

**MEDICAL MALPRACTICE & PUBLIC LIABILITY INSURANCE
THIS IS A CLAIMS MADE AGGREGATE POLICY
(WITH DEFENCE COSTS INCLUDED WITHIN THE LIMITS OF INDEMNITY)**

INSURING CLAUSE

1. WHEREAS the Assured, as defined herein, has made to Underwriters 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 Policy and are to be considered as incorporated herein, and the Premium (as stated in the Certificate) being received by Underwriters.
2. WE, THE UNDERWRITERS, to the extent and in the manner hereinafter provided, and subject to the Terms and Conditions of this Policy HEREBY AGREE to Indemnify the Assured for Claims made against the Assured during the Period of this Insurance against all sums which the Assured shall become legally liable to pay as damages in accordance with the law of any country BUT NOT in respect of any judgment award or settlement made within countries which operate under the laws of the United States of America or Canada (or any order made anywhere in the world to enforce such judgment, award or settlement either in whole or in part), unless the Assured has requested that there shall be no such limitation and has accepted the terms offered by Underwriters in granting such cover which offer and acceptance must be signified by specific endorsement (including any reinstatement provision) to this Policy, arising out of

(i) MALPRACTICE

any bodily injury, mental injury, illness, disease or death of any patient caused by any negligent act, error or omission committed by the Assured in or about the conduct of the Assured's occupation or business as stated in the Proposal or Declaration, or Good Samaritan Acts, (hereinafter referred to as "Malpractice")

(ii) PUBLIC LIABILITY

any bodily injury, mental injury, illness, disease or death of or to any person, or loss of or damage to tangible property of any person in connection with the Assured's professional duties as stated in the Proposal or Declaration, including the provision of food and drink, (hereinafter referred to as "Public Liability")

and pay all Defence Costs incurred with Underwriters' consent, such consent not being unreasonably withheld, in connection with any Claim which falls within this Policy, provided that the total amount payable in respect of damages and Defence Costs shall not exceed the Limits of Indemnity as stated in the Certificate.

IT IS FURTHER provided that Underwriters 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, judgment, 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 Underwriters shall have the right to withdraw from the further defence thereof by tendering control of said defence to the Assured, subject however to any reinstatement conditions which may be endorsed to this Policy.

PROVIDED ALWAYS THAT:

- (a) such Malpractice or Public Liability results in a Claim being first made against the Assured 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 Assured for Malpractice

committed or alleged to have been committed prior to the Retroactive Date specified in the Certificate.

- (ii) there shall be no indemnity hereunder for any Claim made against the Assured for Public Liability, or separate allegations arising out of the same event, which happened prior to the Retroactive Date specified in the Certificate
 - (iii) for the purpose of determining the Limit of Indemnity and Excess applicable, any Claim which is based upon combined allegations of Malpractice and Public Liability, or separate allegations arising out of the same event, shall be dealt with as though it were a Claim arising out of Malpractice as defined in clause 2(i) and is limited to the sum specified in the Certificate for Malpractice.
- (c) this policy will only indemnify the Assured for its proportionate liability for the claim. To the extent that the Assured may be obliged to pay for or contribute to loss attributable to concurrent wrongdoers, such additional liability is excluded from cover under this policy

DEFINITIONS

- (i) The expression "the Assured" shall be deemed to mean:
 - (a) the individual, partnership, corporation, institution or such other entity (named in the Certificate) which has legal capacity
 - (b) any person who is, has been or may become during the period specified in the Schedule, a principal, partner, director, a member of any ethics committee, employee or volunteer of the Assured named in the Certificate but only in respect of Claims arising from work undertaken on behalf of the Assured and excluding registered medical practitioners acting in such capacity.
 - (c) the personal representatives of the estate of any person who would otherwise be indemnified under this Policy.
- (ii) The expression "Good Samaritan Act" shall mean treatment administered at the scene of a medical emergency, accident or disaster by the Assured who is present either by chance, or in response to a S.O.S. call following a disaster.
- (iii) The expression "Claim" shall mean any originating process (in a legal proceeding or arbitration), cross claim or counterclaim or third party or similar notice claiming compensation against and served on an Assured
- (iv) Claims arising from any event or series of events arising from one originating cause shall be deemed to be a single Claim for the purposes of this policy.
- (v) The expression "Defence Costs" shall mean all costs, fees and expenses (including representation at Coroners Inquest) incurred in the defence or settlement of any Claim or the investigation of any matter notified pursuant to s40 of the Insurance Contracts Act..
- (vi) The expression "Products" shall mean any solid, liquid or gaseous substance or component part thereof.
- (vii) Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders.
- (viii) The expression "Conduct" shall include actions and omissions

EXCLUSIONS

UNDERWRITERS shall **not** be liable for:

- (i) any Claim arising out of any Malpractice or alleged Malpractice or Public Liability occurring or alleged to have occurred prior to the inception date of this Policy if the Assured on such date knew or could have reasonably foreseen that such Conduct or incident might be expected to be the basis of a Claim
- (ii) 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 Policy
- (iii) any Claim which may be the subject of assistance or indemnity provided to the Assured or its employee by a Medical Defence Organisation or other Insurer and, notwithstanding that the assistance or coverage provided is the subject of a discretionary benefit, such assistance shall be deemed to be insurance and this Policy shall only contribute proportionally to such other Medical Defence Organisation or Insurer.
- (iv) any Claim made upon the Assured for work carried out by the Assured for and in the name of any other company or association formed of which the Assured forms part for the purpose of undertaking any joint venture UNLESS Underwriters' prior agreement has been obtained and the inclusion of such work is endorsed upon this Policy with the acceptance of such other Terms and Conditions as may be imposed
- (v) any claim arising out of a specific liability assumed by the Assured under contract which goes beyond the duty to use such skill and care as is usual in the exercise of the Assured's activities stated in the Proposal Form UNLESS Underwriters' prior agreement has been obtained and such specific liability is endorsed upon this Policy with the acceptance of such other Terms and Conditions as may be imposed
- (vi) 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 Assured, 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
- (vii) any Claim arising out of Funfairs or other fund raising events requiring crowd control or special permission from the Police and or local authority UNLESS Underwriters' prior agreement has been obtained and such events are endorsed upon this Policy with the acceptance of such other Terms and Conditions as may be imposed
- (viii) any Claim made against any Director or Officer or Employee of the Assured, arising from any unlawful or negligent act, error or omission, actual or alleged breach of trust, breach of warranty of 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 and having acted in that capacity
- (ix) any Claim by any person for bodily injury, mental injury, disease or death incurred, contracted or occurring while under a contract of service or apprenticeship with the Assured, or for any breach of any obligation owed by the Assured 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 bodily injury, mental injury or death of an employee which is caused by any negligent act, error or omission of an Assured, where the employee is a patient of the Assured
- (x) 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 Assured
 - (c) the performance of the activities of the Assured whilst under the influence of intoxicants or narcotics

- (xi) any Claim directly or indirectly caused by, or contributed to by, or arising from ionising radiation 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
- (xii) any Claim arising from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolutions, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by, or under the order of, any government or public or local authority
- (xiii) any Claim arising from the ownership, possession or use by or on behalf of the Assured 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 temporarily in the Assured's custody or control for the purpose of parking
- (xiv) any Claim arising from the ownership, possession or use by or on behalf of the Assured of any aircraft, watercraft or hovercraft, other than Malpractice arising from the emergency transportation of any patient accompanied by the Assured
- (xv) any Claim arising from damage to property owned, leased or hired or under hire purchase or on loan to the Assured or otherwise in the Assured's care, custody or control other than clothing or personal effects, except where such clothing or personal effects have been left unattended
- (xvi) any Claim arising from:
 - (a) personal injury or bodily injury or loss of or damage to, or loss of the use of property directly or indirectly caused by seepage, subsidence, pollution or contamination
 - (b) the cost of removing nullifying or cleaning-up seeping, polluting or contaminating substances
- (xvii) any Claim arising from, or alleged to relate to, actual or attempted sexual relations, sexual contact or intimacy, sexual harassment or sexual exploitation whether under the guise of treatment or not, or in the course of treatment or not. However, if but for this exclusion, the Claim would be covered under this policy and by a civil judgement the Assured is ultimately found not to be liable, Underwriters will reimburse the Assured for reasonable Defence Costs incurred in defending the civil action.
- (xviii) any fines, penalties, punitive or exemplary damages
- (xix) the Excesses stated in the Certificate.

GENERAL CONDITIONS

Subject to the conditions of Section 54 of the Insurance Contracts Act 1984 (hereinafter referred to as the Act), the following General Conditions 1, 2, 3,4,and 5 are conditions precedent to the right of the Assured to be defended or indemnified under this Insurance.

It is understood and agreed that:

1. (a) all statements, particulars and documents referred to or contained in the Proposal hereto are true and
(b) during the Period of Insurance the Assured shall give as soon as practicable notice in writing of any alteration which materially effects the risk.
2. During the Period of Insurance the Assured shall give as soon as practicable notice in writing to Underwriters via the Broker or Agent named herein of:
 - (a) any Claim for Malpractice made against the Assured; or
 - (b) any Claim for Public Liability made against the Assured;
3. The Assured 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 Underwriters or their duly appointed representatives insofar as they pertain to any Claim hereunder
 - (b) retain the records referred to in 3(a) above for a period of at least seven (7) years from the date of treatment and, in the case of a minor for a period of at least seven (7) years after that minor attains majority
 - (c) give to the Underwriters or their duly appointed representatives such information, assistance, signed statements or depositions as Underwriters may require
 - (d) assist in the defence of any Claim or the investigation of any matter notified pursuant to s40 of the Act without charge to the Underwriters.
4. The Assured shall not disclose to any person the terms of this Policy, no liability shall be admitted, no arrangement, offer, promise, or payment, shall be made or cost or expense incurred by the Assured without the written consent of the Underwriters. Underwriters shall be entitled to take control of the defence of any Claim or the investigation of any matter notified pursuant to s40 of the Act or to prosecute in the name of the Assured for their own benefit any Claim for indemnity or damage 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 Underwriters will not settle any Claim or any matter notified pursuant to s40 of the Act without the consent of the Assured. However, if the Assured refuses to consent to any settlement recommended by the Underwriters or their legal representatives and elects to contest or continue any legal proceedings then the liability of the Underwriters shall not exceed the amount for which the Claim or notification could have been so settled plus the costs and expenses incurred with their consent up to the date of such refusal, which in any event will not exceed the Limit of Indemnity as specified in the Schedule and the Assured agrees to indemnify Underwriters for the amount of any judgment, award, settlement, claimant costs, third party costs and Defence Costs which Underwriters are found obligated to pay after the date of such refusal.
5. At all material times after the retroactive date stated in the Certificate and throughout the Period of Insurance:
 - (a) all registered medical practitioners employed by or engaged at the Assureds premises or in connection with the business of the Assured are licensed and maintain registration with the relevant state and/or territory Medical Registration Board(s) and

- (b) such practitioners maintain membership of a Medical Defence Organisation and that the category of membership is appropriate to provide malpractice cover for their past and present professional Conduct in connection with the Assured; or
 - (c) are otherwise fully insured for their own malpractice, professional errors, omissions or negligence in connection with the Assured, including retrospective cover
6. The Assured shall ensure that all food handlers are required to notify their managers of any abdominal pain, vomiting, diarrhoea or septic skin lesions which could indicate the presence of typhoid, para-typhoid, salmonella, amoebic or bacillary dysentery or any other staphylococcal infection.
 7. In accordance with the procedures and on any grounds laid down in Section 59 of the Act, Underwriters may cancel this Insurance at any time by giving fifteen (15) calendar days' notice. Such notice shall be given in writing and may be served by registered mail, telex or facsimile transmission, or may be hand delivered to the address of the Assured as 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 or facsimile shall be deemed to have been served at the time of dispatch. If this Insurance is so cancelled the Underwriters shall retain only the earned portion of the Premium computed from day to day.
 8. Any dispute concerning the interpretation of the Terms, Conditions, Limitations and/or Exclusions contained herein is understood and agreed by both the Assured and Underwriters to be subject to the laws of England save where the aforesaid laws are in conflict with the law of Australia wherein the law of Australia takes precedence. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction within England or Australia and to comply with all requirements necessary to enable such Court to properly hear the dispute and determine it.

ENDORSEMENTS

Endorsements attaching to and forming part of this policy

1) **PRODUCTS LIABILITY EXTENSION**

This Policy is extended to cover Products Liability as follows:

It is hereby agreed that Underwriters will indemnify the Member against all sums which they shall become legally liable to pay as a sub-limit of, and not additional to the limit of the schedule for compensation to a patient or other individual in respect of:

- a) bodily injury (which expression includes death and illness)**
- b) damage to property (which expression includes loss of property)**

arising out of an accident caused by a defect in any goods manufactured, formulated or as a result of any item dispensed, tested, sold or supplied to a third party.

2) **TRADE PRACTICES (AUSTRALIA) EXTENSION**

This Policy is extended to include claims first made against the Insured and notified to Underwriters during the Period of Insurance caused directly by conduct (not being deliberate or fraudulent) which is misleading or deceptive or likely to mislead or deceive, or misrepresentations (not being deliberate or fraudulent misrepresentation) by the Assured, which are contrary to Sections 52 or 53 of the Trade Practices Act 1974 (Commonwealth) or the equivalent sections of the Fair Trading Acts enacted in the State of Australia.

All other policy terms, conditions and exclusions remain unaltered.

3) **MOLESTATION EXCLUSION CLAUSE**

This Policy does not provide any cover (including for costs and expenses) for or in respect of any Claim directly or indirectly related to, based upon, attributable to or in consequence of any actual or alleged molestation of, interference with, mental abuse of or physical abuse of any person, whether by the Insured, or by any agent of the Assured, or by any person performing any volunteer service for or on behalf of the Insured.

4) **JURISDICTION ENDORSEMENT**

Notwithstanding the terms contained within the Insuring Clause of the Policy, it is further understood and agreed that the Assured will only be defended or indemnified under this Policy for Claims made in the following country.

1) Australia.

LSW 593 (11/93).

5) **AIDS AND HEPATITIS NON A**

Underwriters shall not be liable for:

Any claim arising from Hepatitis Non A or any condition directly or indirectly caused by, or associated with, the human immunodeficiency syndrome (HIV) initially named as either HTLV III or LAV or the mutants, derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome (AIDS) or AIDS related complex (ARC) or any syndrome or condition of a similar kind howsoever it may be named.

LSW 584 (11/93)

6) **PREMIUM PAYMENT WARRANTY**

It is hereby warranted that all premiums due to the Underwriters under this Policy are paid within 30 days from Inception.

Non-receipt by Underwriters of such premiums by Midnight on the Premium Due date shall render this Insurance Policy void with effect from Inception.

LSW 585 (11/93)

7) **SKIN TYPES V AND VI**

Underwriters shall not be liable for:

Any claim arising from or attributable to or in consequence of the provision of Electrical Epilation treatments on skin types V and VI, as defined in the Fitzpatrick Scale.

8) **AFTERCARE INSTRUCTIONS**

It is a condition precedent to liability that the Assured provide the APAA approved aftercare instructions when providing; permanent hair removal / Electrolysis and /or Sclerotherapy or acupuncture.

9) **BODY PIERCING**

Underwriters shall not be liable for:

Any claim arising from or attributable to or in consequence of piercing of the tongue or genitalia.

10) **PRIVATE LABEL PRODUCTS**

Underwriters shall not be liable for:

Any claim arising from or attributable to or in consequence of the provision of Private-Label products by for or on behalf of the Assured.

LSW242D(Australia)(Amended)