



# Consultants and Specialists

**Application Guide**

## **The MDU - the market leader**

**The MDU is a mutual, not for profit company owned by our members. Established in 1885, the MDU was the first medical defence organisation and we have led the way ever since. Our sole purpose is to serve our members and that is why we pride ourselves on providing the best and most personal service to you.**

**"... thank you for all the help and good advice that you have given me.... It is of the greatest comfort to know that I had 'someone on my side'."**

**"... I would like to thank you... for all your help and attention. At all times you kept me informed and I felt well prepared for the panel. You made a very stressful time much easier to cope with."**

*Excerpts from genuine letters of thanks from MDU members*

## Today, more than ever, you need MDU membership

Today's doctor works in a litigious and increasingly regulated environment. In the last 10 years the number of complaints to the General Medical Council (GMC) has risen significantly, as have performance reviews by hospital trusts. While many doctors, particularly at the beginning of their career, do not believe they will ever face these threats, statistics show that every doctor is likely to have at least one claim or complaint made against them during their career.

By joining the MDU, the world's first and longest standing medical defence organisation, you can gain access to the finest personal support available to defend you when you need it most.

You can **rest assured** that should you receive a complaint or are subject to a disciplinary investigation, you can ask for the assistance of fellow doctors. We are just a telephone call away.

Furthermore if that complaint turns into a clinical negligence claim, that is not covered by NHS indemnity, you have the **peace of mind** of knowing that you have, as an integral part

of MDU membership, a policy of insurance, underwritten by SCOR UK Company Limited (SCOR) and International Insurance Company of Hannover Limited (Inter-Hannover), which can indemnify you for up to £10 million\*.

MDU membership is not only for when times are difficult. **To help you understand the law and your ethical requirements**, you can access the MDU's range of risk management and advisory publications, and **to assist with your professional development** you can make use of our helpful educational support programme, and our extensive website of articles and case histories.

More UK doctors are members of the MDU than any other medical defence organisation. We look forward to welcoming you into membership soon.

*\* subject to the terms and conditions of the policy*

# MDU membership provides you with a wealth of benefits

If you are a consultant or specialist working in an NHS hospital your employer is responsible for clinical negligence claims that arise from your NHS practice, under NHS indemnity.

However there are areas of personal need with which the NHS scheme may not assist you. As an MDU member you can enjoy access to the very best support from expert doctors and lawyers, provided on the MDU's traditional discretionary basis:

	MDU Member Benefit	NHS Indemnity
24-hour telephone advice on the ethical and legal aspects of clinical practice provided by specially trained doctors, dentists, nurses and lawyers	Yes	Sometimes
support with NCAS investigations	Yes	No
support in preparing a case and representation at PCT, NHS trust and disciplinary hearings	Yes	No
support in responding to a complaint and representation at GMC hearings	Yes	No
support with CHRE referrals to the High Court as a result of a GMC decision	Yes	No
support in preparing responses to patients' complaints	Yes	Limited
support with criminal investigations and proceedings arising from clinical practice	Yes	Limited
support in preparing a case and representation in a Coroner's Court	Yes	No
advice and representation in dealing with press or media enquiries.	Yes	Limited

As a doctor in the NHS your employer is responsible for clinical negligence claims that arise from your NHS practice under NHS indemnity, therefore these do not need to be and are not covered by MDU membership.

However, there are areas where the NHS scheme will not cover you and integral to MDU membership is a professional indemnity policy underwritten by SCOR and Inter-Hannover, which can provide the safeguard you need for complete peace of mind:

	MDU Member Benefit	NHS Indemnity
insurance cover for Good Samaritan acts worldwide	Yes	No
indemnity for claims arising out of some fee paying services such as preparing insurance reports	Yes	No
insurance cover for claims arising from private work (at no extra charge, up to £8,000 income per annum, subject to type of work)	Yes	No

Should your private income exceed £8,000, you can request for your cover to be extended by calling our freephone membership helpline on 0800 716 376. The MDU has a range of subscription rates to cover different levels of private income.

For membership queries please call the **freephone membership helpline on 0800 716 376**

Lines are open Monday to Friday, 8am to 6pm

# Supporting you throughout your career

In addition, MDU membership can provide you with:

## **Invaluable advice**

Advice to help you avoid common pitfalls of practice and to keep you up-to-date on medico-legal issues, including:

- MDU medico-legal advice booklets covering areas such as complaints, confidentiality, record keeping and many others
- medico-legal advisory helpline for risk management and ethical advice when you need it
- popular and informative MDU journals
- regular emails on medico-legal 'hot topics'.

Also, the opportunity to develop your expertise through the MDU's comprehensive and up-to-date website

**the-mdu.com** with:

- the latest medico-legal news
- a large library of case histories
- a wealth of articles and advice
- secure facilities to email an MDU medico-legal adviser.



# Why should you choose the MDU?

The GMC requires all medical professionals to be indemnified against clinical negligence claims for which they are not indemnified by their employer. **Why should you choose the MDU to provide this defence for you?**

## Defence

You have the best possible medical and legal expertise on your side.

**Our experienced in-house legal team has obtained a high success rate for our members at GMC hearings and disciplinary proceedings\*.**

\* based on analysis of 12 months of 2008 MDU data.

## Service

You have access to the largest team of medico-legal experts throughout the UK just a phone call away - 24 hours a day, 7 days a week.

## Insurance & Discretion

The MDU, is the only mutual defence organisation offering access to a strong combination of traditional discretionary benefits in addition to the security of an insurance contract.

### The highest level of claims protection

Traditionally medical defence organisations have provided medical indemnity to doctors **either** on an insured **or** discretionary basis. The difference between the two can be explained simply:-

- An insurance policy gives a contractual agreement that will always provide assistance under the terms of the policy.
- Discretionary benefits give a doctor the right to ask for financial support but not necessarily the right to receive it.

At the MDU we believe that our members should have the security that insurance provides but that they should also be able to call on discretionary assistance should they need it – the best of both worlds.

	Security of an Insurance Policy	Flexibility of support from a doctors mutual
<b>The MDU</b>	✓	✓
MPS/MDDUS	✗	✓
MIA General Insurance	✓	✗

### Know a claim will not be settled without you being consulted first

We **do not** ask you to sign a disclaimer allowing us to settle the claim as we see fit. We aim to keep you involved at all stages of the claim.

### Access to a wealth of information

MDU members have access to a variety of MDU resources - advice booklets, our journals, MDU website and more.



For membership queries please call the **freephone membership helpline on 0800 716 376**

Lines are open Monday to Friday, 8am to 6pm

# MDU membership provides you with the security of a regulated insurance policy

Uniquely among mutual defence organisations in the UK, membership of the MDU has a professional indemnity insurance policy as an integral and important part. From 14 January 2005, all insurance intermediaries in the UK have been required by law to be regulated by the Financial Services Authority. The following is some information about your membership, MDU Services Limited and the policy which we advise you to read.

## Your membership

The benefits of membership of The Medical Defence Union Limited are all discretionary and are subject to the Memorandum and Articles of Association, a copy of which is available to download at the-mdu.com

## About our insurance services

- 1) The insurance policy is arranged through MDU Services Limited (MDUSL). MDUSL's registered office is 230 Blackfriars Road, London, SE1 8PJ. MDUSL is an insurance intermediary, and from 14 January 2005 has been authorised and regulated by the Financial Services Authority (FSA) in respect of insurance mediation activities only reference number 312054. You can check this on the FSA's Register by visiting the FSA's website [fsa.gov.uk/register](http://fsa.gov.uk/register) or by contacting the FSA on 0845 606 1234.
- 2) MDUSL is a wholly owned subsidiary of The Medical Defence Union Limited (MDU).
- 3) In the UK, MDUSL only offers professional indemnity insurance from two insurers, operating on a co-insurance basis:
  - SCOR UK Company Limited
  - International Insurance Company of Hannover Limited

SCOR UK Company Limited (SCOR) is authorised and regulated by the FSA (reference number 202333) and is a member of the Association of British Insurers (ABI). International Insurance Company of Hannover Limited (Inter-Hannover) is authorised and regulated by the FSA (reference number 202640) and is a member of the ABI.

## Your demands and needs

As a Consultant/Specialist we understand your demands and needs to be:

- you should have professional indemnity insurance, in addition to NHS indemnity:-
  - to cover the gaps in the benefits provided under NHS indemnity in relation to indemnity for claims arising out of fee paying services such as preparing insurance reports
  - for Good Samaritan cover worldwide

- or, if you conduct it, private medical work undertaken outside the NHS.

## Policy summary

The policy provides indemnity to you for civil liability to pay compensation (including claimants' legal costs) and defence costs arising from claims against you for professional negligence by you or for professional negligence by a person for whom you are vicariously liable. Under the policy your professional services are covered in the specialty in which you are trained, medico-legal work and fee paying NHS work. Cover under the policy relates to the amount of work you have declared to the MDU for which you require cover for, based on the value of non-indemnified earnings you have notified to and which has been agreed by the membership department at MDUSL. Other types of work may be covered subject to the prior agreement of the membership department at MDUSL.

This indemnity relates to claims arising from professional negligence in the provision, in a professional clinical or professional medical capacity, of professional services in the United Kingdom including the Channel Islands and the Isle of Man. In the context of the policy, professional services includes the examination and treatment of an individual patient; providing written or oral advice concerning the diagnosis or treatment of an individual patient; providing written or oral advice to a court or other body on clinical or medical issues.

The policy also provides defence costs, but not any damages, for claims arising from allegations against you of defamation and from unproven allegations against you of sexual harassment, sexual misconduct or unlawful discrimination, arising out of the provision of professional services.

An extension can be arranged to cover training grades working in recognised, supervised training positions in many countries of the world subject to prior agreement from the membership department at MDUSL. Good Samaritan acts are covered worldwide under the policy.

The policy provides cover up to a limit of £10 million for a single claim and in aggregate in the policy year. The basis of cover is claims made i.e. you are entitled to claim under the policy for claims arising and which you report while you are an active MDU member and holding a valid policy. Under the policy you must notify a claim or circumstance as soon as reasonably practicable.

Claims that occur while you are a member of the MDU but are not reported until after you retire from practice or leave the MDU are not covered by the policy, however, in these circumstances you have the right to request discretionary assistance from the MDU.

## Policy exclusions

The *policy* contains exclusions, some of which are:

- the *policy* will not indemnify *you* to the extent that *you* are entitled to indemnity under any other *policy* with SCOR and Inter-Hannover or anyone else or have the benefit of NHS indemnity or of any other indemnification agreement
- the *policy* will not indemnify *you* when *you* are entitled to be considered for a discretionary payment by any person including a medical defence organisation other than *the MDU* under that organisation's usual practices, except in respect of the provision of *professional services* while *you* are or were a pre-registration house officer, on the first year (F1) or second year (F2) of a Foundation programme or a newly qualified dental professional in the first year after graduation
- in respect of a *claim* which is made or a *circumstance* which arises relating to the provision of *professional services* 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.
- in respect of a *claim* arising from any material published or broadcast by *you* or on *your* behalf or to which *you* have contributed in any way.

This policy summary is not intended to be a complete representation of the policy. For full details of the policy terms, conditions and exclusions please refer to pages 8-11 of this booklet.

## Why we recommend the policy

MDUSL recommends the SCOR and Inter-Hannover insurance policy, as suitable for and in the best interests of MDU members having taken into account the needs of hospital doctors, as listed above in your demands and needs statement

and having considered a number of factors including:

- how the insurance complements the discretionary benefits of membership offered by the MDU
- the terms and conditions of the insurance policy
- the clarity of the plain English wording of the insurance policy
- the security of the insurer
- the favourable terms the MDU has negotiated.

## Other important information

### Termination of Membership and Refunds

The policy will terminate as and when you cease to be a member of the MDU, other than as a result of your death. Your entitlements under the policy will not be affected up to the date of termination.

If you terminate your membership before the end of the contract, no refunds will be given.

### Complaints Procedure

If you wish to register a complaint about MDUSL, please contact the Head of Membership at the following address:

**MDU Services Limited, 230 Blackfriars Road  
London SE1 8PJ**

Complaints we cannot settle may be referred to the Financial Ombudsman Service.

**Financial Ombudsman Service  
South Quay Plaza, 183 Marsh Wall  
London E14 9SR**

### Financial Services Compensation Scheme

MDUSL is covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.

Insurance advising and arranging is covered for 90% of the claim with no upper limit.

Further information about compensation scheme arrangements is available from the FSCS.

# Professional Indemnity Policy Version 10.0/10.1

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

SCOR UK Company Limited is authorised and regulated by the Financial Services Authority (FSA) (reference number 202333) and is a member of the Association of British Insurers (ABI). Registered Office: The London Underwriting Centre, 3 Minster Court, Mincing Lane, London EC3R 7DD. Registered in England No. 01334736.

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: 1 Arlington Square, Bracknell RG12 1WA. 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 UK Company Limited and International Insurance Company of Hannover Limited, which are both members of the Association of British Insurers (ABI)

For membership queries please call the **freephone membership helpline on 0800 716 376**

Lines are open Monday to Friday, 8am to 6pm

**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:

MDU Services Limited  
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 Head of Membership 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 a 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 a 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 a 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 a 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; 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;
  - (b) a 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:
- 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
  - 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:
- give *us*, *our* investigators and legal representatives all information and assistance *we* may reasonably require; and
  - 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:
- admit any legal liability for a *claim*; or
  - 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 (a) If *you* refuse to consent to *our* settling a *claim*, other than a defamation *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*.
- (b) If *you* refuse to consent to settlement of a defamation *claim* against *you*, *our* liability for *defence costs* is then limited to the amount of the *defence costs* incurred to the date *our* legal representatives recommend settlement of the *claim*.
- 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*:
- to the extent that *you* or a 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;
  - when *you* or a 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) or second year (F2) of a Foundation programme or a newly qualified dental professional in the first year after graduation;
  - 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:

- your* partner in a firm, including a general medical or dental practice;
  - a shareholder or director in a company of which *you* are also a shareholder or director; or
  - 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:
- any trading or personal debt incurred by *you*;
  - any fine, or civil or criminal penalty or any punitive, aggravated, additional or exemplary damages;
  - compensation for damage to or destruction or loss of any property;
  - any withholding of remuneration in conjunction with a disciplinary hearing; or
  - 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:
- actual or threatened pollution of the environment; or
  - 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:
- 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
  - 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,

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dishonest, malicious or reckless act or omission or, where *you* were knowingly party to such act or omission, that of a person for whom *you* are vicariously liable;

- (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*;
- (t) in respect of a *claim* or *circumstance* arising in any way from your vicarious liability for the acts or omissions of a registered medical or dental practitioner; or
- (u) in respect of a *claim* or *circumstance* arising in any way from your vicarious liability for the acts or omissions of any person in the course of medical or dental practice in a nursing home or in the provision of laboratory or other services to the medical, dental or allied professions.

## 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
  - (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;
- (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) **We** means the insurers named in the Schedule for each period of insurance and *us* and *our* will be construed accordingly;
- (t) **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;
- (u) the singular includes the plural; and
- (v) 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 20, is subject to the exclusive jurisdiction of the English Courts.

For membership queries please call the  
**freephone membership helpline on 0800 716 376**  
lines are open Monday to Friday, 8am to 6pm

**If you would like to receive this application guide and form, or any of our literature, in a large print format please contact our membership helpline on the number above.**

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