

MEDICAL PRACTITIONER INDEMNITY POLICY WORDING

1. Because you have:

1.1 applied to us for this insurance;

1.2 agreed that any proposal and information supplied by you or on your behalf, together with this policy wording and the Schedule is the basis of this contract of insurance;

we agree to indemnify you subject to the terms and exclusions of this contract of insurance.

2. **DEFINITIONS**

2.1 **Claim** means all claims or complaints made against you and attributable to the same act, error or omission or series of acts, errors or omissions consequent upon or attributable to the same original cause or source;

2.2 **Deductible** means the first amount you must pay before we settle a claim as set out in the schedule;

2.3 **Defence Costs** means all the costs and expenses incurred by you with our written consent in connection with any claim which forms the subject of indemnity under this contract of insurance.

2.4 **Exclusion** means an event, loss or damage that is not insured.

2.5 **Period of Insurance** means the period from the start date of your insurance to the end date as reflected in the Schedule;

2.6 **Scope of Practice** means advice given, services rendered and/or duties undertaken by you or on your behalf in the course of your profession as stated in the Schedule and provided that any income derived from that accrues to you;

2.7 **We, Us, Our** means the Underwriters as reflected in your policy schedule;

2.8 **You, Your** means the person named in the Schedule to this contract of insurance as the policyholder and in the event of your death or incapacity your estate, heirs or legal representatives in respect of any claim made against that person arising out of the conduct by you in your Scope of Practice.

Any reference to the singular includes a reference to the plural and vice versa.

3. **OPERATIVE CLAUSE**

- 3.1 We will indemnify you, as set out below, against your legal liability to pay compensatory damages, which includes claimant's costs and Defence Costs, in respect of Claims first made against you during the Period of Insurance arising out of your performance of your Scope of Practice anywhere in the world excluding the United States of America and Canada and their possessions, territories and/or areas of jurisdiction Canada, and in accordance with the law and procedure applicable in the Republic of South Africa;
- 3.2 We will not indemnify you in respect of any judgment, award or settlement made within any countries which operate under the laws of the United States of America and Canada and their possessions, territories and/or areas of jurisdiction, nor in respect of any order made anywhere in the world to enforce those judgments, awards or settlements in whole or in part;
- 3.3 This contract of insurance is fixed for the Period of Insurance notwithstanding the fact that premium may be payable monthly.
- 3.4 We may cancel this contract of insurance if you do not pay your premium when due.

4. **SOUTH AFRICAN LAW**

- 4.1 You agree that:
- 4.2 the law of the Republic of South Africa applies when interpreting this contract of insurance and determining any claim to an indemnity under this contract of insurance;
- 4.3 only the Courts of the Republic of South Africa may deal with any dispute in respect of this contract of insurance.

5. **INDEMNITY LIMIT**

- 5.1 Our liability for any claims including VAT, claimant's costs, Defence Costs and all costs and expenses which are incurred by us or on our behalf, in respect of Claims made by you or against you during any one Period of Insurance will not exceed the limits of indemnity stated in the schedule.

6. **PROFESSIONAL INDEMNITY**

- 6.1 We will indemnify you in accordance with clause three above against claims resulting from:
- 6.1.1 any breach of your professional duty in terms of your Scope of Practice as stated in the Schedule;

6.1.2 any breach of implied warranty of authority or of trust committed in good faith; or

6.1.3 any defamation or iniuria;

by you in the conduct of your Scope of Practice.

7. **HPCSA, CRIMINAL AND INQUEST DEFENCE COSTS**

7.1 We will indemnify you in accordance with clause three above for Defence Costs, or for costs and expenses incurred by us or on our behalf in the defence of any:

7.1.1 Disciplinary proceedings by the Health Professions Council of South Africa;

7.1.2 Criminal prosecutions;

7.1.3 Inquest proceedings;

against, or involving you, in the conduct of your Scope of Practice, but:

7.2 those indemnities are limited to the amount set out in the Schedule; and

7.3 we will not be liable for any fines or penalties imposed as a consequence of those prosecutions or proceedings.

8. **GENERAL EXCLUSIONS**

8.1 We will not indemnify you for Claims arising out of or as a consequence of:

8.1.1 your (or anyone on your behalf's) dishonest, fraudulent, malicious, illegal or criminal conduct;

8.1.2 any deliberate, conscious or intentional disregard by you, or where applicable on your behalf, of the need to take all reasonable precautions to prevent loss, injury or damage;

8.1.3 your insolvency, liquidation or judicial management, or the insolvency, liquidation or judicial management of any person who enters into an agreement with you;

8.1.4 any performance warranty or penalty clauses, except to the extent that you would have been liable even in the absence of such clauses;

8.1.5 loss of or damage to property of any kind belonging to you or in your custody or control;

8.1.6 any circumstances compulsorily insurable by legislation governing the use of any vehicle or any claims which fall within the ambit of the Road Accident Fund Act or subsequent legislation;

- 8.1.7 your ownership, possession or use, or by anyone on your behalf, of any vehicle, aircraft, helicopter, watercraft or hovercraft;
- 8.1.8 the death of or injury to or illness or disease contracted by, any person employed by or under a contract of service or apprenticeship to you or anyone on your behalf and arising out of that employment, service or apprenticeship;
- 8.1.9 any liability assumed by you or on your behalf, under a contract, which liability would not have attached in the absence of that contract;
- 8.1.10 any Claim disclosed in your proposal to this contract of insurance;
- 8.1.11 the occurrence of any event which you have notified or ought to have notified to any other insurer, Medical Defence Union or the Medical Protection Society or the equivalent thereof before the start date;
- 8.1.12 any event that may be indemnifiable under this contract of insurance but which occurred prior to the start date stated in the Schedule. But nothing contained in this exclusion must be interpreted as releasing you from your obligation to reveal to us as a material fact, amongst other things, all details of all Claims made or outstanding or any events likely to give rise to a Claim(s) when applying for this insurance or during any period of insurance;
- 8.1.13 which you are entitled to indemnity under any other insurance or through the Medical Defence Union or the Medical Protection Society or the equivalent thereof or by your employer for whatsoever reason;
- 8.1.14 any Claim made against you (where you are a company) by any holding, controlled or subsidiary company, or by any person or entity having a financial or executive interest in your business, unless the claim emanates directly from a third party;
- 8.1.15 ionising radiations or contamination by radio activity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, but this shall not include medical isotopes. Combustion includes any self-sustaining process of nuclear fission.
- 8.1.16 nuclear weapons material;
- 8.1.17 your legal liability arising from the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkali, toxic chemicals, liquids or gasses, waste materials or otherwise irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water. This exclusion does not apply if the discharge, dispersal, release or escape is sudden and accidental;

8.1.18 any business or occupation other than as stated in the Schedule, even though that may be carried on by you or on your behalf in conjunction with your Scope of Practice as stated in the Schedule;

8.1.19 any blood bank or blood transfusion services;

8.1.20 any wrongful conduct or any alleged wrongful conduct by you in respect of your employment of any person;

8.1.21 any actual or alleged liability whatsoever for any claim in respect of loss directly or indirectly caused by, arising out of, resulting from, in consequence of or in any way involving, or to any extent contributed to by the hazardous nature of asbestos in whatever form or quantity.

9. **GENERAL TERMS**

9.1 This policy wording, the Schedule and proposal must be read together as one contract of insurance.

9.2 If the Limit of Indemnity is increased during a Period of Insurance then the lower Limit of Indemnity will apply to all Claims made or circumstances notified or required to be notified to us prior to that increase in the Indemnity Limit.

9.3 We will not settle any Claim without your consent. If you refuse to give consent to any settlement and elect to contest or continue any legal proceedings in connection with that Claim, then our liability for the Claim will not exceed the amount for which the claim could have been settled plus any costs and expenses incurred by you with our express consent up to the time of that refusal.

9.4 You must give to us or our duly appointed representatives, that information, assistance and signed statements we require from time-to-time and assist in the defence of any claim without charge to us.

9.5 We will not require you to defend any claim unless a counsel or an attorney chosen by us advises that the claim could be defended with a reasonable prospect of success by you, and you then consent to the Claim being contested. But you must not unreasonably withhold your consent. If there is any dispute between you and us about what constitutes an unreasonable refusal, that dispute will be referred to arbitration in accordance with the provisions of the rules of the Association of Arbitrators, Southern Africa.

9.6 We are entitled if we wish to, to take over and conduct in your name, the defence or settlement of any Claim or to prosecute in your name for our own benefit any Claim for an indemnity or damages or any other relief. We will have full discretion in the conduct of any of those proceedings and in the settlement of any Claim. You must comply with 9.4 above.

- 9.7 We may, at any time, pay to you, in connection with any Claim or series of Claims, to which an indemnity limit is applicable the amount of that indemnity, after deduction of any sums already paid as damages or Defence Costs, or any lesser amount for which the Claim may be settled.

We shall then relinquish the control and conduct of the Claim and be under no further obligation to indemnify you in connection with the Claim once we have made that payment.

- 9.8 You or anyone on your behalf may not, without our express consent, waive any right of recourse which you or we have against any agent, correspondent, external consultant or any other person with whom you may be associated.
- 9.9 If we disclaim liability for any claim for indemnity or for Defence Costs in connection with that claim, then you must institute legal proceedings within 12 months of the date of that disclaimer. If you do not institute proceedings within the 12 month time period, then you will have no claim against us for any indemnity and we will have no liability to you in respect of any Claim.
- 9.10 You or anyone on your behalf must not admit liability for, nor settle any Claim, nor incur any costs or expenses in connection with any Claim without our prior written consent. If you do, then we will not indemnify you for that Claim nor those costs or expenses.
- 9.11 You or anyone on your behalf must not, without our express consent, accept responsibility for the breach of the professional duty of your agent, correspondent or external consultant, practicing in any business or profession.
- 9.12 If any claim arises out of or is contributed to by any dishonest conduct of your principal, partner, director, officer, member or employee or in-house consultant, then any monies, which, but for that dishonesty are due by you to that person, will be deducted from your loss, but only to the extent that you are entitled to withhold that payment to that person.
- 9.13 We waive our rights of subrogation against your principal, partners, directors, officers, members, employers or in-house consultants unless those persons have acted dishonestly or criminally and that conduct gives rise to any claim under this contract of insurance.
- 9.14 If you or anyone on your behalf:
- 9.14.1 makes any fraudulent claim;
 - 9.14.2 or uses any fraudulent means or devices to obtain, or in an attempt to obtain, any benefit under this contract of insurance;

then you will forfeit all benefits under this policy in respect of the whole claim and we will have no liability to you at all in respect of the whole of the claim made, including all its constituent parts.

- 9.15 You must give us written notice as soon as possible after you or anyone on your behalf receives any request for any patient information or medical records of a patient from any person.
- 9.16 You must give us written notice as soon as possible after the occurrence of any event that may give rise to a claim under the contract of insurance. You must give us all additional information as we require. Every letter of demand or complaint, Claim, writ, summons or process must be forwarded to us immediately when you or anyone on your behalf receives it. If you do not comply with these requirements then you will have no claim against us for any indemnity and we will have no liability to you in respect of that claim.
- 9.17 If you give us notice of any occurrence or circumstance contemplated in 9.15 or 9.16 above during the Period of Insurance, which may reasonably be expected to give rise to a Claim against you, then for the purposes of clause 3 above, the claim will be deemed to have been made during the Period of Insurance.
- 9.18 You must take all reasonable precautions to prevent Claims.
- 9.19 You must give us notice of any fact or event which materially affects the risks covered by this contract of insurance as soon as possible.
- 9.20 You must give any notice to us as set out in the Schedule.
- 9.21 You must comply with all risk management procedures as recommended by us from time-to-time. If you do not do so, then you will have no claim against us for any indemnity and we will have no liability to you in respect of any Claim.
- 9.22 You must comply with all of your obligations under this contract of insurance, including all those set out above. If you do not do so, then you will have no claim against us for any indemnity and we will have no liability to you in respect of any Claim.

10. **RUN-OFF COVER**

10.1 You may:

- 10.1.1 in the event of your death, permanent retirement, ceasing to work due to serious illness or disablement, ceasing to practice as a registered healthcare practitioner or pregnancy occurring during the Period of Insurance, apply to us to extend the notification periods referred to in 9.15 and 9.16 above for a maximum period of 36 months from the end date;

10.1.2 in the event of any applications for subsequent extensions, we may, at our sole discretion, agree to extend the notification periods, subject to prevailing underwriting criteria at the time when you apply for any subsequent extensions, and on such terms and conditions as we determine, including if we require, payment of additional premiums