



**PROFESSIONAL INDEMNITY
MEDICAL MALPRACTICE
PUBLIC AND PRODUCTS' LIABILITY
FOR
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. The contract is conditional upon and will only come into effect following payment of the premium by the **Insured** and the receipt thereof by or on behalf of the **Insurers**. Any word or expression to which a specific meaning or definition has been given shall have such specific meaning wherever it may appear.

1. **PREAMBLE**

The **Insured** having made a written proposal to **Insurers** and/or otherwise submitted particulars and statements constituting an acceptable risk profile, which proposal and/or risk profile shall form the basis of this insurance, the **Insurers** will indemnify the **Insured** in accordance with the terms, Exclusions, Conditions and limitations contained herein or endorsed hereon and in the schedule,. In consideration of this and subject to all the provisions of this **Policy**, the **Insurer** agrees as follows:

2. **DEFINITIONS**

For the purpose of this contract of insurance:

2.1 **Business**

shall mean the business identified in the schedule and conducted within the **Territorial Limits**.

2.2 **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**.

2.3 **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: (i) written demand or (ii) civil or administrative proceeding that seeks **Damages** as a result of **Wrongful Acts**, or (iii) 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 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.

2.8 **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.

2.9 **Good Samaritan Act**

shall mean treatment administered at the scene of a medical emergency, accident or disaster by the **Insured** who is present either by chance, or in response to a general call following a disaster. It is accepted by **Insurers** that such treatment may fall outside the normal scope of practice of the **Insured** and **Insurers** will nevertheless indemnify the **Insured** for **Good Samaritan Acts**.

2.10 **Insured**

shall mean:

- a) the **Insured** reflected on the **Policy** schedule and all **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:

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.

Insurers' liability in respect of any **Claims** against a partnership, closed corporation or incorporated company will be limited to R50 Million or the cumulative total of all individual limits of indemnity in respect of the partners, members or directors, whichever is the lesser.

- e) 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.

- 2.11 **Insurer**
shall mean the entity specified as such in the schedule.
- 2.12 **Limit of Indemnity**
shall mean the amount specified as such in the schedule.
- 2.13 **Loss**
shall mean **Damages** and **Defence Costs**. **Loss** shall not mean and this **Policy** shall not cover any (1) taxes (excluding the indemnity provided for VAT as provided for below in section 9.3), (2) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages, (3) fines or penalties, (4) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief, (5) compensation, benefits or overhead of, or charges or expenses by any **Insured**, or (6) any matters which may be deemed uninsurable under the law governing this **Policy** or the jurisdiction in which a **Claim** is brought.
- 2.14 **North America**
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.
- 2.15 **Malpractice**
shall mean any negligent act, error or omission in the **Professional Services**.
- 2.16 **Paid-up member**
for the purposes of the insurance, shall mean any member of the **Insured** that has paid their premium for the relevant **Period of Insurance**.
- 2.17 **Patient**
shall mean any person undergoing treatment by the **Insured** in the course of the **Business**.
- 2.18 **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.
- 2.19 **Policy**
shall mean this insurance policy wording, the schedule and any endorsements or extensions thereto.
- 2.20 **Professional Services**
shall mean the activities and duties which would fall within the normal scope of duties and services performed by a professionally qualified **Paid-up member** properly registered in terms of the current applicable legislation that governs such profession and field of **Business**, as stated in the schedule.
- 2.21 **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").

- 2.22 **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.
- 2.23 **Society/Association**
shall mean the professional organisation consisting of **Paid-up members** of the **Insured**.
- 2.24 **Territorial Limits**
shall be worldwide excluding **North America**.
- 2.25 **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 8.5 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**.
- 2.26 **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.
- 2.27 **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** conducted within the **Territorial Limits** and as set out in Sections One, Two, Three and Four 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** other than as provided for in Section Two – **Malpractice**.

4.2 EXTENSION

4.2.1 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**

4.3 EXCLUSION

The **Insurers** shall not be liable to indemnify the **Insured** in respect of **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.

5. SECTION TWO – 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**.

The indemnity extends to any emergency medical conveyance owned or used by the **Insured** in connection therewith.

This indemnity extends to any failure to diagnose a condition, delayed diagnosis or any misdiagnosis of a condition which results in a **Claim** or a complaint against the **Insured**.

5.2 EXCLUSION

This section does not cover liability for claims arising out of or in connection with any **Product**, but this Exclusion shall not apply to claims arising out of the incorrect prescription or use of such **Products**.

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.

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 **EXTENSION**

7.2.1 **PRODUCTS' AND 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**.

This extension shall be subject to the following exclusions:

1. **Efficacy**
Claims arising out of the failure of a **Product**, or any part thereof, to fulfil the purpose for which it was intended, or to perform as specified, warranted, or guaranteed; but this Exception shall not apply to consequent bodily injury or loss of, or damage to, property.
2. **Recall**
Claims arising out of recalling, removing, repairing, replacing, reinstating, or the cost of, or reduction in value of, any **Product**, if such liability arises from any defect therein or the harmful nature or unsuitability thereof.

7.3 **EXCLUSIONS**

This Section does not cover liability for **Claims** arising out of:

- a) the ownership, possession or use by or on behalf of the **Insured** of any motor vehicle or trailer for which compulsory insurance is required by legislation, other than claims :
 - i) caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
 - ii) arising beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any motor vehicle or trailer;
 - iii) arising out of any motor vehicle or trailer temporarily in the **Insured's** custody or control for the purpose of parking;
- b) liability for which compulsory insurance is required by legislation governing the use of any motor vehicle or trailer;
- c) the ownership, possession or use by or on behalf of the **Insured** of any aircraft, watercraft or hovercraft;
- d) damage to property owned, leased or hired 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 that part of 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**, but only to the extent that the **Insured** would be held liable in the absence of any specific agreement;
- e) **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;
- f) or in connection with any **Product**, subject to provisions in 7.2.1 above.

8. **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;
- 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.

8.1 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 **Paid-up member** or **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.

8.2. 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**.

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

Notwithstanding anything to the contrary contained in General Exclusion 10.1.3, 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:

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.

8.4. **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 7.3 (d) (iii) and General Exclusion 10.1.5;
- 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**.

8.5. **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**.

8.6. **HPCSA /AHPCSA COSTS OTHER STATUTORY BODY COUNCIL HEARINGS**

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

PROVIDED ALWAYS THAT:

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

9. **LIMIT OF INDEMNITY**

9.1 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.

9.2 Notwithstanding clause 9.1 above, the maximum liability of the **Insurers** in respect of **Claims** per **Period of Insurance** shall not exceed R50 million.

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

10. **GENERAL EXCLUSIONS APPLICABLE TO ALL SECTIONS**

10.1 This **Policy** does not cover liability:

- 10.1.1a) arising from 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) arising from any circumstances notified to the **Insurers** of any other policy prior to the inception date hereof;

10.1.2 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**;

10.1.3 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 8.3 relating to employers' liability;

10.1.4 for the costs of replacing or restoring any of the **Insured's** documents;

- 10.1.5 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;
- 10.1.6 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;
- 10.1.7 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**;
- 10.1.8 arising out of employment practices, based upon any actual or alleged employment-related practices or labour disputes;
- 10.1.9 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**;
- 10.1.10 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**;
- 10.1.11 up to the amount of the **Deductible**;
- 10.1.12 for fines, penalties, punitive, vindictive or exemplary damages;
- 10.1.13 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;
- 10.1.14 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;
- 10.1.15 arising out of :
- a) loss of money (including, but not limited to postal and money orders and Kruger Rands);
 - b) theft or forgery;
- 10.1.16 arising out of the insolvency of the **Insured**;

10.1.17 arising out any medical and biological research as well as medical and/or clinical trials;

10.1.18 **Infectious Epidemics / Pandemic**

This policy excludes any loss, damage, cost or expense directly or indirectly arising out of, contributed to by, or resulting from any infectious epidemic/pandemic (as/if classified either way by the appropriate national or international body/agency) which leads to:

- i. the imposition of quarantine or restriction in movement of people or animals by the national or international body or agency; and/or
- ii. any travel advisory or warning being issued by a national or international body or agency

and in respect of (i) or (ii) any fear or threat thereof (whether actual or perceived).

This exclusion does not apply to liability arising from the provision of incorrect treatment and assessment of such diseases by a medical practitioner and / or medical institution providing medical related services.

Specific Exclusion in respect of Clinical Trials in relation to COVID-19

Notwithstanding any provision to the contrary, 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 services rendered and / or activities in relation to COVID-19 Clinical / Medical Trials, including any fear or threat thereof, whether actual or perceived :

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

10.1.19 **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 the manufacture or supply of blood or blood products. Blood or blood products 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.
- e. 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 any other method of infection;

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

- i. first aid or good samaritan or pro bono aid/services;
- ii. medical services at the premises of an original insured for the benefit of the employees of such original insured;
- iii. 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.
- iv. Wrongful Act in relation to dispensing risks.

v.a Breach of Confidentiality on the Insureds part in unintentionally disclosing a Patients HIV/AIDS incorrect analysis and/or incorrect results being provided in respect of HIV/AIDS specimens stored temporarily.

10.1.20 arising out of decennial liability;

10.1.21 as a result of failure to effect or maintain insurance;

10.1.22 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;

10.1.23 arising out of any advice given on North American Law.

10.2 **CYBER LOSS EXCLUSION**

10.2.1 Notwithstanding any provision to the contrary within this contract, this contract excludes any Cyber Loss.

10.2.2 Cyber Loss means any loss, damage, liability, expense, fines or penalties or any other amount directly or indirectly caused by:

- a) the use or operation of any Computer System or Computer Network;
- b) the reduction in or loss of ability to use or operate any Computer System, Computer Network or Data;
- c) access to, processing, transmission, storage or use of any Data;
- d) inability to access, process, transmit, store or use any Data;
- e) any threat of or any hoax relating to a) to d) above;
- f) any error or omission or accident in respect of any Computer System, Computer Network or Data.

10.2.3 Computer System means any computer, hardware, software, application, process, code, programme, information technology, communications system or electronic device owned or operated by the Insured or any other party. This includes any similar system and any associated input, output or data storage device or system, networking equipment or back up facility.

10.2.4 Computer Network means a group of Computer Systems and other electronic devices or network facilities connected via a form of communications technology, including the internet, intranet and virtual private networks (VPN), allowing the networked computing devices to exchange Data.

10.2.5 Data means information used, accessed, processed, transmitted or stored by a Computer System.

10.3 **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 to 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.

10.4 **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**.

10.5 **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 to by or arising from:

- (i) ionising, radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion or use of nuclear fuel;
- (ii) nuclear material, nuclear fission or fusion, nuclear radiation;
- (iii) nuclear explosives or any nuclear weapon;
- (iv) 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.

10.6 **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.

10.7 **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:

- (i) child molestation or sexual abuse of any kind
- (ii) sexual misconduct of any kind
- (iii) wrongful or excessive discipline of any kind
- (iv) bullying or harassment of any kind

HOWEVER:

The Policy is extended to include cover for the Insured's Defence Costs up to a maximum sub-limit of R 250,000 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. **GENERAL CONDITIONS**

Conditions 11.1 to 11.7 are conditions precedent to the liability of the **Insurers** to provide indemnity under this **Policy**.

11.1 Premium is payable on or before the inception date or renewal date or instalment date as the case may be. The **Insurer** shall not be obliged to accept premium tendered to them more than 15 days after such date but may do so upon such terms as they in their sole discretion may determine.

11.2 The **Insured** shall give written notice to the **Insurers** 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.

- 11.3 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**.
- 11.4 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.
- 11.5 Whilst this insurance shall remain fully operative in the event of a change in the constitution of the **Insured**, notice shall be given as soon as reasonably possible of any change in the principals, partners, members or directors or in the legal constitution of the **Insured** and the **Insured** shall supply such further information as the **Insurers** may require for reassessment of the risk.
- 11.6 The interpretation and enforcement of the terms, Conditions and Exclusions of this **Policy** (and any phrase or word contained herein) shall be in accordance with the law of the Republic of South Africa whose courts shall have jurisdiction to the exclusion of the courts of any other country.
- 11.7 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.
- 11.8 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.
- 11.9 Where this **Policy** has been extended to include dishonest acts or omissions of any person treated as the **Insured**, in respect of **Claims** arising from such dishonesty, the **Insured** shall assist **Insurers** to take all possible action to sue for and obtain reimbursement from such person and any money or other property held by the **Insured** which, but for such dishonesty, would be due to such person shall, to the extent allowable in law, be deducted from the **Insured's Loss**.
- 11.10 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**.
- 11.11 Where the premium is provisionally based on the **Insured's** estimates, the **Insured** shall keep accurate records and declare and make payment for all additional and late-joining members on at the least a quarterly basis if not more frequently.
- 11.12 If indemnity is sought under this **Policy** by any fraudulent means :
- a) all benefit in respect of such **Claim** shall be forfeited;
 - b) **Insurers** may cancel the **Policy** with immediate effect by notice in writing to the last known address of the **Insured**.
- 11.13 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.
- 11.14 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**.

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

CFP BROKERS CC

Sweet Thorn on Beyers
Block C, Ground Floor
61 Bosbok Road
Randpark Ridge
2169
South Africa

Suite no.: 44 Private Bag X11
Northriding
2162

Telephone: (011) 794-6848 / 794-7770
Facsimile: 086 553 5547
E-mail: claims@cfpbrokers.co.za

11.16 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. SPECIAL EXTENSIONS (Only applicable if granted in the Policy Schedule)

The following Extensions apply:

- a) provided always that the total liability of the **Insurers** is not increased beyond that which would have applied in the absence of such Extensions, and
- b) are subject otherwise to the terms, Exclusions, Conditions and limitations of the **Policy**.

12.1 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); or

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;

12.2 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) 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. 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 a minimum of 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. shall not apply to any member entitled to free or discounted cover under this policy, unless they were a fully-paid up member on a membership option which included cover under this policy, prior to qualifying for such free or discounted cover. The number of months' cover such members are entitled to under the run off cover extension, will be calculated on the period that they held uninterrupted cover with the Insurer, prior to qualifying for free or discounted cover under this policy.
- ix. 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.

The 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. The extension will not apply if the Insured was not a fully paid-up member until 31 December of the same year that they permanently ceased to practice in RSA.

No cover whatsoever is provided under this 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 / AHPCSA or other Statutory body or
- c. Has breached the provisions of this Policy, prior to permanently ceasing practice in RSA.

Cover provided under this extension will be determined by reference to the 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.

12.3 **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 lead 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.

12.4 **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

12.5 **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.

12.6 **PUBLIC RELATION 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 R 5 000.00 each and every claim.

12.7 **MEDICAL AID 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 You, or incurred by You in respect of medical aid investigation / audits, provided that the enquiry or process relates to the Your Services as defined as defined in the policy schedule excluding any reimbursement of fees, costs or charges payable by You.

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 R 5 000.00 each and every claim.