



**Camargue**

Specialised Liability Management

## **Camargue Underwriting Managers (Pty) Ltd**

Medical Malpractice, Public Liability, Products Liability and  
Errors and Omissions Insurance for Healthcare Establishments

## **Medical Malpractice, Public Liability, Products Liability and Errors and Omissions Insurance for Healthcare Establishments**

This is a **claims** made aggregate **certificate**  
(with **defence costs** included within the **limit of indemnity**)

Please note that certain words shown in bold lower case in this **certificate** (other than when shown in the **schedule**) carry a specific meaning.

These can be found under the heading of DEFINED WORDS on page 13

### **INSURING CLAUSE**

- 1) Whereas the **insured**, as defined herein has made to the **underwriter** a written **proposal** or declaration bearing the date stated in the **schedule**, a copy of which is attached containing particulars and statements which are hereby agreed to be the basis of this **certificate** and are to be considered as incorporated herein, and the premium (as stated in the **schedule**) being received by the **underwriter**,
- 2) we, the **underwriter**, to the extent and in the manner hereinafter provided, and subject to the terms and conditions of this **certificate** and conditional upon payment of the premium by the **insured** and the receipt thereof by or on behalf of the **underwriter**, hereby agree to indemnify the **insured** for **claims** first made against the **insured** during the **period of this insurance** arising out of the performance of their **business/profession**, against all sums which the **insured** shall become legally liable to pay as damages in accordance with the law and procedure applicable in the Republic of South Africa, but not in respect of any judgement award or settlement made within countries which operate under the laws of the United States of America, its possessions or territories, and Canada (or any order made anywhere in the world to enforce such judgement, award or settlement either whole or in part), unless the **insured** has requested there shall be no such limitation and has accepted the terms offered by the **underwriter** in granting such cover, which offer and acceptance must be signified by specific **endorsement** (including any reinstatement provision) to this **certificate**, under each of the following Sections, but only in respect of those Sections stated in the **schedule**.

## **SECTION 1 – Medical Malpractice (if included in the schedule to the certificate)**

### **Operative Clause**

The **underwriter(s)** will, subject to the terms, conditions, extensions, exclusions and **endorsements** contained in this **certificate**, indemnify the **insured** up to the **limit(s) of indemnity** stated in the **schedule** inclusive of **defence costs**, in respect of:

any **injury**, to any patient caused by any negligent act, negligent error or negligent omission committed by the **insured** or about the conduct of the **insured's** occupation or **business** as stated in the **schedule**, or **good samaritan acts**, (hereinafter referred to as “**medical malpractice**”)

### **Exclusions to Section 1**

The **underwriter** shall not be liable to indemnify the **insured** in terms of this Section in respect of **claims** for and/or arising out of:

- 1) **medical malpractice** committed by any Medical Practitioners in their professional capacities as such, for which such Medical Practitioners would be entitled to indemnity under any other insurance policy, or where they would be entitled to assistance from the Medical Defence Union, Medical Protection Society, or any similar entity;
- 2) **medical malpractice** committed by any Obstetricians, Neuro-Surgeons, Gynaecologists, Plastic Surgeons, Anaesthetists and Orthopaedists.

## **SECTION 2 – Public Liability (if included in the schedule to the certificate)**

### **Operative Clause**

The **underwriter(s)** will, subject to the terms, conditions, extensions, exclusions and **endorsements** contained in this **certificate**, indemnify the **insured** up to the **limit(s) of indemnity** stated in the **schedule** inclusive of **defence costs**, in respect of:

1) All sums that the **insured** shall become legally liable to pay as damages for:

- a) **injury**, including injury following the provision of food and drink; and / or
- b) **property damage**

occurring during the **period of insurance**, within the **territorial limits**, in connection with the occupation or **business**. The **limit(s) of indemnity** stated in the **schedule** include:

2) Claimant's costs and expenses in connection with the Operative Clause of this Section.

Provided always that in respect of all **occurrences** during any **period of insurance**, the total amount payable by the **underwriter**, in respect of the Operative Clause of this Section (including all extensions and memoranda), shall not exceed the **limit(s) of indemnity** stated in the **schedule**, which shall be the total amount of all **claims** during the **period of insurance**.

## **SECTION 3 – Products Liability (if included in the schedule to the certificate)**

### **Operative Clause**

The **underwriter(s)** will, subject to the terms, conditions, extensions, exclusions and **endorsements** contained in this **certificate**, indemnify the **insured** up to the **limit(s) of indemnity** stated in the **schedule** inclusive of **defence costs**, in respect of:

1) All sums that the **insured** shall become legally liable to pay as damages for:

- a) **injury**; and / or
- b) **property damage**

occurring during the **period of insurance**, within the **territorial limits**, in connection with the occupation or **business**, and caused by **products**. The **limit(s) of indemnity** stated in the **schedule** include:

2) Claimant's costs and expenses in connection with the Operative Clause of this Section.

Provided always that in respect of all **occurrences** during any **period of insurance**, the total amount payable by the **underwriter**, in respect of the Operative Clause of this Section (including all extensions and memoranda), shall not exceed the **limit(s) of indemnity** stated in the **schedule**, which shall be the total amount of all **claims** during the **period of insurance**.

### **Exclusions to Section 3**

The indemnity provided by Section 3 of this **certificate** will not apply to or include any legal liability

- 1) Arising out of any **products** or services directly affecting the integrity of the structure navigation or propulsion of any aircraft or aerospace device where such **products** or services are knowingly supplied by the **insured** for this purpose
- 2) In respect of recalling removing repairing replacing reinstating or the cost of a reduction in value of any **products** arising as a result of any defect therein or the unsuitability thereof for its intended purpose
- 3) Arising from or in connection with any **products** where such legal liability has been accepted by agreement by or on behalf of the **insured** except to the extent that such liability would have attached in the absence of such agreement
- 4) In respect of loss of or damage to any **products** caused by any defect therein or the unsuitability thereof for its intended purpose

**SECTION 4 – Errors and Omissions (if included in the schedule to the certificate)**

**Operative Clause**

The **underwriter(s)** will, subject to the terms, conditions, extensions, exclusions and **endorsements** contained in this **certificate**, indemnify the **insured** up to the **limit(s) of indemnity** stated in the **schedule** inclusive of **defence costs**, in respect of **financial loss** to third parties.

## EXTENSIONS TO SECTIONS 1, 2, 3 and 4

In addition, the **underwriter** will also pay all **defence costs** incurred with the **underwriter's** prior written consent, such consent not being unreasonably withheld, in connection with any **claim** which falls within this **certificate**, provided always that the total amount payable in respect of damages and **defence costs** shall not exceed the **limit(s) of indemnity** as stated in the **schedule**.

It is further provided that the **underwriter** shall not be obligated to pay any **claim**, judgment, award, **defence costs**, or to undertake or continue the defence of any suit or proceeding after the **limit(s) of indemnity** have been exhausted by payment or agreement to pay any **claim**, judgement, award, settlement and **defence costs**, or after deposit of the applicable **limit(s) of indemnity** in a court of competent jurisdiction, and that in such a case the **underwriter** shall have the right to withdraw from the further defence thereof by tendering control of said defence to the **insured**, subject however to any reinstatement conditions which may be endorsed to this **certificate**.

### Provided always that:

- a) Such **medical malpractice**, public liability, **products** liability, or errors and omissions results in a **claim** being first made against the **insured** during the **period of insurance** as stated in the **schedule** and of which notice has been given in accordance with GENERAL CONDITION 2.
- b)
  - i) There shall be no indemnity hereunder for any **claim** made against the **insured** under SECTION 1 Medical Malpractice committed prior to the **retroactive date** specified in the **schedule**
  - ii) There shall be no indemnity hereunder for any **claim** made against the **insured** under SECTION 2 – Public Liability, or separate allegations arising out of the same event, which happened prior to the **retroactive date** specified in the **schedule**
  - iii) There shall be no indemnity hereunder for any **claim** made against the **insured** for SECTION 3 – Products Liability committed prior to the **retroactive date** specified in the **schedule**
  - iv) There shall be no indemnity hereunder for any claim made against the **insured** under SECTION 4 – Errors and Omissions committed prior to the **retroactive date** specified in the **schedule**

For the purpose of determining the **limit(s) of indemnity** and **deductible** applicable, any **claim** which is based upon combined allegations of **medical malpractice**, public liability, **products** liability and/or errors and omissions, or separate allegations arising out of the same event, shall, be dealt with as though it were a **claim** arising out of **medical malpractice** as insured under Section 1 and is limited to the **limit of indemnity** stated in the **schedule**, but always subject to the Exclusions stated within individual Sections and this **certificate's** GENERAL EXCLUSIONS.

## GENERAL DEFINITIONS

A defined word, term or phrase will be shown in bold each time it appears in the **certificate**.

Each time one of the following defined words, terms or phrases is used, it will have the same meaning wherever it appears in the **certificate** whether expressed in the singular or the plural, male female or neutral.

### 1) ZAR

ZAR shall mean South African Rand the lawful currency of the Republic of South Africa.

### 2) Abuse or harassment

Any abuse or harassment to any person, of whatsoever nature, including but not limited to sexual, racial or discriminatory, abuse or harassment, causing:

- a) **injury**; or
- b) mental injury, distress or anguish,

caused by

- i) actual bodily contact; or
- ii) inference, written material or spoken word,

### 3) Airside liability

Liability in connection with any area of airport premises which has restricted rights of access, including manoeuvring areas, aprons, taxiways, runways and service roads, which are directly associated therewith.

### 4) Business

The business of the **insured** as advised to the **underwriter** at the inception of this **certificate** and prior to any subsequent renewal which shall include

- a) engagement of subcontractors for performance of work on behalf of the **insured**
- b) Organisation of and participation in exhibitions trade fairs conferences and the like
- c) Acting as property owners lessors and lessees including repair refurbishment and maintenance of such property
- d) Provision and management for the benefit of any **employee** of canteen social sports welfare medical facilities fire first aid rescue and ambulance services
- e) Provision for the benefit of any **employee** of nursery crèche or baby care facilities
- f) Private work undertaken by any **employee** for any director or partner or executive of the **insured**
- g) The organisation or sponsorship of charitable events or similar fund raising activities



- h) Sponsorship of events organisations entities and individuals
- i) Sale or disposal of own property and goods excluding owned mechanically propelled vehicles
- j) Provision of gifts and promotional material incidental to the business

#### 5) Certificate

- a) All terms, conditions, exclusions, extensions and the **schedule** all whether general or Section specific comprising this document; and
- b) All other **schedules**, notices, appendices, subjectivity notices and other documents agreed by the **underwriter** and the **insured** attaching from time to time; and
- c) All **endorsements** for incorporation in this document
- d) All of which shall be read together and constitute the contract of insurance between the **insured** and the **underwriter**.

#### 6) Claim

- a) The expression "claim" shall mean any event or series of events arising from one originating cause and for which the **insured** is required to give notice to the **underwriter** in accordance with GENERAL CONDITION 2.
- b) The receipt by the **insured** of any written or verbal notice of demand for compensation made by a third party against the **insured**;
- c) Any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **insured**;
- d) Communication invoking any pre-action protocol;
- e) Any notice of intention, whether orally or in writing, to commence legal proceedings against the **insured**.

#### 7) Computer virus(es)

A set of corrupting harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code programmatic or otherwise that propagate themselves through a computer system or network of whatsoever nature. Computer virus includes but it is not limited to 'Trojan Horses' 'worms' and 'time or logic bombs'

## 8) Deductible

The amount which the **insured** agrees to pay before which the **underwriter** shall be liable to make any payment under this **certificate** and such amount shall be inclusive of all costs and expenses as specified in the **certificate** and/or Operative Clauses.

The full **limit(s) of indemnity** as stated in the **schedule** will apply over and above the deductible subject otherwise and always to the **certificate** terms conditions and exclusions stated herein.

## 9) Defence costs

Shall mean all costs, fees and expenses (including representation at coroner's inquest) incurred in the defence or settlement of any **claim**.

## 10) Electronic data

Facts concepts and information converted to a form useable for communications interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

## 11) Employee

- a) Any person under a contract of service or apprenticeship with the **insured**
- b) Any labour master or labour only sub-contractor or persons supplied by them whilst under the direct control and supervision of the **insured**
- c) Self-employed persons engaged by the **insured**
- d) Persons engaged by the **insured** under work experience training study or similar schemes
- e) Any person hired to borrowed by or supplied to the **insured** from any other employer
- f) Persons on secondment to the **insured** from the **insured's** parent subsidiary or associated companies outside the Republic of South Africa
- g) Voluntary workers for the **insured**
- h) Outworkers and home workers for the **insured**
- i) Any prospective employee who is being assessed by the **insured** as to his or her suitability for employment
- j) Any person determined to be an employee by a Court situated in the Republic of South Africa

## 12) Endorsement(s)

Any written amendment(s) attaching to and forming part of this **certificate**.

### 13) Financial loss

Financial loss to third parties caused by any negligent act, negligent error or omission committed by the **insured** in or about the conduct of their occupation or **business** as stated in the **schedule** and arising directly or indirectly out of a breach of duty owed to a patient.

### 14) Good samaritan act(s)

Any treatment administered by the **insured** within the accepted skills of the **insured** at the scene of a medical emergency, accident or disaster whether by chance or in response to a call for emergency assistance following a disaster.

### 15) Injury

Bodily injury, death, disease and illness which shall include psychiatric illness but excludes false arrest, false detention, false imprisonment wrongful eviction, kidnap/abduction.

### 16) Insured

- a) The named insured in the **schedule** to this **certificate**;
- b) Any **employee** or other party for whom the insured is responsible, but only in respect of work performed by the **employee** or other party on behalf of the insured;
- c) The personal representatives of the estate of any person who would otherwise be indemnified under this **certificate**

Indemnity shall also be provided to the following parties but only at the request of the insured

- d) Any director or partner of the insured other than any doctor surgeon consultant midwife or dentist while working in a professional capacity
- e) Any **employee** other than any doctor surgeon consultant midwife or dentist while working in a professional capacity
- f) The officers members committee and voluntary helpers of the insured's canteen and welfare organisations in their respective capacities as such
- g) The officers and members of the insured's security rescue first aid fire and ambulance services in their respective capacities as such
- h) The officers members committee voluntary helpers and guests of the insured's sports and social organisations in their respective capacities as such
- i) The officers or members of the insured's medical organisation other than any doctor surgeon consultant midwife or dentist while working in a professional capacity

Provided always that such parties requiring indemnity shall observe fulfil and be subject to the terms conditions and exclusions of this **certificate**.

## 17) Limit(s) of indemnity

The amount(s) stated in the **schedule**, extension of cover, condition or Section of this **certificate** being the total amount payable by the **underwriter** in respect of any one **occurrence**, irrespective of the number of **claims**, but in the aggregate during the **period of insurance**, when shown as such in the **schedule**, extension of cover, condition, endorsement(s) or Section of this **certificate**.

If the Limit of Indemnity is increased during a period of insurance then the lower Limit of Indemnity shall apply to all claims made or circumstances notified or required to have been notified to the Insurers prior to such increase in the Limit of Indemnity. Unless otherwise stated the **retroactive date** for new Limit of Indemnity shall be the effective date thereof.

## 18) Medical Malpractice

Any injury to any patient caused by any negligent act, negligent error or negligent omission committed by the **insured** on about the conduct of the **insured's** occupation or **business** as stated in the **schedule**, or **good samaritan act(s)**,

## 19) Occurrence

Occurrence shall mean an event including continuous or repeated injurious exposure to the same conditions during the **period of insurance** which results in **injury** or **property damage**.

## 20) Offshore

From the time of embarkation onshore onto a conveyance at the point of final departure to an offshore rig, offshore platform, or support or accommodation vessel, until disembarkation onshore from such offshore rig, offshore platform or support or accommodation vessel.

## 21) Period of insurance

The period stated in the **schedule**.

## 22) Permanently implantable device(s) and/or product(s)

Any medical device or product(s) which are intended to be totally or partially introduced, surgically or medically, into the human body and which are intended to remain after the procedure for a period greater than 12 months.

## 23) Pollution

Discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste into or upon land, or any structure on land, the atmosphere or any ground water, surface water or coastal waters.

## 24) Pollution incident

A sudden, identifiable, unexpected and unintended **pollution** that takes place in its entirety at a specific time and place during the **period of insurance**.

## 25) Principal

Any party other than a director partner or **employee** of the **insured** with whom the **insured** has entered into a contract in the course of the **business**.

## 26) Products

Goods or **products** (after they have ceased to be in the possession or under the control of the **insured**) manufactured constructed altered repaired serviced treated sold supplied or distributed by the **insured** (including containers labelling or instructions for use provided in connection therewith) and including any structure constructed erected or installed or any contract works executed by or on behalf of the **insured** in the course of the **business**.

## 27) Property damage

Direct physical loss of or direct physical damage to material property.

## 28) Proposal

Any information provided by the **insured** or the **insured's** broker or agent on behalf of the **insured** in connection with this insurance.

## 29) Retroactive date(s)

Retroactive date(s) means the date stated in the schedule.

## 30) Schedule

The schedule of insurance attaching to and forming part of this **certificate** together with any renewal schedule.

## 31) Territorial limits

Sections 1 and 2 – Medical Malpractice and Public Liability - Worldwide excluding USA and Canada

Section 3 – Products Liability - Worldwide excluding USA and Canada

Section 4 - Errors and Omissions - Worldwide excluding USA and Canada

## 32) Terrorism

An act including but not limited to the use of force or violence and or the threat thereof of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) committed for political religious ideological or similar purposes including the intention to influence any government and or to put the public or any section of the public in fear.

## 33) Underwriter

Underwriter means the party specified as underwriter in the **schedule** and any other subscribing underwriters.

## GENERAL EXCLUSIONS

The **underwriter** shall not be liable for:

- 1) Any **claim** arising under any Section of this certificate occurring prior to the inception date of this **certificate** if the **insured** on such date knew or could have reasonably foreseen that circumstances existed that might be expected to be the basis of a **claim**.
- 2) Any **claim** arising from any circumstance or **occurrence**, which has been notified to any medical defence organisation and/or insurer prior to the inception of this **certificate**.
- 3) Any **claim** which is the subject of insurance indemnity or assistance provided by any medical defence organisation. This **certificate** shall not be drawn into contribution thereto.
- 4) Any **claim** arising out of a specific liability assumed by the **insured** under contract which goes beyond the duty to use such skill and care as is usual in the exercise of the **insured's** activities stated in the **proposal** form unless the **underwriter's** prior agreement has been obtained and such specific liability is endorsed upon this **certificate** with the acceptance of such other terms and conditions as may be imposed.
- 5) Any **claim** arising out of the manufacture of any **products**, or the construction, alteration, repair, repackaging, servicing, or treating of any **products** sold, supplied or distributed by the **insured**, or any **claim** arising out of the failure of any **product** to fulfil the purpose for which it was designed, or to perform as specified, warranted or guaranteed. This exclusion however does not apply to the compounding, manipulation, preparation or packaging of any medicine undertaken in terms of the scope of practice as defined in the Act(s) covering the dispensing of medications by doctors or pharmacists, if licensed to do so. Nor does this exclusion apply to non-permanently invasive implantable **products**, medical **products** sold, supplied, or distributed but not manufactured by the **insured**.
- 6) Any **claim** made against any director or officer or **employee** of the **insured**, arising from any unlawful or negligent act, negligent error or negligent omission, actual or alleged breach of trust, breach of warranty or authority or breach of duty committed or attempted by such director or officer or **employee** where such **claim** is made solely by reason of his holding the position of director or officer or **employee** of any company and having acted in that capacity.
- 7) Any **claim** by any person for **injury**, contracted or occurring while under a contract of service or apprenticeship with the **insured**, or for any breach of any obligation owed by the **insured** as an employer to any **employee**, or any **claim** in respect of which compensation is available under any workers' compensation scheme and or similar legislation. However, this exclusion shall not apply to any claim arising out of any **injury**, to an **employee**, which is caused, by any negligent act, negligent error or negligent omission of an **insured**, where the **employee** is a patient of the **insured**.

- 8) Any errors and omissions **claims** arising from any professional services rendered which are not in the conduct of the **insured's business** or occupation as a provider of healthcare services, unless stated in the **schedule**.
- 9) Any errors and omissions **claims** arising from or brought against the **insured** by a company in which the **insured** has a controlling interest unless the original **claim** emanates from an independent third party.
- 10) Any cross liabilities which shall be deemed to mean **claims** made against an **insured** party by any other **insured** party.
- 11) Any **claims** arising out of or directly from the insolvency, bankruptcy or judicial management of the **insured**.
- 12) Any **claim** arising out of the infringement of copyright, registered designs, trademarks or passing off or any infringement of any data protection act.
- 13) Any **claim** directly or indirectly caused by or contributed to by:
  - a) any act in violation of any law or ordinance
  - b) any dishonest, fraudulent or criminal act of the **insured**
  - c) 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.
- 14) Any **claim** directly or indirectly caused by, or contributed to by, or arising from ionising radiation(s) or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 15) Any loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
  - a) war, invasion, acts of foreign enemies, hostilities or war like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  - b) any act of **terrorism**.

For the purpose of this exclusion, it also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

If the **underwriter** allege that by reason of this exclusion, any loss, damage, cost or expenses is not covered by this insurance the burden of proving the contrary shall be upon the **insured**.

In the event that any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- 16) Any **claim** arising from the ownership, profession or use by or on behalf of the **insured** of any motor vehicle or trailer for which compulsory insurance is required by law, other than **claims** arising from damage to any motor vehicle or trailer in the **insured's** custody or control for the purpose of parking.
- 17) Any **claim** arising from the ownership, possession or use by or on behalf of the **insured** of any aircraft, watercraft, hovercraft, unmanned aerial vehicle or drone, other than **malpractice** arising from emergency transportation of any patient accompanied by the **insured**.
- 18) Any **claim** arising from **airside liability** other than **malpractice** arising from emergency transportation of any patient accompanied by the **insured**.
- 19) Any **claim** arising from damage to property owned, leased or under hire purchase or on loan to the **insured** or otherwise in the **insured's** care, custody or control other than clothing or personal effects, except where such clothing or personal effects have been left unattended.
- 20) Any **claim** arising directly or indirectly out of asbestosis or silicosis or other fibrosis of the lungs or any other illness or disease related to infection of the respiratory system following continuous or continual inhalation or ingestion of any substance.
- 21) Any **claim** arising from:
  - i) legal liability for **injury** or **property damage** arising from **pollution**, but this Exclusion shall not apply to a **pollution incident**.
  - ii) the cost of removing, nullifying or cleaning-up seeping, polluting or contamination substances.
- 22) Any fines, penalties, punitive or exemplary damages.
- 23) The **deductible** stated in the **schedule**, except that this exclusion shall not apply in respect of **defence costs** incurred with **underwriter's** prior written consent.
- 24) Any blood bank or blood transfusion services.
- 25) Any liability directly or indirectly caused by/or contributed to by or arising from genetic engineering
- 26) Clinical trials.



- 27) For any act giving rise to a **claim** or series of related **claims** relating to a past, present or prospective **employee** of the **insured** and arising out of any actual or alleged unfair or wrongful dismissal, discharge or termination, either actual or constructive, of employment, employment-related misrepresentation, wrongful failure to employ or promote, wrongful deprivation of career opportunities, wrongful discipline; failure to furnish accurate job references; failure to grant tenure or negligent **employee** evaluation; or sexual or workplace or racial or disability harassment of any kind (including the alleged creation of a harassing workplace environment); or unlawful discrimination, whether direct, indirect, intentional or unintentional, or failure to provide adequate **employee** policies and procedures.
- 28) Any **claim** arising out of the loss, damage, destruction, distortion, erasure, corruption or alteration of **electronic data** from any cause whatsoever including but not limited to **computer virus(es)** or loss of use reduction in functionality cost expense of whatsoever nature resulting therefrom regardless of any other cause or event contributing concurrently or in any other sequence to the loss
- 29) Any **claim** arising out of or in connection with activities **offshore**.
- 30) Any **claim**, circumstance, incident or loss arising out of or in connection with any **permanently implantable device(s)/product(s)**, sold, supplied, manufactured, constructed, altered, repaired, repackaged, serviced, treated or distributed by the **insured**.
- 31) Any **claim**, circumstance, incident or liability arising out of **abuse or harassment**.
- 32) any **claim** arising from birthing, obstetrics, and maternity.

*Definition:* the definition of "**maternity/obstetric**" includes any **claim** which relates directly or indirectly to the medical care of pregnancy, new born children, childbirth or the care of the mother after birth, together with any treatment which is incidental to or as a consequence of such treatment.

The definition also includes, but is it not limited to, ante-natal care or treatment (including radiology and pathology), birth by any delivery method, midwifery, neonatal treatment including subsequent treatment in a care unit or similar unit. The definition applies to treatment or care given to mother and/or baby and extends to include **claims** by family or dependants.

- 33) Notwithstanding anything to the contrary in the **certificate** the following condition shall apply:
- a) If, by virtue of any law or regulation which is applicable at the inception of this **certificate** or which becomes applicable at any time thereafter, providing coverage to the **insured** and/or paying a **claim** and/or providing a benefit under the **certificate** directly or indirectly breaches an embargo or sanction, the **underwriter** shall not indemnify nor make any payment or provide any economic benefit to the **insured** or to any other party under this **certificate** to the extent that it would be in breach of such law or regulation.

- b) Circumstances where payment or provision of a valid and otherwise collectable **claim** or benefit may directly or indirectly breach an embargo or sanction, then the **insurer** will take all reasonable measures to obtain necessary authorisation to make such payment or provision.

## GENERAL CONDITIONS

General conditions **1, 2, 3, 4** and **5** are conditions precedent to the right of the **insured** to be defended or indemnified under this insurance.

It is understood and agreed that:

### 1) Truthful statements and advising alterations

- a) all statements, particulars and documents referred to or contained in the **proposal** hereto are true; and
- b) during the **period of insurance**, the **insured** shall give as soon as practicable, notice in writing of any alteration, which materially affects the risk.

### 2) Claim material details

during the **period of insurance** the **insured** shall give immediate notice in writing to the **underwriter** via the broker or agent named herein of:

- a) every letter of **claim** writ summons or process for **malpractice** or alleged **malpractice** against the **insured**; or
- b) every letter of **claim** writ summons or process for public liability or alleged public liability against the **insured**; or
- c) every letter of **claim** writ summons or process for **products** liability or alleged **products** liability against the **insured**; or
- d) every letter of **claim** writ summons or process for errors and omissions or alleged errors and omissions against the **insured**; or
- e) the receipt of notice from any person of an intention to hold the **insured** responsible for any **malpractice** or public liability or **products** liability or errors and omissions; or
- f) any conduct or circumstance which is likely to give rise to a **claim** for **malpractice** or public liability or **products** liability or errors and omissions being made against the **insured**; or
- g) The receipt of notice from any person of an intention to hold any **employee** or other person performing work on behalf of the **insured** responsible for any **malpractice** or public liability or **products** liability or errors and omissions; or
- h) Any conduct or circumstance by any **employee** or other person performing work on behalf of the **insured** which is likely to give rise to a **claim** for **malpractice** or public liability or **products** liability or errors and omissions being made against the **insured**; or
- i) Any knowledge the **insured** has that materials, goods, services or actions specified designed or recommended by the **insured** or by a party for whom and

for which the **insured** is responsible have failed to meet the standard required and which might give rise to a **claim** against the **insured** which (regardless of the **deductible**) may be the subject of indemnity under this **certificate**.

If the **insured** gives notice as required by e) or f), any **claim** subsequently made against the **insured** shall be deemed to have been made during the **period of insurance**.

### 3) Maintenance of accurate records

The **insured** shall at all times:

- a) maintain accurate descriptive records of all professional services and equipment used in procedures which shall be available for inspection and use by the **underwriter** or their duly appointed representatives in so far as they pertain to any **claim** hereunder.
- b) retain the records referred to in 3) a) above for a period of at least ten (10) years from the date of treatment and, in the case of a minor for a period of at least ten (10) years after that minor attains majority, and
- c) give to the **underwriter** or their duly appointed representatives such information, assistance, signed statements or depositions as the **underwriter** may require; and
- d) assist in the defence and investigation of any **claim** or potential **claim** without charge to the **underwriter**.

### 4) Non-Disclosure of insurance

The **insured** shall not disclose to any person the terms of this **certificate**, no liability shall be admitted, no arrangement, offer, promise, or payment, shall be made or cost or expense incurred by the **insured** without the prior written consent of the **underwriter**. The **underwriter** shall be entitled to take control of the defence of any **claim** or to prosecute in the name of the **insured** for their own benefit any **claim** for indemnity or damages or otherwise against any third party and shall have full discretion in the conduct of any negotiations or proceedings on the settlement of any **claim**. The **underwriter** will not settle any **claim** without the consent of the **insured**. However, if the **insured** refuses to consent to any settlement recommended by the **underwriter** or their legal representatives and elects to contest or continue any legal proceedings then the liability of the **underwriter** shall not exceed the amount for which the **claim** could have been so settled plus the costs and expenses incurred with their written consent up to the date of such refusal, which in any event will not exceed the **limit(s) of indemnity** as specified in the **schedule** and the **insured** agrees to indemnify the **underwriter** for the amount of any judgement, award, settlement and **defence costs** which the **underwriter** is found obligated to pay after the date of such refusal.

## 5) Practitioners Registration and Insurance

It is a condition precedent to the right of the **insured** to be defended or indemnified under this **certificate** that the **insured** shall ensure and warrant that throughout the **period of insurance**:

- a) all Medical Practitioners maintain a license approved by the Government Medical and Health Department or other applicable licensing and registration body and
- b) such Practitioners maintain membership of a Medical Defence Organisation and that the category of such membership is applicable to all services offered or provided to the **insured** or
- c) are otherwise fully insured for their own Malpractice, professional errors, omissions or negligence.

## 6) Cancellation of Insurance

The **underwriter** may cancel this insurance in the event of non-payment of premium by giving thirty (30) calendar days' notice. Such notice shall be given in writing and may be served by registered mail, telex, facsimile transmission, or email, or may be hand delivered to the address of the **insured** stated in the **schedule**. Any notice sent by registered mail shall be deemed to have been served seven (7) calendar days after dispatch and any notice sent by telex, facsimile or email shall be deemed to have been served at the time of despatch. If this insurance is so cancelled the **underwriter** shall retain only the earned portion of the premium computed from day to day.

## 7) Claim jurisdiction

Any dispute concerning the interpretation of the terms, conditions, limitations and/or exclusions contained herein understood and agreed by both the **insured** and the **underwriter** to be subject to the laws of the Republic of South Africa. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within the Republic of South Africa and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the laws and practice of such court.

## GENERAL EXTENSIONS

### 1) Defence Costs - Criminal

It is hereby understood and agreed that this **certificate** is extended to indemnify the **insured** for all legal costs and expenses incurred with the **underwriter's** prior written consent, such consent not being unreasonably withheld in the defence of criminal proceedings brought against the **insured** where the conduct giving rise to such proceedings is alleged to have occurred during a consultation with or treatment of a patient.

Provided always that:

- a) Notification of the circumstances giving rise to the criminal proceedings has been given in accordance with GENERAL CONDITION 2;
- b) For the purposes of insurance, the criminal proceedings shall be deemed to be a **claim**;
- c) There shall be no cover hereunder for proceedings commenced prior to inception of this **certificate** or arising from circumstances which on or before inception, the **insured** was aware (or should reasonably have been aware) might give rise to proceedings.
- d) "**Proceedings**" includes an appeal against the outcome of any initial proceedings;
- e) The **underwriter** shall not be liable hereunder for the payment of any fines, penalties, vindictive, punitive or exemplary damages;
- f) The total amount payable in respect of defence costs for both Criminal Defence Costs or Inquiry Defence Costs (as provided under GENERAL EXTENSION 2 below) combined shall not in total exceed 10% of the **limit of indemnity** or the separate **limit of indemnity** stated in the **schedule**, whichever is the lesser.

### 2) Inquiry Defence Costs – Disciplinary and Coroner's Inquest

It hereby understood and agreed that this **certificate** is extended to indemnify the **insured** against all legal costs and expenses incurred with the **underwriter's** prior written consent, such consent not being unreasonably withheld, in connection with any legal representation of the **insured** at any duly constituted professional disciplinary tribunal or inquiry or coroner's inquest (hereafter referred to as the inquiry) relating to any matter which may form the subject of a **claim** which falls within this **certificate**, provided always that the total amount payable in respect of such costs and expenses shall not exceed the **limit of indemnity** for disciplinary hearing costs, which is to be capped at ten percent (10%) of the **limit of indemnity** or as stated in the **schedule**.

Provided always that:

- a) the circumstances giving rise to the inquiry could also give rise to civil proceedings and that in the event of such civil proceedings, but for

GENERAL EXCLUSION 13), the **insured** would be entitled to indemnity under this insurance;

- b) notification of the circumstances giving rise to the inquiry has been given in accordance with GENERAL CONDITION 2;
- c) for the purposes of this insurance, the inquiry shall be deemed to be a **claim**
- d) there shall be no cover hereunder for an inquiry commenced prior to inception of this **certificate** or arising from circumstances which on or before inception, the **insured** was aware (or should reasonably have been aware) might give rise to a professional disciplinary tribunal, inquiry or coroner's inquest;
- e) "**Inquiry**" includes an appeal against the outcome of any initial inquiry, hearing or proceedings;
- f) the **underwriter** shall not be liable hereunder for payment of any fines, penalties, vindictive, punitive or exemplary damages;
- g) the total amount payable in respect of such costs shall be dealt with in accordance with Proviso f) of Extension 1) above – Defence Costs – Criminal.

Notwithstanding the foregoing, disciplinary hearing costs with respect to a breach of the Health Professions Act no. 56 of 1974 as amended from time to time or any other statute governing the professional activities of a healthcare worker as well as any ethical codes, shall be deemed to be covered herein.

### 3) Defamation

Notwithstanding GENERAL EXCLUSION 31), it is hereby understood and agreed that this **certificate** is extended to indemnify the **insured** for **claims** made against the **insured** for defamation committed without malice by reason of words written or uttered by the **insured** in or about the conduct of their occupation or **business** as stated in the **schedule**.

It is a condition precedent to the right of the **insured** to be defended or indemnified hereunder that in the event of a **claim** the **insured** shall, upon reasonable request of the **underwriter**, issue an apology and expression of regret, the form and content of which are to be approved by the **underwriter**. If on receipt of such a request from the **underwriter** the **insured** refuses to such an apology and expression of regret, the **underwriter** shall not be liable to defend or indemnify the **insured** in respect of any damages, costs and/or expenses incurred after the date of such refusal.

The **underwriter** shall not be liable for:

- a) any **claims** arising from the contents of any journal or publication, or communication or contribution to the press or media;
- b) any **claims** arising from defamation committed or alleged to have been committed against professional adversaries or business competitors;
- c) any fines, penalties, punitive or exemplary damages;

- d) any **claims** arising from any infringement of any data protection act
- e) molestation or any form of physical abuse including, but not limited to sexual abuse whether or not including physical contact of any kind.

#### 4) Loss of documents

It is hereby understood and agreed that if during the **period of insurance** the **insured** shall discover that any documents, the property of or entrusted to the **insured** and which should be in the custody of the **insured** have been destroyed, irrecoverably damaged, lost or stolen, and after diligent search cannot be found, the **underwriter** will indemnify the **insured**:

- a) for all sums which the **insured** will become legally liable to pay as damages in consequence of such documents having been so destroyed, irrecoverably damaged, lost or stolen, and
- b) for all costs and expenses incurred by the **insured** in replacing or restoring such documents. However, any **claim** for costs and expenses shall be supported by bills or accounts, which shall be subject to approval by the **underwriter** or their duly appointed representatives.

The expression "**documents**" shall be deemed to mean deeds, wills, maps, plans, records, books, letters, certificates, forms and documents of any nature whether written, printed or reproduced by any other method (other than bearer bonds, coupons, tickets, bank notes, currency notes, negotiable instruments, computer systems records and, in respect of 1. above, medical records)

The **underwriter** shall not be liable for:

- i) any **claim** arising out of any infringement of any data protection act
- ii) any **claim** arising from libel and/or slander
- iii) any **claim** arising from breach of confidentiality.

#### 5) Breach of Professional Confidentiality

It is hereby understood and agreed that this **certificate** is extended to indemnify the **insured** for **claims** made against the **insured** during the **period of insurance** stated in the **schedule** arising from any breach of professional confidentiality in or about the conduct of their occupation or **business** as stated in the **schedule**.

Provided always that the **underwriter** shall **not** be liable under this extension for:

- a) any **claims** arising from libel or slander.
- b) any **claims** arising from the loss of any documents, the property of or entrusted to the **insured**, or the costs and expenses incurred by the **insured** in replacing or restoring such documents.
- c) any **claims** arising from any infringement of any data protection act.



## 6) Dishonesty of employees

It is hereby understood and agreed that this **certificate** is extended to indemnify the **insured** for **claims** arising out of financial loss to third parties caused by dishonest fraudulent or criminal acts of **employees** of the **insured** in or about the conduct of the **insured's** occupation or **business** as stated in the **schedule** and for which the **insured** shall become legally liable.

Provided always that the **underwriter** shall not be liable under this extension for:

- a) any **claims** arising from any professional service rendered which is not in the conduct of the **insured's** **business** or occupation stated in the **schedule**;
- b) any **claims** made against any person who has been or may become during the period specified in the **schedule**, a **principal**, partner, director, member of any ethics committee, **employee** or volunteer of the insured named in the **schedule** in respect of **claims** arising from work undertaken that is not on behalf of the **insured**;
- c) any **claims** made by any company in which the **insured** has a controlling interest unless the original **claim** emanates from an independent third party;
- d) cross liabilities which shall be deemed to mean **claims** made against any **insured** party by any other **insured** party;
- e) any **claims** arising out of or relating directly or indirectly from the insolvency or bankruptcy of the **insured** or a company that the **insured** has a controlling interest;
- f) any **claims** brought about or contributed by the **insured(s)**;
- g) any **claims** arising out of infringement of copyright, registered designs, trademarks or passing off or any infringement of any data protection act;
- h) any **claims** directly or indirectly caused by loss of documents, breach of confidentiality, libel, slander or defamation.

It is a condition precedent to the right of the **insured** to be defended or indemnified hereunder that the **insured** shall during the **period of insurance** give immediate notice in writing of the discovery of reasonable cause for suspicion of fraud or dishonesty on the part of their **employees**, whether giving rise to a **claim** under this extension or not, and the **underwriter** shall not be liable for any **claims** arising from any loss sustained resulting from any act committed after the date of such discovery on the part of the **employee** or **employees** concerned.

## 7) Extension 1 to 6 - Total Aggregate Limit of Indemnity

It is noted and agreed that in respect of Extensions 1 to 6, the total **limit of indemnity** is as stated in the **schedule** or 10% of the underlying aggregate **limit of indemnity** whichever is the lesser and not in addition to the **limit of indemnity** stated in the **schedule**.

## 8) Jurisdiction

Notwithstanding the terms contained within the insuring clause of this **certificate**, it is further understood and agreed that the **insured** will only be defended or indemnified under this **certificate** for **claims** made in the following country or countries:

1. The Republic of South Africa

## 9) Automatic Reinstatement of Limit of Indemnity (R.T.C. Basis) – [if included in the schedule or endorsed to the certificate]

IT IS HEREBY AGREED that, subject to the Terms, Conditions and Exclusions of this **certificate**, and upon notification to the **underwriter** during the **period of insurance** of any **claim** made against the **insured** this **certificate** shall be reinstated for such amount as stated in the **schedule** without payment of additional premium, but such reinstatement amount shall only apply in excess of the total aggregate **limit of indemnity** effective under any applicable policies in excess of this **certificate** and only in respect of subsequent **claims** which are totally unrelated to any **claims** which have given rise to such reduction.

IT IS FURTHER AGREED that the liability of the **underwriter** for indemnifying the legal liability of the **insured** (including payment of additional **defence costs**) in respect of any one **claim** or series of **claims** arising out of or attributable to the same originating cause shall not exceed the **limit of indemnity** stated in the **schedule** AND the maximum amount payable under this **certificate** during the **period of insurance** is limited to twice the **limit of indemnity** stated in the **schedule**.