



## **Insurance for Members of the British Society of Echocardiography**

### **SPECIMEN POLICY WORDING**

#### **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, 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 Schedule) 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 Schedule.

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 prior to the Retroactive Date specified in the Schedule
- (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 Schedule
- (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 Schedule for malpractice.

**DEFINITIONS**

- (i) The expression "the Assured" shall be deemed to mean:
  - (a) the individual, partnership, corporation, institution or such other entity (named in the Schedule) 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 Schedule but only in respect of Claims arising from work undertaken on behalf of the Assured
  - (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 event or series of events arising from one originating cause and for which the Assured is required to give notice to Underwriters in accordance with General Condition 2.
- (iv) 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.
- (v) The expression "Products" shall mean any solid, liquid or gaseous substance or component part thereof.
- (vi) Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders.

## EXCLUSIONS

UNDERWRITERS shall **not** be liable for:

- (i) any Claim arising out of any Malpractice or Public Liability occurring prior to the inception date of this Policy if the Assured on such date knew or could have reasonably foreseen that such Malpractice or Public Liability 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 is the subject of Insurance, Indemnity or Assistance provided by any Medical Defence Organisation. This Policy shall not be drawn into contribution thereto
- (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(s) or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof
- (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

### **EXCLUSIONS (cont'd)**

- (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 fines, penalties, punitive or exemplary damages
- (xviii) the Excesses stated in the Schedule.

### **GENERAL CONDITIONS**

General Conditions 1, 2, 3 and 4, 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 the Insurance the Assured shall give immediate notice in writing to Underwriters via the Broker or Agent named herein of;
  - (a) every letter of Claim writ summons or process for Malpractice or alleged Malpractice against the Assured; or
  - (b) every letter of Claim writ summons or process for Public Liability or alleged Public Liability against the Assured; or
  - (c) the receipt of notice from any person of an intention to hold the Assured responsible for any Malpractice or Public Liability; or
  - (d) any conduct or circumstance which is likely to give rise to a Claim for Malpractice or Public Liability being made against the Assured.

If the Assured gives notice as required by (c) or (d), any Claim subsequently made against the Assured shall be deemed to have been made during the Period of Insurance.

The Assured shall, at all times, in addition to their obligations set out above afford such information to and co-operation with the Underwriters, or their appointed representatives, to allow the Underwriters to be able to comply with such relevant Practice Directions and Pre-Action Protocols as may be issued and approved from time to time by the Head of Civil Justice.

### GENERAL CONDITIONS (cont'd)

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 Ten (10) years from the date of treatment and, in the case of a minor for a period of at least Ten (10) years after that minor attains majority, and
  - (c) give to the 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 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 to prosecute in the name of the Assured for their own benefit any Claim for indemnity or damages or otherwise against any third party and shall have full discretion in the conduct of any negotiations or proceedings on the settlement of any Claim. The Underwriters will not settle any Claim 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 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 and Defence Costs which Underwriters are found obligated to pay after the date of such refusal.
5. 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.
6. Underwriters may cancel this Insurance 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.
7. 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 the United Kingdom. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within the United Kingdom and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the laws and practice of such court.

### CANCELLATION CLAUSE

#### If you wish to cancel cover

If for any reason you wish to cancel your cover mid-term, there is **NO REFUND**, so the cover will just continue until the renewal date

In the event you have ceased trading but still wish to keep cover in force to allow for late claims to be reported whose circumstances arose whilst you were trading and provided those circumstances arose during the policy period, you may purchase a further 12 months cover at the renewal date to provide a 12 month **EXTENDED REPORTING PERIOD** – the usual cost is 100% of the expiring period premium

## **CONDITIONS, EXTENSIONS & SPECIAL CLAUSES**

### **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 immuno deficiency 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.

### **JURISDICTION ENDORSEMENT**

Notwithstanding the terms contained within the Insuring Clause of this 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 or countries.

1. Great Britain
2. Northern Ireland
3. Channel Islands
4. Isle of Man

### **CONDITION PRECEDENT - PROFESSIONAL INSTRUMENTS**

It is a condition precedent to the right of the Assured to be defended and indemnified by the underwriters of this policy that any tool or implement used or intended for use in the performance of the Assured's professional duties and which is intended to be in contact with bodily fluid (whether human or animal) or penetrate tissue (whether human or animal) shall be:

handled, used and stored in accordance with the manufacturers' instructions, and

where approved by the manufacturers and by the Department of Health or equivalent to be used more than once, sterilised prior to such use:

- (a) using only sterilised apparatus specifically approved by the manufacturer and in accordance with instructions, recommendations or guidelines of such manufacturer
- (b) in accordance with Department of Health guidelines or equivalent

### **BREACH OF PROFESSIONAL CONFIDENTIALITY EXTENSION**

It is hereby understood and agreed that this Policy is extended to indemnify the Assured for Claims made against the Assured during the Period of Insurance stated in the Schedule arising from any Breach of Professional Confidentiality in or about the conduct of their occupation or business as stated in the Proposal or Declaration.

Underwriters shall **not** be liable for:

- (i) any Claims arising from libel or slander
- (ii) any Claims arising from the loss of any documents the property of or entrusted to the Assured, or the costs and expenses incurred by the Assured in replacing or restoring such documents
- (iii) any Claims arising from any infringement of the Data Protection Act 1998.

The Limit of Indemnity hereunder is:-

£1,000,000 any one Claim and in the aggregate including costs and expenses during the Period of Insurance, and shall be part of and **not** additional to the Limit of Indemnity stated in the Schedule.

**ALL OTHER TERMS, CONDITIONS, LIMITATIONS AND EXCLUSIONS REMAIN UNALTERED**

## CONDITIONS, EXTENSIONS & SPECIAL CLAUSES (cont'd)

### (RE)INSURERS LIABILITY CLAUSE

#### **(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

#### **Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

### **COMPLAINTS PROCEDURE**

Novae Underwriting Limited aims to provide a first class professional service to its customers which we expect to maintain throughout the duration of the policy. In order for this level of service to be fully appreciated by you, we would first ask you to read through this policy document carefully to ensure you understand the extent of the coverage provided and the conditions and exclusions that apply - *particularly what is required of you if and when you become aware of a claim or a circumstance which may give rise to a claim being made against you.*

If you have any questions or concerns about your policy or issues over the handling of a claim or if you wish to make a complaint concerning your policy, which cannot be answered to your satisfaction by your Broker, then please contact us at the address set out below:-

The Chief Executive,  
Novae Underwriting Limited  
71 Fenchurch Street  
London  
EC3M 4HH.

In the event that you are unable to resolve the situation you may, in certain circumstances, contact the Complaints Department at Lloyd's:

Policyholder and Market Assistance  
Lloyd's Market Services  
G6/86, One Lime Street,  
London  
EC3M 7HA

Tel No: +44 (0)20 7327 5693  
Fax No: +44 (0)20 7327 5225  
E-mail: complaints@lloyds.com

Complaints that cannot be resolved by the Lloyd's Complaints Department may be referred to the Financial Ombudsman Service. Further details of the service will be provided at the appropriate stage of the complaints process.

This complaints procedure is without prejudice to your right to take legal proceedings.

### **FINANCIAL SERVICES COMPENSATION SCHEME (FSCS)**

"Lloyd's underwriters are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the Scheme if a Lloyd's underwriter is unable to meet its obligations to you under this contract. If you were entitled to compensation under the Scheme, the level and extent of the compensation would depend on the nature of this contract. Further information about the Scheme is available from the Financial Services Compensation Scheme (7<sup>th</sup> Floor, Lloyds Chambers, Portsoken Street, London, E1 8BN) and on their website ([www.fscs.org.uk](http://www.fscs.org.uk))."

### **ENGLISH LAW AND JURISDICTION**

General Condition 7 is hereby deleted from the Policy and replaced with the following:

7. 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. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within England and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the laws and practice of such court.