

MEDICAL MALPRACTICE PROFESSIONAL INDEMNITY PUBLIC AND PRODUCTS' LIABILITY FOR ASSOCIATION HEALTHCARE PRACTITIONERS





This is to certify that in accordance with the authorisation granted to

ITOO SPECIAL RISKS (PTY) LTD ON BEHALF OF THE HOLLARD INSURANCE COMPANY (PTY) LTD
(Co Reg No. 2016/281463/07, FSP No. 47230, VAT No. 4400274504)

and in consideration of, and conditional upon, the prior payment of the premium by or on behalf of the **Insured** and receipt thereof by or on behalf of the **Insurers**, the **Insurers** are hereby bound to insure in accordance with the terms, Exclusions, Conditions and limitations contained herein or endorsed hereon.

The Policy wording, its schedule and endorsements as agreed to by the Insurer from time to time shall be read together as one contract. Any word or expression to which a specific meaning or definition has been given shall have such specific meaning wherever it may appear.





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1. INSURING CLAUSE

Coverage under this **Policy** is limited to **Claims** first made against you, or a **Circumstance** first reported to **Insurers** in writing during the period of Insurance. Provided such incidents occur on or after the **Retroactive Date**. **Insurers** will pay on your behalf **Defence Costs** and all sums which You become legally obligated to pay as Damages in respect of Incidents, arising out of your **Professional Services**, to which this **Policy** applied in accordance with the terms, **Exclusions**, conditions and limitations contained herein or endorsed hereon.

Provided that:

- a) Since this is a claims made insurance **Policy**, all cover under this **Policy** is given solely with respect to **Claim(s)** or **Circumstance(s)** first made against an **Insured** and reported to the **Insurer** during the **Period of Insurance**, in accordance with the conditions of this **Policy**.
- b) The indemnity provided herein applies to any **Claim** made against any **Insured** anywhere in the world but not in respect of any judgment, award, payment or settlement made within countries which operate under the laws of the **United States and/or Canada / Australia** or to any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part.

In the event of any one originating cause giving rise to a **Claim**, or a series of **Claims** which form the subject of indemnity under more than one Section of this **Policy**, each Section shall apply separately and be subject to its own separate **Limit of Indemnity**, provided always that the total amount of the **Insurer's** liability shall be limited to the greatest aggregated **Limit of Indemnity** available under any one of the Sections affording indemnity for the **Claim** or series of **Claims**.





2. DEFINITIONS

For the purpose of this contract of insurance:

2.1 Breach of Duty

Shall mean any actual or alleged negligent act, error, omission, misstatement, misleading statement, breach of confidentiality or omission in the performance of or failure to perform **Professional Services**.

2.2 Bodily Injury

Shall mean physical injury, illness, disease, or death. It also includes nervous shock, emotional distress, mental anguish, or mental injury if they result from or are related to the aforementioned conditions.

2.2 Breach of Confidentiality

Shall mean any unintentional breach of trust or patient confidentiality, including violations of the Protection of Personal Information Act 4 of 2013, as amended from time to time, and any related regulations. This definition does not include any claims arising from or related to cyber liability, such as data breaches or cyberattacks.

2.3 Circumstance

Shall mean knowledge of facts which ought reasonably to lead to the conclusion that a Claim may be made against the Insured.

2.4 Claim

Shall mean any:

- a) written demand for Damages from a Patient or Patient's representative, arising out of a Circumstance, Incident or arising out of any other liability indemnified under this policy;
- b) civil or administrative proceeding that seeks **Damages** as a result of **Wrongful Acts**; or
- c) regulatory or statutory body complaint, such as to the HPCSA or SANC but not limited thereto, and subject to clause 6.4 of Section 3 in relation to **Defence Costs**.

2.5 Damages

Shall mean any amount that an **Insured** shall be legally liable to pay to a **Third Party** in respect of judgments rendered against an **Insured** or for settlements which conform with the consent requirements set out in the Conditions of this **Policy** and subject to the limitations of **Loss**.





2.6 Deductible

Shall mean the first amount of each and every **Claim** to be borne by the **Insured** as specified in the schedule. The **Deductible** shall apply per **Claim** or series of claims arising from one originating cause or source.

For the avoidance of doubt the **Deductible** is payable by the **Insured** towards **Damages** and **Defence Costs** upon the request of the **Insurer**. It is payable regardless of the outcome of the **Claim**.

2.7 Defence Costs

Shall mean all necessary and reasonable costs and expenses incurred by the **Insurers** on behalf of the **Insured** or by the **Insured** with **Insurers'** prior written consent in connection with any **Claim** which forms the subject of indemnity under this **Policy**. **Defence Costs** shall not mean any internal or overhead expenses of any **Insured** or cost of any **Insured's** time.

For the avoidance of doubt, the legal defence costs incurred in the investigation and defence of any criminal charges against the **Insured**, which arise out of the **Insured's** rendering healthcare services, or practicing their profession, but which do not arise out of the breach of any statute or regulations, will be covered under the **Defence Costs** section of this policy.

2.8 Documents

Shall mean all records of any kind, including hard copy written records, computer records, and electronically stored, digital, or digitized information or media. This includes clinical notes and other related documentation.

However, it does not include securities, stamps, banknotes, bullion, derivative instruments, travellers' cheques, cheques, bills of exchange, investments, certificates of deposit, postal orders, money orders, shares, letters of credit, orders upon public treasuries, promissory notes, currency, coins, negotiable instruments, or bonds, while in the **Insured's** custody in the ordinary course of its Business.

2.9 Environmental Impairment / Pollution

Shall mean the emission, discharge, release, dispersal, disposal, seepage or escape of solid, liquid, gaseous or thermal contaminants or irritants, including vapours, smell, odours, humidity, fumes; smoke, soot or other airborne particulates; acids, alkalis, chemicals and waste; electromagnetic waves, noise, vibrations; other emission of effluent or noxious substances into or upon the soil, the atmosphere or any watercourse or body of water which changes the natural state or condition of the soil, the atmosphere or any watercourse or body of water other than by a sudden, accidental and identifiable event; the depositing or storing of effluent, noxious substances, nuclear material or nuclear waste and the breach of any legislation relating to the foregoing.





2.10 Exclusion(s)

Shall mean an event, **Loss** or **Damage** that is not insured.

2.11 Good Samaritan Act

Shall mean acts performed in good faith while providing voluntary emergency medical assistance in an unforeseen situation, without expectation of remuneration. Such acts are not required to be part of the **Insured's** formal duties and may fall outside of the normal scope of practice and occur outside their usual practice setting. Coverage is provided for any claims arising from **Good Samaritan Acts**, subject to the policy terms and conditions.

2.12 Hate Speech

Shall mean any speech, gesture, conduct, writing, or display that incites violence or prejudicial action against, or brings into contempt or ridicule, individuals or groups based on race, ethnicity, gender, religion, sexual orientation, or other protected characteristics.

2.13 Insured

Shall mean:

- a) the **Insured** reflected on the **Policy** schedule, provided that they are Paid-up members of the Society / Association;
- b) any present or former employee, locum, director, member or officer of the **Insured** in respect of those activities that are conducted within the course and scope of the Business of the **Insured**;
- c) any predecessors of the **Insured** but only to the extent that liability attaches to the **Insured**;
- d) any partnership, closed corporation or incorporated company that the **Insured** is a partner, member or director of;

PROVIDED THAT:

- a) In the event that any of the partners, members or directors are not insured through this Professional Indemnity, Medical Malpractice and Liability Scheme ("the Scheme") with Hollard at the time of the incident, then **Insurers** will only be responsible for that portion of the **Claim**, calculated proportionally, in the same proportion that the partners, members or directors insured through the Scheme with Hollard bear to the total number of partners, members or directors in that partnership, closed corporation or incorporated company at the time that the incident occurred. This calculation will include previous directors, members or partners who were insured through the Scheme with Hollard at the time that the incident occurred.





- b) **Insurers'** liability in respect of any **Claims** against a partnership, closed corporation or incorporated company will be limited to **R10 Million** or the cumulative total of all individual limits of indemnity in respect of the partners, members or directors, whichever is the lesser.
- c) In the event of the death, incapacity, insolvency or bankruptcy of any person treated as the **Insured** (in respect of **Claims** against such person) his estate, legal representatives and/or heirs.

2.14 Insurer

Shall mean the entity specified as such in the schedule.

2.15 Limit of Indemnity

Shall mean the amount specified as such in the schedule.

2.16 Loss

Shall mean **Damages** and **Defence Costs**. **Loss** shall not mean and this **Policy** shall not cover any:

- a) taxes (excluding the indemnity provided for VAT as provided for below in section 9.3);
- b) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages or constitutional damages;
- c) fines or penalties;
- d) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief;
- e) compensation, benefits or overhead of, or charges or expenses by any **Insured**; or
- f) any matters which may be deemed uninsurable under the law governing this **Policy** or the jurisdiction in which a **Claim** is brought.

2.17 North America / Australia

Shall mean the United States of America (being the fifty states of the union plus the District of Columbia), Canada and any territory operating under the laws of or subject to the jurisdiction of courts of the afore-mentioned territories as well as Australia.

2.18 Malpractice

Shall mean any negligent act, error or omission in the **Professional Services**.





2.19 Patient

Shall mean any person undergoing treatment by the **Insured** in the course of the Business.

2.20 Period of Insurance

Shall mean the period of time specified in the schedule unless the **Policy** is cancelled in which event the **Period of Insurance** will end on the effective date of cancellation.

2.21 Policy

Shall mean this insurance policy wording, the schedule and any endorsements or extensions thereto.

2.21 Professional Services

Shall mean the activities and duties which would fall within the normal scope of duties and services performed by a professionally qualified **Insured** properly registered in terms of the current applicable legislation that governs such profession and field of Business, as stated in the schedule.

2.23 Product

Shall mean any property in or after it has left the custody or control of the **Insured** which has been labelled, prescribed, designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **Insured**, but shall not mean food and drink supplied by or on behalf of the **Insured** primarily to the **Insured's** employees as a staff benefit ("Food and Drink").

2.24 Retroactive Date

Shall mean the date that the Society/Association provides for each individual Paid-up member when they first became a Paid-up member of the Society/Association, provided there has been no break in the membership and no gap in Medical Malpractice cover since that date and shall mean the date stated in the schedule.

2.25 Society/Association

shall mean the professional organisation consisting of Paid-up members of the **Insured**.

2.26 Territorial Limits

Shall be worldwide excluding **North America and Australia**

2.27 Third Party

Shall mean any entity or natural person, provided that **Third Party** does not mean (i) any **Insured**, save for provisions contained in clause 9.1.3 pertaining to Cross Liabilities; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the **Insured's Business**.

2.28 Vehicle





Shall mean any land vehicle or trailer (including any machinery or apparatus attached thereto) whether or not subject to vehicle regulation and whether or not self-propelled.

2.29 Wrongful Acts

Shall mean any **Breach of Duty**, defamation and fraud or dishonesty.





3. INSURING CLAUSES

The indemnity granted by this **Policy** applies solely to all **Claims** first made against the **Insured** during the **Period of Insurance** and reported to the **Insurer** as required by this **Policy** and in respect of which the **Insured** shall become legally liable to pay compensation, including claimants' costs, fees and expenses and **Defence Costs** arising out of and in the course of the Business or arising from a **Good Samaritan Act** on after the **Retroactive Date** conducted within the **Territorial Limits** and as set out in Sections One, Two, Three and Four, Five hereof.

This shall be in accordance with the law of any country but not in respect of any judgment, award, payment or settlement made within countries which operate under the laws of **North America** (or to any order made anywhere in the world to enforce such judgment, award or settlement either in whole or in part).

4. SECTION ONE – PROFESSIONAL INDEMNITY

4.1 INDEMNITY

The **Insurers** will indemnify the **Insured** under this section against their legal liability to pay compensation (including claimants' costs, fees and expenses) as a result of any **Claim** for any actual or alleged negligent act, error or omission by the **Insured** in the course of the Business and performance of **Professional Services** other than as provided for in Section Two – **Malpractice**.

4.2 SPECIFIC EXCLUSIONS

The **Insurer** shall not be liable to indemnify the **Insured** in respect of legal liability for, arising out of or relating to:

- a) any **Claims** arising from breach of contract unless such breach is a breach or alleged breach of **Professional Services** by the **Insured** or any other person upon whom the **Insured** has placed reliance;
- b) any **Claim** more appropriately covered under Section Two – **Medical Malpractice**;
- c) **Property Damage** unless arising from an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing **Professional Services**;
- d) any actual or alleged infringement or breach of legislation, provisions, rules or regulations regarding data protection and privacy laws including but not limited to the Protection of Personal Information Act No. 4 of 2013, as amended from time to time;





- e) any actual or alleged **Breach of Duty**, act, error, misstatement, breach of confidentiality or omission arising from the operation of the Insured's own internet, intranet or extranet sites;
- f) any investment advice or investment service;
- g) the provision of any actual or alleged verbal or written warranty or guarantee provided by or on behalf of the **Insured** relating to the financial returns of any investment or portfolio of investments;
- h) the breach of licences concerning, infringement or misappropriation of patents or **Trade Secrets**;
- i) the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of **Pollutants**, or any direction, request or effort to (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**, or (b) respond to or address the effects of **Pollutants**.

5. SECTION TWO – MEDICAL MALPRACTICE

5.1 INDEMNITY

The **Insurers** will indemnify the **Insured** under this Section against **Claims** for and/or arising out of death of, bodily or mental injury to and/or illness or disease sustained by any **Patient** caused or alleged to have been caused by **Malpractice** or a **Good Samaritan Act**.

5.2 SPECIFIC EXCLUSIONS

The Insurer shall not be liable to indemnify the Insured in respect of legal liability for, arising out of or relating to:

- a) any criminal act or any act committed while in violation of any law or ordinance;
- b) the loss or damage to any property manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **Insured**;
- c) the nature or condition of any **Product** but this exclusion shall not apply to any **Claim** arising out of the incorrect prescription of such **Product**;
- d) obstetricians, foetal sonar scans in excess of 12 weeks, neuro surgeons, gynaecologists, plastic surgeons, anaesthetists, bariatric surgery, spinal surgeons, orthopaedic surgeons and orthopaedists;
- e) plastic surgery other than for the remedying of injuries caused by an accident.





6 SECTION THREE - DEFENCE COSTS

- 6.1 The **Insured** shall render at their own cost all such assistance as the **Insurers** may require in order to investigate, defend or settle any **Claim** or **Circumstance** and shall arrange to be available at their own cost for such interviews as may be required by the **Insurers** or any advisers or legal representatives appointed by the **Insurers**.
- 6.2 The **Insurers** will pay any expenses incurred by the **Insured** (excluding such costs mentioned in 6.1) in order to assist with the investigation, defence or settlement of any **Claim** made against the **Insured** and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any **Claim** made or which might be made against the **Insured**, provided such **Claim** or **Claims** are the subject of indemnity by this **Policy** and the **Insurers** prior written consent is obtained.
- 6.3 All costs, fees and expenses incurred by the **Insurers** or at their instance in the investigation, defence or settlement of any **Claim** or **Circumstance** made against the **Insured** and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any **Claim** made or which might be made against the **Insured** shall be deemed to be costs, fees and expenses incurred by the **Insured** with the prior consent of the **Insurers**.
- 6.4 Notwithstanding 6.2 and 6.3 above, the **Insurers** will in addition pay all fees for representation or defence of the **Insured** with the **Insurer's** written consent at an inquest or inquiry held by a disciplinary committee of the Health Professions Council of South Africa or any other statutory body governing the conduct of the **Insured's Business** regardless of the nature of the complaint and whether or not it could result in a civil or other **Claim** against the **Insured** which is covered under this policy.
- 6.5 The **Policy** is extended to include cover for the investigation and defence of any criminal charges against the **Insured** up to a maximum sub-limit of **R 250,000** each and every claim and in the annual aggregate. The deductible applicable being **R 50,000** each and every claim.

If the **Insured** is found guilty by any court or if the **Insured** admits to any such guilt or wrongdoing or enters into any settlement agreement in respect of such allegations, without the prior written consent of the **Insurers**, then the **Insured** shall be liable to repay **Defence Costs** paid by the **Insurer** arising from such **Claim**.

This sub-limit shall form part of and not be in addition to the overall **Limit of Indemnity**.





7. SECTION FOUR - PUBLIC LIABILITY *(If stated in the schedule to apply)*

7.1 INDEMNITY

The **Insurers** will indemnify the **Insured** under this Section against their legal liability for **Claims** arising out of:

- a) accidental death, bodily and mental injury, illness or disease of or to any person;
- b) accidental loss of possession or control of or actual damage to property;

arising out of and in the course of the Business.

7.2 SPECIFIC EXCLUSIONS

The **Insurer** shall not be liable to indemnify the **Insured** in respect of legal liability for, arising out of or relating to:

- a) any **Claim** arising out of or in connection with the nature or condition of any **Product**;
- b) bodily Injury to any Employee where such Bodily Injury arises from and in the course of employment;
- c) the ownership, possession or use by or on behalf of the **Insured** of any **Vehicle** other than a **Claim**:
 - i. caused by the use of any **Vehicle** as a tool of trade or of plant forming part of or attached to or used in connection with any Vehicle;
 - ii. arising beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any Vehicle;
 - iii. arising out of any **Vehicle** temporarily in the **Insured's** custody or control for the purposes of parking;
- d) for damage to any bridge, weighbridge, road or anything beneath caused by the weight of any **Vehicle** or of the load carried thereon;
- e) arising out of any **Vehicle** on the **Insured's** premises for which compulsory insurance is not required by legislation provided the Insured is not indemnified by any motor policy for such **Vehicle**;
- f) arising out of the possession or use by or on behalf of the **Insured** of any **Vehicle** which is the property of Transnet, or their subsidiary companies;





- g) in respect of any trailer not attached to and not having become unintentionally detached from any mechanically propelled vehicle;
- h) arising out of any circumstances compulsorily insurable by legislation governing the use of any **Vehicle**;
- i) arising out of the ownership, possession or use by or on behalf of the Insured of any aircraft, watercraft or hovercraft (other than small craft on inland waterways);
- j) **damage** to property owned, leased or hired by or under hire purchase or on loan to the **Insured** or otherwise in the **Insured's** care, custody or control other than:
 - i. premises (or the contents thereof) temporarily occupied by the **Insured** for work therein or other property temporarily in the **Insured's** possession for work thereon (but no indemnity is granted for damage to the property on which the Insured is working and which arises out of such work);
 - ii. employees' and visitors' clothing and personal effects;
 - iii. premises tenanted by the **Insured** to the extent that the **Insured** would be held liable in the absence of any specific agreement;
- k) property belonging to Transnet, or their subsidiary companies, or any government or quasi-government department, provincial administration, municipality or similar body whilst on any premises permanently occupied by the **Insured**;
- l) the loss or damage to property caused by dewatering operations or by the removal or weakening of or interference with support to such property;
- m) for any **Claim** arising out of the design, formula, specification, treatment, error or omission, or the provision of **Professional Services**, or advice of a technical or professional nature given by or on behalf of the **Insured** in exchange for a fee;
- n) the ownership, hire, leasing or operation of any airport, airstrip or helicopter pad other than airstrips or helicopter pads which are not equipped with control tower operations or navigational aid facilities other than a windsock;
- o) **Environmental Impairment / Pollution** unless such **Environmental Impairment / Pollution** was the direct result of a sudden, specific and identifiable event occurring during the **Period of Insurance** and did not arise as a result of the **Insured's** failure to take reasonable precautions.





8. SECTION FIVE – PRODUCTS LIABILITY *(If stated in the schedule to apply)*

8.1 INDEMNITY

The **Insurers** will indemnify the **Insured** under this Section against their legal liability for **Claims** arising out of:

- a) accidental death, bodily and mental injury, illness or disease of or to any person;
- b) accidental loss of possession or control of or actual damage to property;

arising out of with the nature or condition of any **Product**.

8.2 DEFECTIVE WORKMANSHIP LIABILITY *(If stated in the schedule to apply)*

The **Insurer** will indemnify the **Insured** for any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** which is alleged to have been caused by a **Product**.

This extension extends to include **Claims** arising out of **Defective Workmanship**, defective packaging and labelling. **Claims** for inadequate or incorrect instructions with regard to the use of the product will be covered under Section Two: **Medical Malpractice** of this **Policy**.

8.3 SPECIFIC EXCLUSIONS

The **Insurer** shall not be liable to indemnify the **Insured** against liability directly or indirectly caused by, resulting from, in connection with or arising from:

- a) any defect in any **Product** of which the **Insured** was aware prior to inception of the **Policy**;
- b) the cost of repair, reconditioning or replacement of any **Product** or part thereof and/or for the loss of use of any **Product** or part thereof;
- c) the cost of recalling, removing, repairing, replacing, reinstating or the reduction in value of any **Product**, if such liability arises from any defect therein or the harmful nature or unsuitability thereof, or in connection with any **Product**, subject to provisions in 8.1 and 8.2 above;
- d) the costs incurred by the **Insured** in the recall of any **Product** or part thereof;
- e) the failure of any **Product** or part thereof to fulfil its intended function or to perform as specified, warranted or guaranteed, but this Specific Exclusion shall not apply to consequent **Bodily Injury** or **Property Damage**;





- f) any **Product** that is used on, incorporated into or onto any aircraft or aerial device or is used to control the navigation or safety of any aircraft or aerial device;
- g) any **Product** exported directly or indirectly to **North America/Canada**;
- h) the design, formula, specification, treatment or advice by or on behalf of the **Insured** unless in connection with a **Product**;
- i) **Products** not registered under the Medicines and Related Substances Control Act (101 of 1965) or any amending legislation thereto unless such **Products** are legally exempt from such registration;
- j) **Products** which are banned or withdrawn by the Medicines and related Substances Control Act (101 of 1965) or amending legislation thereto, or any legislation empowered to govern the registration of medicines and related substances prior to the above legislation;
- k) any implantable medical devices.

For the purposes of this Specific Exclusion, the term “replacement” shall be deemed to include any credit or refund granted or alternative **Product** provided by or on behalf of the **Insured** in lieu of replacement of the defective **Product**.

9. EXTENSIONS

The following Extensions shall apply automatically under all Sections of cover under this **Policy** and:

- a) shall be subject to the relevant **Limit of indemnity** and **Deductible** as stated in the schedule to apply to the Extensions; and
- b) are subject otherwise to the terms, Exclusions, Conditions and limitations of the **Policy**;

PROVIDED ALWAYS THAT the total liability of the **Insurers** is not increased beyond that which would have applied in the absence of such Extensions.

9.1 GENERAL EXTENSIONS

9.1.1 BREACH OF CONFIDENTIALITY

Insurers will indemnify the **Insured** in respect of **Claims** first made against the **Insured** during the **Period of Insurance** arising out of:

- a) the actual or alleged negligent breach of Protection of Personal Information Act (Act 4 of 2013) as amended from time to time and regulations thereunder arising





out of or in the course of **Business** provided that the **Claim** is notified to the **Insurer** during the **Period of Insurance** and that the **Claim** is not as a result of a cyber liability and/or data security breach;

b) unintentional breach of trust or unintentional breach of patient confidentiality.

9.1.2 COURT/INQUIRY ATTENDANCE COSTS

This **Policy** will reimburse the **Insured** up to **R5,000.00** per day or part thereof that the **Insured** is required by **Insurer's** legal counsel to be in attendance at court, or required to be in attendance at an inquiry of the HPCSA, limited to a maximum of R25,000.00 per **Insured** per **Period of Insurance**, for reasonable costs incurred with the prior written consent of the **Insurers** necessitated by the **Insured's** and/or their employees attendance at court or an inquest or inquiry or in respect of the **Insured's** loss of income as the result of attendance at court or an inquest or an inquiry.

9.1.3 CROSS LIABILITIES

Each **Insured** indemnified is separately indemnified in respect of **Claims** made against any of them by any other, subject to the total liability of the **Insurers** not exceeding the stated **Limit of Indemnity**.

9.1.4 DEFAMATION

Insurers may indemnify the **Insured** in respect of claims arising out of defamation by the **Insured**. The **Insurers** may elect not to indemnify the **Insured** where the circumstances of the alleged defamation led them to believe that the **Insured** acted with malicious intention. The onus will be upon the **Insured**, if **Insurers** elect not to indemnify the **Insured** for this reason, to prove that they did not act with malicious intention.

9.1.5 EMPLOYERS LIABILITY *(If stated in the schedule to apply)*

Notwithstanding anything to the contrary contained in General Exclusion 11.17, the indemnity granted by this **Policy** extends to include **Claims** arising out of Injury to any person employed under a contract of service or apprenticeship with the **Insured** where such Injury arises out of and in the course of the execution of such contract.

PROVIDED ALWAYS THAT there is no cover is provided for:

a) liability for **Claims** arising from illness or disease, or contributed to by prolonged exposure to substances, factors or circumstances, peculiar to any particular employment or occupation;





- b) liability for **Claims** arising out of asbestos or asbestos-related disease of the respiratory system, but this exclusion shall not apply to **Claims** where the proximate or contributory cause is not related to asbestos dust or fibres;
- c) amounts recoverable under any Workmen's Compensation enactment applicable from time to time.

9.1.6 INDEMNITY TO OTHERS

The indemnity granted by this policy extends to:

- a) any party who enters into an agreement with the **Insured** for any purpose of the Business, but only to the extent required by such agreement to grant such indemnity and subject always to Section Four: Exclusion 7.2 (e) (iii) and General Exclusion 11.17;
- b) officials of the **Insured** in their business capacity arising out of the performance of the Business or in their private capacity arising out of their temporary engagement of the **Insured's** employees;
- c) the officers, committee and members of the **Insured's** canteen, social, sports, medical, fire-fighting and welfare organisations in their respective capacities as such;
- d) the personal representatives of the estate of any person who would otherwise be indemnified by this **Policy**, but only in respect of liability incurred by such person.

Provided always that such persons or parties shall observe, fulfil, and be subject to the terms, Exclusions, Conditions and limitations of this **Policy** as though they were the **Insured**.

9.1.7 MEDICAL SCHEME INVESTIGATION / AUDITS

(Cover sub-limited to **R25,000.00** in the annual aggregate)

The **Insurer** will indemnify You for fees, costs and expenses incurred, with the prior written consent of the **Insurer**, in assisting and representing the **Insured**, or incurred by the **Insured** in respect of medical aid investigation / audits, provided that the enquiry or process relates to the **Insured's** Services as defined in the policy schedule excluding any reimbursement of fees, costs or charges payable by the **Insured**.

Cover excludes any fees, costs and expenses in respect of any action which the **Insured** wishes to take against medical aid providers / scheme.

Insurers' total liability shall not exceed that sum of sub-limit of indemnity as stated for that **Period of Insurance**.





The **Deductible** applicable is **R2,500** each and every claim.

9.1.8 PUBLIC RELATIONS EXPENSES

(Cover sub-limited to **R25,000.00** in the annual aggregate)

Where the **Insured** retains the services of a public relations consultant for the sole purpose of protecting its reputation that has been brought into question as a direct result of a **Claim** covered by this **Policy**, the **Insurer** agrees to pay the reasonable fees, costs and expenses of such public relations consultant, provided that:

- a) The **Insured** notifies the **Insurers** within 30 days of becoming aware of its reputation being brought into question, and provide full written details outlining the circumstances surrounding the event; and
- b) **Insurers** have given their prior written consent to retain the services of such public relations consultant; and
- c) **Insurers'** total liability for all public relations expense, shall not exceed that sum of sub-limit of indemnity as stated in the schedule for that period of insurance.
- d) Cover is limited to protecting the reputation of the **Insured** and rights of recourse against the culprit is specifically excluded.

The **Deductible** applicable is **R2,500.00** each and every claim.

9.1.9 REGULATORY OR STATUTORY BODY DEFENCE COSTS

The **Insurer** will indemnify the **Insured** for all fees, costs and expenses incurred, with the prior written consent of the **Insurer**, in assisting and representing the **Insured**, or incurred by the **Insured**, in respect of any HPCSA / AHPCSA / SANC Costs / Other Statutory Body Council Hearings regulatory or disciplinary enquiry or process, provided that the enquiry or process relates the **Insured's Professional Services** as defined in the policy schedule.

PROVIDED ALWAYS THAT:

- a) no indemnity shall be granted for fines or penalties.

9.1.10 STATUTORY DEFENCE COSTS

Notwithstanding anything to the contrary contained in this **Policy**, the **Insurers** will indemnify the **Insured** in respect of legal costs and **Defence Costs** with the consent of the **Insurers** in the defence of any criminal action or criminal prosecution brought against the **Insured** arising from actual or alleged breach of any legislation governing the conduct of the **Insured's Business**. This cover shall extend to include legal costs and **Defence Costs** incurred with the consent of the **Insurers** in the defence of any criminal action or charge made against the **Insured** during the **Period of Insurance** as a result of the alleged contravention of any statute governing the conduct of the **Business** (other





than statutes governing the ownership or use of motor vehicles, the Labour Relations Act No.66 of 1995 or the Companies Act No. 71 of 2008) and as read in conjunction with the Criminal Procedure Act No. 56 of 1955 as amended from time to time.

PROVIDED ALWAYS THAT:

- a) no indemnity shall be granted for fines or penalties;
- b) in the case of an appeal, the **Insurers** shall not indemnify the **Insured** unless its legal representatives (chosen by the **Insurer** in its sole discretion) shall advise that such appeal should be likely to succeed;
- c) no indemnity is provided in respect of any costs and expenses other than the legal costs and **Defence Costs** referred to in this section.

9.1.11 WRONGFUL ARREST

Notwithstanding anything to the contrary in this **Policy**, the **Insurers** will indemnify the **Insured** in respect of **Claims** arising out of **Wrongful Arrest** (as hereinafter defined) committed or alleged (other than by the **Insured**) to have been committed by the **Insured** in the course of the **Business**.

PROVIDED ALWAYS THAT:

- a) for the purposes of this Extension, the terms "**Wrongful Arrest**" shall mean:
 - i. assault and battery committed or alleged to have been committed at the time of making or attempting to make an arrest or in resisting an overt attempt to escape by a person under arrest before such person has been or could be placed in the custody of the police or a law enforcement officer;
 - ii. defamation, injuria, false imprisonment or malicious prosecution either committed or alleged to have been committed directly in connection with an arrest or arising out of the investigation of acts of shoplifting or theft;
 - iii. wrongful discharge of any employee.
- b) no indemnity shall be granted in respect of **Claims**:
 - i. made against the **Insured** by any person or persons other than those being or having been or alleged have been arrested or under arrest, or their personal representatives;
 - ii. made against the **Insured** by any Director, Partner or employee of the **Insured**, or their personal representatives;
 - iii. arising out of unfair labour practice as within the meaning of the Labour Relations Act No.66 of 1995;





- c) the total liability of the **Insurers** under this Extension shall not exceed the **Limit of indemnity** in respect of all claims made against the **Insured** during the **Period of Insurance**.

9.2 SPECIAL EXTENSIONS

9.2.1 EXTENDED REPORTING PERIOD

In the event that the **Insured** elects not to renew or extend this **Policy**, and does not affect any similar insurance in substitution and specifically declares same to the **Insurer** prior to the expiry of the **Policy**, then the Insurance provided under this **Policy** shall be extended to include any **Claim** of which the **Insured** becomes aware of and notified to the **Insurer** during a 30 day period (which shall commence immediately following the date of expiry of the **Policy**) but which claim must have occurred subsequent to the **Retroactive Date** shown in the Schedule and prior to the expiry of the **Policy**.

No cover whatsoever is provided under the extended reporting period extension where a member:

- a) has been struck off the roll (or otherwise, legally prohibited from practicing their insured profession in South Africa or elsewhere); or
- b) suspended from practice by the HPCSA (or other regulatory body).

This extension will not apply where this **Policy** is terminated by **Insurers** by reason of failure to pay premium or failure to comply with the terms, exclusions and conditions of this **Policy** or non- renewal by **Insurers**;

9.2.2 EXTENDED TERRITORIAL COVERAGE FOR SHORT-TERM SERVICES

Cover shall extend to include services rendered abroad by fully paid-up **Insureds** as per agreed professions within the **Territorial Limits** of the **Policy**, provided that such services are rendered for 60 consecutive days or less on any one visit.

If the practitioner intends to emigrate, then no cover will be provided for overseas treatment and the practitioner must obtain alternative insurance in the country that they will be emigrating to.

9.2.3 LIABILITY FOLLOWING EMPLOYEE/VOLUNTEER DISHONESTY

This **Policy** extends to cover **Claims** arising out of any dishonest, fraudulent or malicious act or omission of any employee or volunteer (not being a director, partner or principal) of the **Insured**

9.2.3 RUN OFF COVER





In the event of and with effect of the retirement or ceasing to practice as a registered healthcare practitioner in South Africa (due to emigration, death permanent disability, or severe illness of the **Insured**), and in the event of death of the **Insured**, the **Insured's** executor on behalf of the **Insured's** Estate, is granted an additional period of thirty-six (36) months (hereinafter referred to as Run Off Cover) to identify circumstances in connection with work performed during the currency of this **Policy** that may give rise to a **Claim** for indemnity in terms of this **Policy**, or any HPCSA / AHPCSA or other Statutory body complaints, regardless of the nature thereof, and provided that:

- a) the **Insured** enjoyed continuous uninterrupted cover with the **Insurer** for a period of not less than a minimum of thirty-six (36) consecutive months; immediately and consecutively prior to the expiring of this Policy;
- b) where the **Insured** has held uninterrupted cover with the **Insurer** for a period of less than twelve (12) consecutive months, run off cover may be purchased separately;
- c) where the **Insured** has held uninterrupted cover with the **Insurer** for a period of greater than twelve (12) consecutive months but less than thirty-six (36) consecutive months, the period of run off cover afforded shall be pro-rated to bear the same proportions as the period of uninterrupted cover held;
- d) the Run Off Cover:
 - i. does not apply if this **Policy** is terminated by Insurers by reason of failure to pay premium or failure to comply with the terms, exclusions and conditions of this policy;
 - ii. is limited to scope of services as noted in the policy schedule;
 - iii. is not granted should the **Insured's** license or right to practice have been revoked, suspended or surrendered or should any prior breach of this **Policy** by the **Insured** or by the **Insured's** executor have occurred;
 - iv. shall not apply to **Claims** made against the **Insured** where such **Claim** or **Circumstance** that might give rise to a **Claim**, was advised to the **Insurer** prior to the commencement date of the Run-Off Cover;
 - v. shall be increased to a period of sixty (60) months where the **Insured** has held uninterrupted cover with the **Insurer** for more than thirty-six (36) consecutive months;
 - vi. shall be increased to a period of seventy-two (72) months where the **Insured** has held uninterrupted cover with the **Insurer** for a minimum of forty-eight (48) consecutive months;
 - vii. shall, notwithstanding the period stated above, terminate immediately at the commencement date thereof should insurance be obtained by the **Insured** replacing in whole or in part the insurance afforded by this **Policy**. (This will not apply where the **Insured** obtains insurance in any country outside of South Africa to cover **Professional Services** rendered in any country outside of South Africa);





- viii. the **Insurer's** total liability in respect of all **Claims** made during the final **Period of Insurance** and all **Circumstances** identified during the Run Off Cover period shall in no event exceed the **Limit of Indemnity** as stated in the schedule which applied immediately prior to commencement of Run Off Cover;
- e) this extension does not remove the condition of timeous notification of potential **Claims** to **Insurers**. The **Insured** would still be required to notify **Insurers** as soon as they become aware of any potential claim or HPCSA / AHPCSA or other Statutory body complaint against them.
- f) no cover whatsoever is provided under this extension:
 - i. should the **Insured's** license or right to practice be revoked, suspended or involuntarily surrendered or should any prior breach of this **Policy** by the **Insured** or by the **Insured** Executor have occurred and shall terminate immediately;
 - ii. if the **Insured** breached the provisions of this **Policy**, prior to permanently ceasing practice in South Africa.

Cover provided under this extension will be determined by reference to the entire **Policy** document (including all endorsements) that was in force during the period of insurance that the **Insured** permanently ceased to practice in South Africa.

No Run-Off Cover will be allowed should the **Insured** elect not to renew this insurance or **Policy** has lapsed or cancelled and placed such insurance with another insurer.

10. LIMIT OF INDEMNITY

10.1 The total liability of the **Insurers**, in terms of the Insuring Clause:

- a) per **Claim** or series of **Claims** arising from one originating cause or source, including interest thereon, all claimants' costs, fees and expenses and **Defence Costs**;
- b) in respect of all **Claims** per **Period of Insurance**;

shall not exceed the **Limit of Indemnity** stated in the schedule.

10.2 Where applicable, the **Insurers** will indemnify the **Insured** for any Value Added Tax (VAT) obligation that may be incurred subject to and **Limit of Indemnity** which is exclusive of VAT.

11. GENERAL EXCLUSIONS APPLICABLE TO ALL SECTIONS

This **Policy** does not cover liability:

11.1 ABSOLUTE CYBER LOSS EXCLUSION





Notwithstanding any provision to the contrary within this policy or any endorsement thereto this policy excludes any **CYBER LOSS** regardless of any other cause or event contributing concurrently or in any other sequence thereto.

Any loss, damage, liability, claim, cost, expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any **DATA**, including any amount pertaining to the value of such **DATA** shall not be recoverable hereunder, nor be considered as physical loss or damage for the purposes of this exclusion or any other part of this policy.

If the **Insurer** alleges that by reason of this exclusion any **CYBER LOSS** sustained by the **Insured** is not covered by this policy, the burden of proving the contrary shall fall to the **Insured**.

Definitions

- a) **CYBER LOSS** means any loss, damage, liability, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any **CYBER ACT** or **CYBER INCIDENT** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **CYBER ACT** or **CYBER INCIDENT**.
- b) **CYBER ACT** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving actual access to, processing of, use of or operation of any **COMPUTER SYSTEM**.
- c) **CYBER INCIDENT** means:
 - i. any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **COMPUTER SYSTEM**;
 - ii. any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **COMPUTER SYSTEM**.
- d) **COMPUTER SYSTEM** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, **DATA** storage device, networking equipment or back up facility.
- e) **DATA** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **COMPUTER SYSTEM**.





11.2 ACTS PRIOR TO RETROACTIVE DATE

Relating to any negligent act, error or omission which was or may have been or is alleged to have been committed or omitted (as the case may be) before the **Retroactive Date**.

11.3 ADMISSION OF CRIMINAL, ILLEGAL, OR FRAUDULENT ACTS

Arising out of, based upon or attributable to any act which a court, judge, arbitrator or statutory body finds or which an **Insured** admits, to a criminal or illegal conduct, dishonest or fraudulent act, and in such event, the **Insurer** shall be reimbursed for all **Loss** paid (including any VAT indemnification) in connection with such **Claim**.

11.4 ANIMAL FEEDS

Arising out of, based upon or attributable to animal feeds where chemical additives have been or are used in the preparation of such feeds.

11.5 ANTI-COMPETITIVE ACTIVITIES

Arising out of, based upon or attributable to any actual or alleged competition violation, a breach of any applicable competition law or legislation, restraint of trade or unfair competition.

11.6 ASBESTOS EXCLUSION

Notwithstanding any provision of this **Policy** including any **Exclusion**, exception or Extension or other provision which would otherwise override an **Exclusion**, this **Policy** does not cover any legal liability, **Loss**, **Damage**, cost or expense whatsoever or any consequential loss directly or indirectly caused by, arising out of, resulting from, in consequence of, in any way involving, or to the extent contributed to by, the hazardous nature of asbestos in whatever form or quantity.

11.7 BLOOD AND HUMAN TISSUE BANKS/BLOOD TRANSFUSION SERVICES

This **Policy** does not cover any **Claims** arising from, related to, or connected with blood and human tissue banks or blood transfusion services. This exclusion, however, does not extend to entities that temporarily store blood samples or vials as part of their standard business operations. Additionally, this exclusion does not apply to qualified Medical Professionals engaged in providing **Professional Services** for blood work or testing, including those involved in clinical trials. Coverage is also excluded for instances where blood or tissue samples are modified or redistributed.

11.8 CLINICAL TRIALS





Arising out of, based upon or attributable to any medical or biological research and medical or clinical trials or an **Insured's** involvement in such research or trials; or any study or experiment in humans in order to discover and/or verify the effects and/or actions of substance, including but not limited to medical, pharmaceutical or similar products, devices, drugs and the like. However, cover will apply where a Medical Professional is providing **Professional Services** for the collection of data, conduct of health tests including provision of standard clinical care and screening of potential patients for various clinical trials and/or patients involved in clinical trials provided that such clinical trial is carried out in accordance all applicable legislation and regulatory authority having jurisdiction regulatory authority having jurisdiction.

11.9 CONTRACEPTIVES / FERTILITY DRUGS AND TREATMENT

Arising out of, based upon or attributable to contraceptives (including birth control pills), contraceptive devices, fertility drugs and/or products specifically designed and marketed for use during and in connection with pregnancy; however, this shall not apply to dispensing risks.

11.10 COMPUTER VIRUS EXCLUSION

Notwithstanding any provision of this **Policy** including any special **Exclusion** or Extension or other provision not included herein which would otherwise override a General Exclusion, this **Policy** does not cover any legal liability of whatsoever nature directly or indirectly caused by or contributed by or consisting of or arising from the incapacity or failure of any computer, correctly or at all, to capture, save, retain or to process any data as a result of the action of any computer virus, or other corrupting, harmful or otherwise unauthorised code or instruction including any trojan horse, time or logic bomb or worm or any other destructive code, media or programme or interference.

A computer includes any computer, data processing equipment, microchip, integrated circuit or similar device in computer or non-computer equipment or any computer software, tools, operating system or any computer hardware or peripherals and the information or data electronically or otherwise stored in or on any of the above, whether the property of the **Insured** or not.

11.11 CONTRACTUAL LIABILITY/PERFORMANCE GUARANTEES

For contractual liability or performance guarantees arising out of, based upon, or attributable to any:

- a) contractual liability or other obligation assumed, that goes beyond the duty to use such skill and care as is ordinarily applied to the **Professional Services** provided;
- b) performance guarantee or warranty;





- c) delay in performing, failing to perform or failing to complete any **Professional Services**, unless such delay or failure arises from **Breach of Duty** by the **Insured**.

11.12 COVID-19 / PANDEMICS / EPIDEMICS EXCLUSION

This **Policy** excludes any loss, damage, liability, expense, fines, penalties or any other amount directly or indirectly caused by, in connection with, or in any way involving or arising out of any of the following – including any fear or threat thereof, whether actual or perceived:

- a) Coronavirus (COVID-19) including any mutation or variation thereof;
- b) Pandemic or epidemic, as declared as such by the World Health Organization or any governmental authority.

However, this exclusion does not apply to:

Liability arising from the provision of healthcare related services in relation to incorrect treatment and assessment of such diseases by a medical practitioner and / or medical institution providing healthcare related services.

11.13 DATA LOSS OR DISTORTION DUE TO MEDIA AND ENVIRONMENTAL FACTORS

Arising out of loss of or distortion of computer data due to:

- a) the presence of magnetic flux;
- b) defects in the data tapes or other data media;
- c) use or processing whilst mounted in or on any machine;
- d) wear, tear, vermin or gradual deterioration;
- e) climatic or atmospheric conditions or extremes of temperature.

11.14 DECENNIAL LIABILITY

Arising out of decennial liability.

11.15 DEDUCTIBLE

Up to the amount of the **Deductible**.

11.16 DELIBERATE/INTENTIONAL ACTS





Arising out of any dishonest, criminal or malicious act or omission, or any act or omission in violation of any law or ordinance, committed by or on behalf of the **Insured**, save where such criminal or illegal conduct is negligent and not reckless or intentional.

11.17 EMPLOYERS LIABILITY

For any death, bodily or mental injury, disease or illness to any person employed by the **Insured** under a contract of service or apprenticeship or training which arises out of or in the course of such employment, subject to Extension clause 9.1.5 relating to Employers' Liability.

11.18 PRIOR CLAIMS/CIRCUMSTANCE

Resulting from, derived from, or connected to:

- a) **Circumstances** which may reasonably be expected to give rise to a **Claim** known to the **Insured** at the inception or renewal date of this **Policy**;
- b) any Circumstances notified to the **Insurers** of any other policy prior to the inception date hereof.

11.19 INSURED'S DOCUMENTS

For the costs of replacing or restoring any of the **Insured's** documents.

11.20 FINES AND PENALTIES

- a) Arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that it can be proved that liability would have attached in the absence of such clauses or warranties;
- b) for fines, penalties, punitive, vindictive or exemplary damages or constitutional damages.

11.21 EMPLOYMENT PRACTICES LIABILITY

Arising out of employment practices, based upon any actual or alleged employment-related practices or labour disputes.

11.22 ENVIRONMENTAL LAWS AND POLLUTION

Arising out of:

- a) any **Environmental Impairment / Pollution** occurring during the **Period of Insurance**;





- b) any contravention of Pollution and / or Environmental Laws;
- c) delays in projects requiring official regulatory Environmental approval.

11.23 FAILURE TO INSURE

As a result of failure to effect or maintain insurance.

11.24 FIDELITY COVER

Arising out of:

- a) loss of money (including, but not limited to postal and money orders and Kruger Rands);
- b) theft or forgery.

11.25 HIV / AIDS

Liability caused by, arising from, or related to:

- a) the Human Immune Deficiency Virus (HIV);
- b) the Acquired Immune Deficiency Syndrome Related Complex (ARC);
- c) the Acquired Immune Deficiency Syndrome (AIDS);
- d) any virus, complex or syndrome that is related to the foregoing which results from;
- e) the manufacture or supply of blood or blood products. Blood or blood products;
- f) include blood preparations, sera, plasma, cellular products and whole blood to the extent that they are derived from human blood and are intended for use as a drug;
- g) arising out of the contraction of HIV or the mutant derivatives or variations thereof or in any way related to AIDS or any syndrome or condition of a similar kind howsoever it shall be named, due to needle stick injuries, blood transfusions; or
- h) any other method of infection.

This exclusion does not apply to liability arising from the provision of:

- a) first aid or **Good Samaritan** or pro bono aid/services;





- b) medical services at the premises of an original **Insured** for the benefit of the employees of such original **Insured**;
- c) non-invasive, alternative or complimentary medicine. For purposes of this exclusion acupuncture where the **Insured** use disposable needle packs is deemed to be non-invasive;
- d) **Wrongful Act** in relation to dispensing risks;
- e) a **Breach of Confidentiality** on the **Insureds** part in unintentionally disclosing a Patients HIV/AIDS;
- f) incorrect analysis and/or incorrect results being provided in respect of HIV/AIDS.

11.26 INSOLVENCY

Arising out of the insolvency of the **Insured**.

11.27 NARCOTICS/INTOXICANTS

Arising from the performance of the activities of the **Insured** whilst under the influence of intoxicants or narcotics excluding medication prescribed and/or administered by a properly qualified doctor as well as any over the counter drugs which are being taken at the time for recognised medical complaints or conditions.

11.28 NORTH AMERICA AND AUSTRALIA

For or arising out of:

- a) any award or damages granted in terms of a judgment delivered or obtained in the first instance;
- b) costs, fees and/or expenses of litigation incurred;
- c) the conduct of the **Business**;

in **North America and Australia**.

11.29 NUCLEAR EXCLUSION

This **Policy** does not cover any legal liability, loss, damage, cost or expense whatsoever or any consequential loss directly or indirectly caused by or contributed by or arising from:





- a) ionising, radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion or use of nuclear fuel;
- b) nuclear material, nuclear fission or fusion, nuclear radiation;
- c) nuclear explosives or any nuclear weapon;
- d) nuclear waste in whatever form;

regardless of any other cause or event contributing concurrently or in any other sequence to the loss. For the purpose of this **Exclusion** only, combustion shall include any self-sustaining process of nuclear fission.

However, this **Exclusion** does not exclude nuclear medicine, radiology and sonography.

11.30 PATENT/TRADE SECRET

Arising out of, based upon or attributable to the breach of licenses concerning, infringement or misappropriation of patents or Trade Secrets.

11.31 POLYCHLORINATED BIPHENYLS (PCB'S)

Arising out of, based upon or attributed to polychlorinated biphenyls.

11.32 SANCTIONS EXCLUSION

Neither Hollard Insurance Company Limited (the insurer), nor any of its reinsurers shall be deemed to provide cover and no (Re)insurer shall be liable to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Hollard Insurance Company Limited and/or its Reinsurers to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

11.33 SEXUAL MISCONDUCT EXCLUSION

Notwithstanding anything else contained in the **Policy** to the contrary the **Insurer** shall not indemnify the **Insured** in respect of any loss, damage, cost or expense directly or indirectly arising out of, contributed to, resulting from, and / or in consequence of, any actual or alleged:

- a) molestation, assault or abuse of any kind;
- b) sexual misconduct of any kind;
- c) wrongful or excessive discipline of any kind;





- d) bullying or harassment of any kind;
- e) racism or any allegations of racism;
- f) **Hate Speech** or any allegation of **Hate Speech**.

HOWEVER:

The **Policy** is extended to include cover for the Insured's **Defence Costs** up to a maximum sub-limit of **R 100,000** each and every claim and in the annual aggregate. The main **Deductible** applicable to the **Policy** will apply.

If the **Insured** is found liable for **Damages** or found to have committed misconduct by any court or statutory regulatory body, or if the **Insured** admits to any such misconduct or wrongdoing or enters into any settlement agreement in respect of such allegations, without the prior written consent of the **Insurers**, then the **Insured** shall be liable to repay **Defence Costs** paid by the **Insurer** arising from such **Claim**.

Cover is limited to **Defence Costs** only.

11.34 WAR / TERRORISM EXCLUSION

The **Insurers** shall not be liable to indemnify the **Insured** in respect of **Claims** directly or indirectly caused by, resulting from happening through or in connection with:

- a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, insurrection, rebellion, revolution, military or usurped power;
- b) any action taken in controlling, preventing, suppressing or in any way relating to the excluded situations in a) above, including, but not limited to, confiscation, nationalization, damage to or destruction of property by or under the control of any government or public or local authority;
- c) any act of **Terrorism** regardless of any other cause contributing concurrently or in any other sequence to the loss.

For the purpose of this Exclusion, **Terrorism** means an act of violence or any act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear.





In any action suit or other proceedings where the **Insurer** alleges that by reason of this Exclusion a **Loss** is not covered by this insurance the burden of proving that such **Loss** is covered shall be upon the **Insured**.

12. GENERAL CONDITIONS

The following are conditions precedent to the liability of the **Insurers** to provide indemnity under this **Policy** and is applicable to Applicable to all Sections including but not limited to all Endorsements and/or Extensions unless otherwise stated.

12.1 ALLOCATION OF RECOVERIES AND REIMBURSEMENT

All recoveries made in respect of any **Claim** under this **Policy** shall be applied (after deduction of the costs, fees and expenses incurred in obtaining such recovery) in the following order of priority:

- a) the **Insured** shall first be reimbursed for the amount by which their liability in respect of such **Claim** exceeded the amount of indemnity provided by the **Policy**;
- b) the **Insurers** shall then be reimbursed for the amount of their liability under the **Policy** in respect of such **Claim**;
- c) any remaining amount shall be applied towards the amount of the **Deductible** borne by the **Insured** in respect of such **Claim**.

12.2 CANCELLATION

This Policy may be cancelled by the **Insured** as and in the manner permitted by law. In such case, if no **Claim** has been made and no **Circumstance** has been notified prior to such cancellation, the **Insurer** shall retain the customary short rate proportion (expired portion of Premium plus handling charges) of the Premium. Otherwise, Premium shall not be returnable and shall be deemed fully earned at cancellation.

By Insurers:

Insurers may cancel this Policy by delivering to You (the **Insured**), written notice stating when, not less than 31 days thereafter, the cancellation is effective. Proof of e-mail, mailing or delivery of the notice is sufficient proof of notice and this.

Policy is deemed cancelled for the specific **Insured** at the date specified in the notice.

Insurers are entitled to a pro-rata proportion of the Premium. Payment or tender of any unearned Premium by **Insurers** is not a condition precedent to the effectiveness of the cancellation, but payment will be made as soon as is practical.





12.3 COMPLIANCE

It is a condition precedent to cover under this **Policy** that the **Insured** shall, at all times, comply with all laws and regulations, including any licenses or regulatory authorisations, as may pertain to its Business or the **Professional Services** which it provides in the normal and ordinary course of its Business.

12.4 CONTINUING PROFESSIONAL DEVELOPMENT

The **Insured** must ensure that they undertake regular Continuing Professional Development (CPD) Training if required to do so in terms of legislation and or by a regulating industry body.

12.5 CONTROL OF CLAIMS AND SETTLEMENT AUTHORITY

No admission, offer, promise or payment shall be made or given by or on behalf of the **Insured** without the written consent of the **Insurers** who shall be entitled if they so desire to take over and conduct the defence or settlement of any **Claim** or to prosecute in the name of the **Insured** any **Claim** for indemnity or **Damages** or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any **Claim** and the **Insured** shall give all such information and assistance without charge as the **Insurers** may require.

12.6 CO-OPERATION

The **Insured** will at their own cost:

- a) render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim** and the assertion of indemnification and contribution rights;
- b) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Loss** under this **Policy**;
- c) give such information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any **Loss** or determine the **Insurer's** liability under this **Policy**.

12.7 DEFENCE/SETTLEMENT

The **Insurers** may at any time pay to the **Insured** in connection with any **Claim** or series of claims under this **Policy** to which the **Limit of Indemnity** applies the amount of such limit (after deduction of any amounts already paid) or any lesser amount for which such **Claim** or claims can be settled and upon such payment being made the **Insurers** shall relinquish the conduct and control of and be under no further liability in connection with





such **Claim** or claims notwithstanding the fact that the **Insured** has been only partially reimbursed for their **Loss** due to the amount of any **Deductible** payable in terms hereof.

12.8 EQUIPMENT

- a) All equipment must be regularly maintained and calibrated per the manufacturer's specifications, or in the absence of such specifications, once a year.
- b) Equipment / Instruments must be properly sterilised and maintained per the manufacturer's stipulations and/or industry body regulations.

12.9 GOVERNING LAW AND JURISDICTION

- a) The **Policy** is governed by the law of the Republic of South Africa when interpreting this contract of insurance and deciding any **Claim** to an Indemnity. Only the Courts of the Republic of South Africa may deal with any dispute in respect of this **Policy**.
- b) A reference in this **Policy** to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision.
- c) The titles and headings to the various sections of the **Policy** are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.
- d) In this **Policy** the singular includes the plural and vice versa. Any gender includes the other genders.
- e) Where any reference is made to a day it shall mean a calendar day.

12.10 INFORMED CONSENT

The **Insured** will be required save for in the event of an **Emergency** to provide evidence that they have complied with all regulatory and statutory requirements in relation to informed consent, prior to rendering any **Professional Services** as defined in the **Policy Schedule**. All Patients (or legal or natural guardians) are to sign and date consent forms after being informed of the relevant medical / clinical services, therapeutic services, procedure, and/or treatment to be undertaken.

For purposes of this condition, **Emergency** shall mean: the sudden, passing situation/s requiring rapid intervention to prevent death, serious injury, serious impairment to bodily functions or health deterioration which would place the person's life in serious jeopardy.





Notwithstanding the foregoing, failure to obtain written informed consent as required under this condition shall not preclude coverage under this **Policy**. However, in such cases, an additional special deductible of R100 000 each and every claim shall apply.

12.11 INSURER'S CONSENT

As a condition precedent to liability under this **Policy**, no **Insured** shall admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any **Defence Costs** without the prior written consent of the **Insurer**. Only those settlements, judgments and **Defence Costs** consented to by the **Insurer**, and judgments resulting from **Claims** defended in accordance with this **Policy**, shall be recoverable as a **Loss** under this policy. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer** shall be entitled to exercise all of its rights under the **Policy** including the right to participate fully in the defence and the negotiation of any settlement of any **Claim** in order to reach a decision as to reasonableness.

12.12 MALICIOUS INTENT

If indemnity is sought under this **Policy** by any fraudulent means or devices are used by the **Insured** or anyone acting on their behalf or with their knowledge or consent to obtain any benefit under this **Policy** or if any event is occasioned by the wilful act or with the connivance of the **Insured**, the benefit afforded under this **Policy** in respect of any such **Claim** shall be forfeited. The **Insurer** shall also be entitled to immediately cancel the **Policy**, without prejudice to such other rights available to it in law and the **Insured** shall reimburse all damages, costs and expenses paid by the **Insurer**.

Hollard/iTOO elects to exercise its right in terms of above against a specific **Insured** under the policy, Hollard/iTOO will give notice in writing to Garrun CFP to that effect and Garrun CFP will notify the **Insured** in writing of such cancellation.

An endorsement will be made to the **Policy** schedule thereafter reflecting the name of the **Insured** who can no longer take up cover under this **Policy** going forward. Such endorsement will appear on a separate sheet to the **Policy** schedule to protect the personal information of the individual involved.

12.13 MATERIAL CHANGES IN THE RISK

The **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer** of any fact or event which materially affects the risks covered by this contract of insurance as soon as possible. These include, but not limited to:

- a) any material changes in practice;
- b) activities performed that are materially different from those declared in proposal form or renewal;





- c) activities outside of the normal activities of **Professional Services** or Business;
- d) You currently undergoing, or have been recently advised to undergo, treatment for alcohol, drug, or other substance abuse, or for behavioral issues (including sexual misconduct) that could reasonably be expected to impair your ability to perform your professional duties safely and competently.
- e) you suffer an illness or physical defect which impairs, or is likely to impair, your ability to practice for thirty (30) days or more;
- f) you are convicted of or plead guilty to any criminal charge other than a minor traffic offense;
- g) your registration to practice, or otherwise to deliver Healthcare services of any type, is revoked, suspended, surrendered, or limited in any respect;
- h) you are called to appear before the HPCSA, peer review committee, professional standards review committee, or credentialing committee in a proceeding seeking to terminate, revoke or limit Your employment or privilege to practice or membership of a professional body.

12.14 MID-TERM LIMIT INCREASES

If the **Limit of Indemnity** is increased during the **Period of Insurance**, the liability of the **Insurers** in respect of **Claims** made against the **Insured** or for **Circumstances** notified, or which should have been notified, to the **Insurers** prior to such increase, shall not exceed the **Limit of Indemnity** applicable prior to such increase.

12.15 MISPLACED CERTIFICATIONS

It is hereby noted and agreed that if an **Insured** under this **Policy** has misplaced their Certifications proving their qualifications and if proof of such qualifications is required by **Insurers** that Insurers will accept in place of the said Certifications:

- a) a written affidavit attested to by the **Insured** confirming their qualification/s, that has been duly commissioned by a Registrar of Oaths;
- b) together with a historical record of the appropriate billing codes for that particular treatment having been performed previously by the **Insured**, or any other documentation agreed to by the **Insurers** for this purpose.





12.16 MISREPRESENTATION, MISDESCRIPTION AND NON-DISCLOSURE

Any misrepresentation, misdescription, or non-disclosure that is material shall render voidable the **Policy**, the particular item or Section of the **Policy** affected by such misrepresentation, misdescription, or nondisclosure.

12.17 NOTIFICATION OF CLAIMS / CIRCUMSTANCES

The **Insured** shall give written notice to the **Insurers**, via Garrun CFP, as soon as practicable of any **Claim** made against the **Insured** or of any **Circumstance** which may give rise to a **Claim** being made against the **Insured** and which forms the subject of indemnity under this **Policy** and shall give all such additional information as the **Insurers** require. Every claim, writ, summons or process and all documents relating to the **Claim**, event or **Circumstance** shall be forwarded to the **Insurers** immediately on being received by the **Insured**.

If the **Insured** notifies the **Insurers** during the **Period of Insurance** of any event or **Circumstance** which the **Insurers** accept may give rise to a **Claim** being made against the **Insured**, then such **Claim** shall for the purpose of this **Policy** be treated as having been first made against the **Insured** during the **Period of Insurance**.

This **Policy** will allow the **Insured** the opportunity to notify **Insurers** of **Claims** made against them or **Circumstances** as soon as practicable but not later than 30 days after expiry of this insurance provided that the **Insured** first became aware of the **Claim** or **Circumstance** prior to expiry.

Whenever this **Policy** requires notice to be given to the **Insurers** such notice shall be given via the **Insured's** broker:

GARRUN CFP (PTY) Ltd

33 Central Street
Houghton
2198
South Africa

P.O. Box 92337
Norwood
2117
South Africa

Telephone: (011) 794-6848
E-mail: claims.cfp@garrun-group.co.za

12.18 OTHER INSURANCE/INDEMNIFICATION

If at the time of any event giving rise to a **Claim** under this **Policy**, other insurance cover exists applicable to such **Claim**, the **Insurer** shall be liable (subject at all times to the terms of this **Policy**) to pay only a rateable proportion of the amount payable to the





Insured in respect of such **Claim**, whether the **Insured** is paid under such other insurance or not.

If such other insurance is provided by the **Insurer** or any group company or affiliate of Hollard Insurance Company Ltd, ("Hollard"), then the maximum amount payable by Hollard under all such policies shall not exceed the **Limit of Indemnity** of that policy referred to above which has the highest applicable **Limit of Indemnity**. Nothing contained herein shall be construed to increase the **Limit of Indemnity** of this **Policy**.

To the extent that another insurance policy imposes upon an insurer a duty to defend a **Claim**, **Defence Costs** arising out of such **Claim** shall not be covered under this **Policy**.

12.19 PREMIUM PAYMENT

Premium is payable on or before the inception date or renewal date as the case may be. The **Insurer** shall not be obliged to accept premium tendered to them more than 31 days after such date but may do so upon such terms as they in their sole discretion may determine.

12.20 PROFESSIONAL RECORDS

The **Insured** shall maintain accurate descriptive records of all **Professional Services** rendered for the period required/stipulated by legislation/regulation and/or guidelines provided by the **Insured's** statutory body, which records shall be made available for inspection and use by the **Insurers** or their duly appointed representatives insofar as they pertain to any **Claim** under this **Policy**.

12.21 PROOF OF MEMBERSHIP

In the event of a **Claim**, the **Society/Association** will provide proof that the member is a **Paid-up member** of such **Society/Association**. This will not apply where the **Insured** is acting in their official capacity or volunteers for the **Society/Association**.

12.22 RISK MANAGEMENT

In the event that the **Insurer** provides the **Insured** with recommended risk management procedures during the **Period of Insurance**, the **Insured** shall comply all risk mitigation procedures as recommended by the **Insurer**. If the **Insured** does not implement or comply with the recommended risk management procedures, the **Insurer** shall have no liability under this policy to the **Insured** in respect of any **Claim** which arises out of or is attributable to, whether directly or indirectly, the failure by the **Insured** to implement or comply with the **Insurer's** recommended risk management procedures.





12.23 STUDENTS AND INTERNS

Cover will only respond where Students / Interns are under the supervision of a fully qualified professional in their field of study, where the professional is at hand at all times to provide guidance, check the progress of treatment and check proposed treatment plans before implementation thereof where necessary.

12.24 SUBROGATION

If an indemnity is granted under this Policy in respect of a **Claim**, the **Insurer** shall be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for its actual **Loss**. The **Insurer** shall be entitled to pursue and enforce such rights in the name of the **Insured**, who shall provide the **Insurer** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any amount recovered in excess of the **Insurer's** total payment shall be restored to the **Insured** less the cost to the **Insurer** of such recovery. The **Insurer** agrees not to exercise any such rights of recovery against any **Employee** unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, intentional criminal or malicious act or omission of the **Employee**. In its sole discretion, the **Insurer** may, in writing, waive any of its rights set forth in this subrogation clause.

12.25 TIME-BAR / PRESCRIPTION

No **Claim** shall be payable in the event that an action or suit is not instituted by the **Insured** against the **Insurer** within 12 (twelve) months following the rejection or disclaimer of liability by the **Insurer**.

12.26 UNIFIED INTERPRETATION OF POLICY AND SCHEDULE

The **Policy** and the **Schedule** shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this **Policy** or **Schedule** shall bear such specific meaning wherever it may appear.

13. VALUE-ADDED SERVICES

13.1 LEGAL ASSIST ENDORSEMENT

In consideration of the premium charged and paid and notwithstanding anything to the contrary contained in the policy, it is hereby agreed and noted that as a ITOO Specialist and General Liability policy holder, we will pay on behalf of the Insured various legal services relating to the Insureds business activities. Such services are obtainable by contacting the ITOO Legal Assist line on 0861 102 033; 24 hours a day, 7 days a week.





What You Get

Each policy holder has access to the following as per policy period:

- a) an unlimited 24/7 facility for telephonic advice and assistance.

The following will also be made available if deemed necessary:

- a) a face-to-face Consultation with a qualified attorney;
- b) up to three letters, matter and complexity dependent; and
- c) a follow up consultation.

Exclusions

This endorsement does not cover:

- a) any **Claim, Circumstance** or notification related matter/s that may or may not be covered under this policy;
- b) any advice on how to bring a claim under this **Policy**;
- c) any matters pertaining to any claims repudiated by the ITOO Special Risks (Pty) Ltd;
- d) matters where the policy holder's business does not have an economical or legitimate interest;
- e) any matters related to family law;
- f) any criminal matters;
- g) credit control or debt collection;
- h) issuing and service of a summons and/ or response;
- i) any disputes between the policy holder and ITOO; and
- j) any matter in which ITOO believes the policyholder has been dishonest or unethical.

Nothing in this endorsement shall be construed to increase the **Insurers** limit of liability set forth in the declarations page of such other ITOO Policy.





13.2 BUSINESS IDENTITY THEFT

In the event that an identity theft incident occurs the **Insurer** will indemnify the **Insured** up to a maximum limit of R500 000.00 towards costs to rectify the incident, utilizing the Insurer's Business Identity Theft support risk staff contactable on 011 – 027 2143 from Monday to Friday 08h00 to 16h30.

For the purposes of this **Policy**, an identity theft incident is defined as any incident whereby the **Insured's** identifying data has been utilized to impersonate the business in order to further an identity thief's intents.

Process

If an identity theft incident takes place, the Insured must call the HOLLARD SUPPORT LINE on **011 – 027 2143** in order for a consultant to be appointed.

Once a consultant is appointed, a case will need to be opened at the local police station with the assistance of the support risk staff. The **Insured** will then be required to provide all necessary documentation and assistance within 30 days of contacting the Support Helpline. Identity Theft restitution cover in accordance with this extension is only available if the **Insured** lodges its claim through the above process and in order to obtain the **Insurer's** approval for the costs in rectifying the identity theft incident.

Provided that this extension does not cover liability:

- a) for payments made directly to customers or service providers;
- b) for legal costs and expenses relating to or arising from any proceedings in the High Court of South Africa (including appeals or reviews);
- c) arising out of, based upon or attributable to the theft of pin codes, log in details, account numbers and phishing scams;
- d) arising out of, based upon or attributable to ATM or credit card fraud;
- e) for consequential loss suffered as a result of an identity theft incident;
- f) for loss suffered by or incurred by the directors, officers or Employees of the Insured.

For further information please visit the Identity Theft website www.identityguard.co.za





THE PRIVACY OF YOUR PERSONAL INFORMATION

Garrun CFP (Pty) Ltd and your **Insurers**, care about the privacy, security and online safety of your personal information and we take our responsibility to protect this information very seriously.

Below is a summary of how we deal with your personal information. For a more detailed explanation, please read our official Privacy Notice on our respective websites.

- **Processing of your personal information:** We have to collect and process some of your personal information in order to provide you with our products and services, and also as required by insurance, tax and other legislation.
- **Sharing your personal information:** We will share your personal information with other insurers, industry bodies, credit agencies and service providers. This includes information about your insurance, claims and premium payments. We do this to assess claims, prevent fraud and to conduct surveys.
- **Protecting your personal information:** We take every reasonable precaution to protect your personal information (including information about your activities) from theft, unauthorised access and disruption of services.
- **Receiving marketing from us:** Please contact us if you want to change your marketing preferences. Remember that even if you choose not to receive marketing from us, we will still send you communications about this product.

