal proceedings then the liability of the Underwriters shall not exceed the amount for which the Claim could have been so settled plus the costs and expenses incurred with their consent up to the date of such refusal, which in any event will not exceed the Limits of Indemnity as specified in the Schedule and the Assured agrees to indemnify Underwriters for the amount of any judgment, award, settlement and Defence Costs which Underwriters are found obligated to pay after the date of such refusal.
6. Underwriters may cancel this Insurance by giving fifteen (15) calendar days' notice. Such notice shall be given in writing and may be served by registered mail, telex or facsimile transmission, or may be hand delivered to the address of the Assured as stated in the Schedule. Any notice sent by registered mail shall be deemed to have been served seven (7) calendar days after dispatch and any notice sent by telex or facsimile shall be deemed to have been served at the time of dispatch. If this Insurance is so cancelled Underwriters shall retain only the earned portion of the Premium computed from day to day.
7. Any dispute concerning the interpretation of the Terms, Conditions, Limitations and/or Exclusions contained herein is understood and agreed by both the Assured and Underwriters to be subject to the laws of the United Kingdom. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within the United Kingdom and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the laws and practice of such court.