



Professional Indemnity Policy

Underwritten by SCOR Insurance (UK) Limited and by International Insurance Company of Hannover Limited.

SCOR Insurance (UK) Limited is authorised and regulated by the Financial Services Authority (FSA) (reference number 222109) and is a member of the Association of British Insurers (ABI).

Registered Office: 71 Fenchurch Street, London EC3M 4BS.
Registered in England No. 4580111.

International Insurance Company of Hannover Limited is authorised and regulated by the FSA (reference number 202640) and is a member of the ABI.

Registered Office: L' Avenir, Opladen Way, Bracknell, Berkshire RG12 0PE.
Registered In England No. 1453123.

This insurance policy, which includes the Schedule and any endorsements, is a legally binding contract. It is agreed that the information *you* have provided or which *we* hold about *you* and *your* practice, on which *we* have relied and which *we* have used to assess the premium payable by *you*, will form the basis of this *Policy*. The accuracy and completeness of such information is a condition precedent to the validity of this *Policy*. If any such information is inaccurate or incomplete, *we* will be entitled to treat this *Policy* as invalid and of no legal effect.

You must tell *us* if *your* circumstances change. *You* must also tell *us* about any change to *your* professional or personal situation which has or may have a material bearing on *your* professional practice, or on *your* membership of *the MDU*, or on the cover provided by this *Policy*. Such changes can include *your* type or amount of work, address and anything else which may increase or decrease *your* risk or exposure to risk. *You* must also tell *us* if *you* become aware that any information *we* hold about *you* is incorrect. If *you* fail to do any of these things without delay, *you* may lose *your* right to claim under this *Policy*.

Please read this policy, the Schedule and any endorsements carefully and keep them in a safe place.

MDU Services Limited is an agent of SCOR Insurance (UK) Limited and International Insurance Company of Hannover Limited, which are both members of the Association of British Insurers (ABI).

CONTACTING US

If *you* are required or need to contact *us* under any of the terms of this *Policy*, or for any other reason, *you* should do so at the following address:

The MDU
230 Blackfriars Road
London SE1 8PJ

Telephone: 0800 716 376, fax: 020 7202 1696,
e-mail: membership@the-mdu.com.

COMPLAINTS PROCEDURE

We have tried to write this *Policy* in plain English but if there is anything *you* do not understand please contact *us*. If *you* have a query or cause for complaint regarding *your Policy*, firstly *you* should:

Contact the Membership Manager at the above address.

If *you* can provide details of *your Policy* and in particular *your Policy* number this will assist in dealing with *your* enquiry.

If *we* cannot settle *your* complaint, *you* may refer it to the Financial Ombudsman Service:

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
LONDON E14 9SR

THIS POLICY

1 This insurance policy, which includes the Schedule and any endorsements, sets out the terms, conditions, exclusions and other provisions on which *we* agree to insure *you*. *We* have used the information about *you* and *your* practice which *you* have provided or which *we* hold, to assess the premium payable by *you*. When reading this *Policy*, please note the use of specially defined words, which appear in italics. There is a list of these defined words in clause 18.

PERIOD OF INSURANCE

2 This *Policy* is for the period shown in the Schedule.

WHAT WE INSURE YOU FOR UNDER THIS POLICY

3 *We* agree to indemnify *you* against civil liability (including civil liability for claimants' legal costs):

- (a) for *professional negligence* by *you*, arising from a *claim*:
- (i) which is first made against *you*:
 - (A) during the period of insurance other than in relation to a *previously notified circumstance*; or
 - (B) after the period of insurance in relation to a *reported circumstance*; and
 - (ii) which relates to the *provision of professional services* by *you* on an *incident date* when *you* were a member of *the MDU*;

(b) for *professional negligence* by any person for whom *you* are *vicariously liable*, arising from a *claim*:

- (i) which is first made against *you*:
 - (A) during the period of insurance other than in relation to a *previously notified circumstance*; or
 - (B) after the period of insurance in relation to a *reported circumstance*; and
- (ii) which relates to the *provision of professional services* by such person on an *incident date* when *you* were a member of *the MDU*;

(c) in respect of a *Good Samaritan act* by *you*, arising from a *claim*:

- (i) which is first made against *you*:
 - (A) during the period of insurance other than in relation to a *previously notified circumstance*; or
 - (B) after the period of insurance in relation to a *reported circumstance*; and
- (ii) which relates to a *Good Samaritan act* by *you* on an *incident date* when *you* were a member of *the MDU*; or

(d) in respect of a *Good Samaritan act* by any person for whom *you* are *vicariously liable*, arising from a *claim*:

- (i) which is first made against *you*:
 - (A) during the period of insurance other than in relation to a *previously notified circumstance*; or
 - (B) after the period of insurance in relation to a *reported circumstance*; and
- (ii) which relates to a *Good Samaritan act* by such person on an *incident date* when *you* were a member of *the MDU*.

4 *We* also agree to indemnify *you* against:

(a) *defence costs* for any *claim* for *professional negligence* or in respect of a *Good Samaritan act*, as referred to in clauses 3(a) to (d); and

(b) *defence costs* (but not any damages) for any *claim* which arises from:

- (i) allegations of defamation against *you* arising from the *provision of professional services* on an *incident date* when *you* were a member of *the MDU*, by *you* or by any person for whom *you* are *vicariously liable*;
- (ii) allegations of defamation against *you* arising from a *Good Samaritan act* on an *incident date* when *you* were a member of *the MDU*, by *you* or by any person for whom *you* are *vicariously liable*;
- (iii) allegations, which are not proven or admitted, of sexual harassment, sexual misconduct, unlawful discrimination or any other alleged conduct by *you* arising in any such case from the *provision of such professional services* as are defined by clause 18(m)(i) or (ii) when *you* were a member of *the MDU*, even if the fact or matter alleged would, if proven, fall outside the proper scope of the *provision of such professional services*; or
- (iv) allegations, which are not proven or admitted, of sexual harassment, sexual misconduct, unlawful discrimination or any other alleged conduct by *you* arising in any such case from a *Good Samaritan act* when *you* were a member of *the MDU*, even if the fact or matter alleged would, if proven, fall outside the proper scope of a *Good Samaritan act*,

in each case where the *claim* is first made against *you*:

- (A) during the period of insurance other than in relation to a *previously notified circumstance*; or
- (B) after the period of insurance in relation to a *reported circumstance*.

TERRITORIAL COVER

5 The indemnity *we* provide under this *Policy* is for the *provision of professional services* within the *United Kingdom* but for *Good Samaritan acts* worldwide. For this purpose:

(a) *you* will only be regarded as *providing professional services* in the *United Kingdom* if:

- (i) at the *incident date* *you* were registered in and *your* practice was located in the *United Kingdom* and when *you* provided the *professional services* *you* were present in the *United Kingdom*;

- (ii) any individual patient to or in respect of whom the *professional services* were provided was, at both the *incident date* and (if different) the *examination date*, present in the *United Kingdom*;
 - (iii) every court to whom or for whose specific benefit the *professional services* were provided was, at the *incident date*, located in the *United Kingdom*;
- (b) any person for whom *you* are *vicariously liable* will only be regarded as *providing professional services* in the *United Kingdom* if:
- (i) at the *incident date* *you* were registered in and *your* practice was located in the *United Kingdom* and when such person provided the *professional services* they were present in the *United Kingdom*; and
 - (ii) any individual patient to or in respect of whom the *professional services* were provided was, at both the *incident date* and (if different) the *examination date*, present in the *United Kingdom*;
 - (iii) every court to whom or for whose specific benefit the *professional services* were provided was, at the *incident date*, located in the *United Kingdom*.

WHEN YOU ARE INSURED

- 6** We agree to insure *you* under this *Policy* if *you* are a member of *the MDU* when this *Policy* commences and throughout the period of insurance.
- 7** This *Policy* will terminate if and when *you* cease to be a member of *the MDU*, other than as a result of *your* death. This will not affect *your* entitlements under this *Policy* up to the date of termination.

HOW MUCH WE INSURE YOU FOR

- 8** The Schedule sets out the maximum amount of *our* indemnity to *you* (including *defence costs*) for each *one claim* and the total of all *claims* in respect of the period of insurance. We may at any time pay the relevant maximum amount (or the balance of this amount) to *you* and we will then have no further obligations under this *Policy*.

WHEN YOU HAVE TO NOTIFY US

- 9** *You* must notify *us* as soon as reasonably practicable of:
- (a) any *claim* against *you* for *professional negligence* or in respect of a *Good Samaritan act* or arising from allegations against *you* of the type referred to in clause 4(b); or
 - (b) *your* becoming aware of any *circumstance* that may give rise to any *claim* against *you* for *professional negligence* or in respect of a *Good Samaritan act* or arising from allegations against *you* of the type referred to in clause 4(b).

YOUR DUTY TO CO-OPERATE

- 10** *You* agree to act in good faith in all *your* dealings with *us* and at *your* expense to:
- (a) give *us*, *our* investigators and legal representatives all information and assistance we may reasonably require; and
 - (b) co-operate fully with *us*, *our* investigators and legal representatives.

OUR RIGHT TO THE CONDUCT AND CONTROL OF CLAIMS

- 11** If we make a payment under this *Policy*, we are subrogated to all *your* rights of contribution and indemnity or recovery. This means we may act at *our* own expense in *your* place to pursue these rights.
- 12** We may, if we so wish, take over and conduct in *your* name the defence and/or settlement of any *claim* or *proceedings*. If we do, *you* will give *us* all such information and assistance as we may reasonably require.

CONSENT TO SETTLEMENT

- 13** *You* agree that *you* will not, without *our* prior written consent:
- (a) admit any legal liability for a *claim*; or
 - (b) settle a *claim*, in respect of which we may be required to indemnify *you*.
- 14** We will not admit liability for, or settle, any *claim* against *you* without *your* prior consent.

- 15** If *you* refuse to consent to *our* settling a *claim*, *our* liability is then limited to the amount we recommend in settlement plus *defence costs* to the date we recommend settlement of the *claim* to *you*.
- 16** *You* agree not to surrender any right to, or settle any *claim* for, contribution, indemnity or recovery from any other party without *our* prior written consent.

WHAT WE EXCLUDE FROM THE POLICY

- 17** We will not indemnify *you* under this *Policy*:
- (a) to the extent that *you* or any person for whom *you* are *vicariously liable* are entitled to indemnity under any other policy with *us* or anyone else or have the benefit of NHS indemnity or of any other indemnification agreement;
 - (b) when *you* or any person for whom *you* are *vicariously liable* are entitled to be considered for a discretionary payment by any person including a medical and/or dental defence organisation other than *the MDU* under that organisation's usual practices (as if *you* did not have this *Policy*), except in respect of the *provision of professional services* or a *Good Samaritan act* or allegations against *you* of the type referred to in clause 4(b) while *you* are or were a pre-registration house officer, on the first year (F1) of a Foundation programme or a newly qualified dental professional in the first year after graduation;
 - (c) in respect of a *claim* which is made or a *circumstance* which arises relating to the *provision of professional services* or a *Good Samaritan act* by another person as:
 - (i) *your* partner in a firm, including a general medical or dental practice;
 - (ii) a shareholder or director in a company of which *you* are also a shareholder or director; or
 - (iii) an employee or agent of such a firm or company, except to the extent that *you* are vicariously liable for any such person;
 - (d) in respect of a *claim* which is made or a *circumstance* which arises from the *provision of professional services* as defined by clause 18(m)(iii), other than a *claim* which is or may be made by the *recipient* or court to whom or for whose specific benefit such *professional services* have been provided;
 - (e) in respect of:
 - (i) any trading or personal debt incurred by *you*;
 - (ii) any fine, or civil or criminal penalty or any punitive, aggravated, additional or exemplary damages;
 - (iii) compensation for damage to or destruction or loss of any property;
 - (iv) any withholding of remuneration in conjunction with a disciplinary hearing; or
 - (v) any indirect or consequential loss, or loss of profits or of earnings by *you*;
 - (f) for any judgement or order (except arising from or in connection with a *Good Samaritan act*) of, based on or derived from a court of any country outside the *United Kingdom*;
 - (g) when a person makes a *claim* against *you* or a *circumstance* arises because, and only because, the person is related to *you* as *your* employee, locum tenens or agent;
 - (h) in respect of a *claim* or *circumstance* arising in any way out of the ownership, lease, use or occupation or state of any premises or anything done or omitted to be done in respect of the state of any premises;
 - (i) in respect of a *claim* or *circumstance* arising in any way out of the manufacture, distribution or sale of any products outside the proper course of the *provision of professional services*;
 - (j) in respect of a *claim* or *circumstance* arising in any way out of the unlawful sale, supply, use or application of any substance;
 - (k) in respect of a *claim* or *circumstance* arising in any way out of:
 - (i) actual or threatened pollution of the environment;
 - or

- (ii) any requirement for *you* to deal with that pollution, other than the *provision of professional services* or a *Good Samaritan act* to an individual patient injured or ill as a result of such pollution;
- (l) in respect of a *claim* or *circumstance* arising from allegations of defamation, except for the indemnity for *defence costs* under clause 4(b)(i) or (ii);
- (m) in respect of a *claim* or *circumstance* arising from any material published or broadcast by *you* or on *your* behalf or to which *you* have contributed in any way;
- (n) in respect of a *claim* or *circumstance* arising in any way from *your* insolvency or bankruptcy (except a failure to *provide professional services* as a result of such insolvency or bankruptcy);
- (o) in respect of a *claim* or *circumstance* arising in any way from proven or admitted criminal activity or criminal behaviour, whether or not within the *provision of professional services* or a *Good Samaritan act*;
- (p) in respect of a *claim* or *circumstance* arising in any way from proven or admitted sexual harassment, sexual misconduct or unlawful discrimination;
- (q) in respect of a *claim* or *circumstance* arising in any way from alleged sexual harassment, sexual misconduct or unlawful discrimination, or from any other alleged conduct by *you* which in any such case:
 - (i) would not be within the proper scope of the *provision of such professional services* as are defined by clause 18(m)(i) or (ii) or a *Good Samaritan act*; and
 - (ii) is not proven or admitted, except for the indemnity for *defence costs* under clause 4(b)(iii) or (iv);
- (r) in respect of a *claim* or *circumstance* arising in any way out of *your* deliberate intent to cause harm, or *your* fraudulent, dishonest, malicious or reckless act or omission or, where *you* were knowingly party to such act or omission, that of any person for whom *you* are *vicariously liable*; or
- (s) in respect of the consequences of any *circumstance* which was:
 - (i) notified under any policy which was in force prior to the inception of this *Policy*; or
 - (ii) known to *you* at the inception of this *Policy*.
- (ii) written or oral advice on or concerning the examination, condition, diagnosis, treatment (including prescribing of drugs or therapy) or care of an individual patient, in each case in a clinical or medical emergency, accident or disaster when *you* or a person for whom *you* are *vicariously liable* are not present in *your* or their professional capacity but as a bystander;
- (f) **Incident date** means the date of the *provision of professional services* or a *Good Samaritan act* or the matter alleged of the type referred to in clause 4(b) that gave rise to the *claim* or *circumstance*. If there are multiple dates, this will be the earliest date. If there was a course of treatment, this will be the date on which the course of treatment started or, if later, the earliest date on which it is claimed the alleged *professional negligence* occurred;
- (g) **the MDU** means The Medical Defence Union Limited;
- (h) **One claim** means:
 - (i) all *claims* by one or more claimants arising, directly or indirectly, from any *related professional services*;
 - (ii) all *claims* by one or more claimants arising, directly or indirectly, from the *provision of professional services* or a *Good Samaritan act* to a woman and her unborn or newly born child or children;
 - (iii) all *claims* by one or more claimants arising, directly or indirectly, from any one error or omission or any one series of common or similar errors or omissions in the *provision of professional services* or a *Good Samaritan act*, otherwise, each *claim* will be treated as being separate;
- (i) **Policy** means this document, the Schedule and any endorsements;
- (j) **Previously notified circumstance** means a *circumstance* which *you* first notified to *us* or *our* agents or to *the MDU* or its agents prior to this period of insurance;
- (k) **Proceedings** means:
 - (i) any legal proceedings relating to a *claim* for *professional negligence*, a *Good Samaritan act* or allegations against *you* of the type referred to in clause 4(b); and
 - (ii) proceedings by *us* in exercise of *our* rights under clause 12;
- (l) **Professional negligence** means actual or alleged negligence or breach of duty owed to any person (including statutory or contractual duty) in the *provision of professional services*;
- (m) **Professional services** means, in a professional clinical or professional medical capacity:
 - (i) the examination, diagnosis, treatment (including prescribing of drugs or therapy) or care of an individual patient; and/or
 - (ii) written or oral advice on or concerning the examination, condition, diagnosis, treatment (including prescribing of drugs or therapy) or care of an individual patient; and/or
 - (iii) written or oral advice to or for the specific benefit of a *recipient* or court on or concerning clinical or medical issues, without reference to an individual patient;
- (n) **Provision of professional services and providing professional services** means providing, or failing to provide *professional services*;
- (o) **Recipient** means:
 - (i) *your* employer, in the course of *your* employment;
 - (ii) a person or entity who or which engages *you* under a contract for the *provision of professional services*, in the course of *your* carrying out the same;
 - (iii) a person or entity to whom *you* provide *professional services* as an employee, contractor or agent of another person or entity, in the course of *your* carrying out the same;
- (p) **Related professional services** means the *provision of professional services* or a *Good Samaritan act* in connection with all medical or clinical matters or issues which have a common cause or similar origin;

DEFINITIONS

18 In this *Policy*:

- (a) **Circumstance** means an event that may give rise to a *claim* for *professional negligence* or a *claim* in respect of a *Good Samaritan act* or an allegation against *you* of the type referred to in clause 4(b);
- (b) **Claim** means:
 - (i) a demand for, or an assertion of a right to, compensation or damages; or
 - (ii) an intimation of an intention to seek compensation or damages;
- (c) **Defence costs** means legal costs, disbursements and related expenses reasonably and necessarily incurred by *you* with *our* prior written consent or by *us* on *your* behalf, in relation to a *claim* or *reported circumstance* relating to *professional negligence*, a *Good Samaritan act* or allegations against *you* of the type referred to in clause 4(b):
 - (i) in investigating, defending, settling or mitigating any *claim*; or
 - (ii) in prosecuting any *proceedings* for indemnity, contribution or recovery;
- (d) **Examination date** means the date on which an individual patient was examined. If there are multiple dates, this will be the earliest date;
- (e) **Good Samaritan act** means providing, or failing to provide:
 - (i) the examination, diagnosis, treatment (including prescribing of drugs or therapy) or care of an individual patient; and/or

- (q) **Reported circumstance** means a *circumstance* you first report to *us* or *our* agents during the period of this insurance;
- (r) **United Kingdom** means the United Kingdom of Great Britain and Northern Ireland, together with the Channel Islands and the Isle of Man;
- (s) **Vicariously liable** or **vicarious liability** means vicariously liable or vicarious liability:
 - (i) for the acts or omissions in the ordinary course of medical practice (which does not include a nursing home or the provision of laboratory or other services to the medical, dental or allied professions) of; or
 - (ii) in respect of a *Good Samaritan act* by, any person other than a registered medical or dental practitioner;
- (t) **We** means the insurers named in the Schedule for each period of insurance and *us* and *our* will be construed accordingly;
- (u) **You** means:
 - (i) the insured named in the Schedule;
 - (ii) the personal representatives of *your* estate following *your* death or *your* legal representatives if *you* become incapable, insolvent or bankrupt; and
 - (iii) *your* beneficiaries and those who have or obtain an interest in *your* beneficiaries' estates following their deaths;and *your* will be construed accordingly;
- (v) the singular includes the plural; and
- (w) the male gender includes the female, and vice versa.

CO-INSURANCE

- 19** Our obligations under this *Policy* are several and not joint, in the proportions set out by *our* names in the Schedule. Neither of *us* is responsible for the obligations of the other.

ARBITRATION

- 20** If there is a dispute or difference between *you* and *us* arising out of or in connection with this *Policy*, this will be referred to arbitration before a sole arbitrator who *you* and *we* will appoint under the English arbitration legislation. Such a reference to arbitration and all proceedings relating to it will be subject to the provisions of the Arbitration Act 1996 and any statutory modification or re-enactment of that Act.

GOVERNING LAW

- 21** Unless *we* and *you* agree otherwise in writing, this insurance contract will in all respects be governed by and construed in accordance with English law and, except for any reference to arbitration under clause 19, is subject to the exclusive jurisdiction of the English Courts.



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