

**ENTERPRISE INSURANCE COMPANY PLC  
AFTER THE EVENT LEGAL EXPENSES INSURANCE  
REMEDYLEGAL POLICY**

**THIS IS TO CERTIFY** that in consideration of the Premium as set out in the Schedule attached hereto which Schedule forms part of this Policy having been paid to the Insurer, the Insurer is hereby bound to insure in accordance with the terms, Limit of Indemnity, Conditions and Exclusions as hereinafter appear or endorsed hereon.

**WHEREAS** the Insured named in the Schedule herein has made, subscribed or caused to be subscribed and has deposited, a written proposal and declaration with RemedyLegal which is hereby declared and agreed to be the basis of this contract between the Insurer and the Insured and is deemed to be incorporated herein.

**NOW THE INSURER** hereby agrees, to the extent and in the manner set out herein, and **subject to the terms, Limit of Indemnity, Conditions and Exclusions** set out in this LitPlan Policy and Schedule, to indemnify the Insured against:

- (i) Opponent's Legal Costs (as hereinafter defined)
- (ii) Own Disbursements (as hereinafter defined)
- (iii) the Premium  
as specified in the section of Cover described below in relation to the Proceedings.
- (iv) Where specified Solicitors own Profit Costs.

#### DEFINITIONS AND INTERPRETATION

In this Policy and Schedule, unless inconsistent with or the context otherwise requires, the following words and expressions shall bear the meaning set out below:

#### **Appointed Representative**

The solicitor, firm of solicitors or other appropriately qualified adviser(s), as specified in the Schedule, being members of the Insurance Intermediary's Panel of Solicitors and who have been approved by the Insurer and duly appointed to represent an Insured in the Proceedings.

#### **Conclusion**

The conclusion of the Proceedings shall be either when a settlement in the Proceedings has been agreed between the parties, or when the Proceedings have been concluded by judgement or order of the Court or when the Proceedings have been discontinued, withdrawn or compromised with the Insurer's prior written consent, such consent not to be unreasonably withheld, to extend in each such case to the date upon which the costs issues between the parties are finally determined whether by court proceedings or otherwise.

#### **Conditional Fee Agreement**

A written agreement made between the Insured and the Appointed Representative entered into pursuant to Section 58 of the Courts and Legal Services Act 1990 as amended by Section 27 of the Access to Justice Act 1999 and defined in the Conditional Fee Agreements Regulations 2000 or such further legislation or regulations as may amend the definition of a conditional fee agreement from time to time and such an agreement

between the Appointed Representative and Counsel if appropriate.

#### **Inception Date**

As specified in the Schedule, being the date upon which the Insured's insurance cover commences.

#### **Insurance Intermediary**

The Insurance Intermediary specified in the Schedule, and any subsidiary or associated company which has or have entered into an agreement with the Insured to manage the pursuit of the Insured's claim for compensation in respect of damages arising out of clinical negligence which includes amongst other things a claim for damages for injury suffered which is the subject matter of the Proceedings and has agreed with the Insurer to undertake certain insurance services on the Insurer's behalf.

#### **Insured**

An individual (including his heir and assignees) who has entered into an agreement with the Insurance Intermediary and a Conditional Fee Agreement with the Appointed Representative, and who has been issued with a Schedule by the Insurer.

#### **Insurer**

Enterprise Insurance Company PLC, authorised insurer, registered in Gibraltar (Reg. No. 89698). The company is licensed by the Commissioner of Insurance under the Insurance Companies Ordinance to carry on insurance business in Gibraltar. Registered Office: Montagu Pavilion, 8 . 10 Queensway, Gibraltar.

#### **Opponent**

The person(s), firm(s), company(ies) or entity(ies) against whom or which the Insured proposes to bring or is bringing the Proceedings.

#### **Opponent's Legal Costs**

The legal costs which have been incurred by the Opponent from the date of the commencement of the dispute giving rise to the Proceedings and which are payable to the Opponent by the Insured either pursuant to any order of the Court made during the Proceedings or pursuant to a settlement entered into as part of the terms of a compromise, discontinuance or withdrawal of the Proceedings and to which the Insurer has given their prior written consent. Opponent's Legal Costs shall include the costs of any Interim applications assessed at the date of the hearing of the application.

#### **Own Disbursements**

Disbursements together with any value added tax (if irrecoverable from any other source) reasonably and properly incurred by the Appointed Representative and / or the Insured in the conduct of the Proceedings on behalf of the Insured. These shall include Court Fees, fees payable to experts for the provision of experts reports and for attendance in Court for the purpose of providing evidence to the Court during the course of the Proceedings but shall not include Counsels fees.

**Premium**

The amount specified in the Schedule payable by the Insured to the Insurer at the conclusion of the proceedings in consideration for which the Insurer undertakes the obligations under this Policy.

**Proceedings**

The legal proceedings, whether formally issued or not, in relation to the pursuit by the Insured for compensation arising out of a clinical negligence, as specified in the Schedule. The Proceedings shall also include any Appeal either by the Insured or the Opponent provided the prior written consent of the Insurer has been obtained, such consent not to be unreasonably withheld. For the avoidance of doubt, this definition shall not include (i) any proceedings of the kind set out in Section 58(10) of the Courts and Legal Services Act 1990 nor (ii) any proceedings brought outside the Territory but shall include proceedings brought against or by an Opponent under Part 8 of the Civil Procedure Rules with the approval of the Insurer nor (iii) any proceedings (or Appeals) which the Insurer determines at its absolute discretion to be ~~Test Litigation~~.

**Procedures Manual**

The manual, including any revised version thereof issued subsequent to the Inception Date issued or approved by the Insurer, for the use of the Appointed Representative, which sets out the terms with which the Appointed Representative must comply in conducting the Proceedings.

**Schedule**

The schedule to this LitPlan Policy.

**Success**

The claimant is awarded damages and/or costs by a court, or the case is concluded by way of negotiated settlement.

**Territory**

England and Wales.

Any reference herein to a Court shall include a tribunal, arbitration, mediation or alternative dispute resolution process established under any statutory authority.

Any references herein to any statute, statutory provision, subordinate legislation, order or rule shall be construed as referring to English statutes, statutory provision, subordinate legislation, orders and rules and shall be deemed to include any amendment, consolidation or re-enactment from time to time.

Any reference herein to the payment of costs or interim costs to the Opponent by the Insured pursuant to an order of the Court at the Conclusion of or during the course of the Proceedings shall extend to include an order of the Court for the payment of costs or interim costs by the Insured to any other persons.

Any reference herein to masculine gender shall imply the feminine and reference to singular shall imply the plural, and vice versa. Any reference herein to a

~~person~~ shall imply any individual, firm, unincorporated association or body corporate.

Where any word or phrase herein is not defined but which is defined in the Civil Procedure Rules 1998 such word or phrase shall bear that meaning wherever it shall appear.

The headings herein are for ease of reference only and shall not affect the construction or interpretation of this Policy.

**LIMIT OF INDEMNITY**

The maximum liability of the Insurer in respect of each Insured issued with a Schedule under this Policy is limited to the amount set out in the Schedule.

**THE COVER****Section A**

Under this Section of Cover, the Insurer shall provide an indemnity to the Insured in respect of Opponent's Legal Costs.

The liability of the Insurer under this Section of Cover shall not exceed the limit of indemnity set out in the Schedule.

**Section B**

Under this Section of Cover, the Insurer shall provide an indemnity to the Insured in respect of the Premium and Own Disbursements reasonably incurred subject to the limit of indemnity set out in the Schedule.

**Section C**

Under this Section of Cover, where an additional premium has been paid the insurer shall provide an indemnity to the insured in respect of his/her own solicitors costs up to a limit of £3,000 (three thousand pounds). The additional premium is set at £1000 plus IPT. Indemnified fees shall be reasonably and properly incurred, and excludes fees incurred, which are the subject of a Conditional Fee Arrangement.

**CONDITIONS****1. Compliance**

- (a) The due observance and fulfilment of the terms and conditions of this Policy in so far as they relate to anything to be done or complied with by the Insured and the truth of the Insured's statements and answers made or given at the time of entering into the agreement with the Insurance Intermediary and which may subsequently be included in a statement of truth shall be conditions precedent to any liability of the Insurer to make payment under the Policy.

(b) The Insured and the Appointed Representative shall conduct the Proceedings with due care and diligence and shall take all reasonable steps to minimise or avoid the costs and expenses payable under the LitPlan Policy. During the course of the Proceedings, the Insured shall comply with any orders made by the Court, all the rules of the Court and shall follow all proper and reasonable advice given by the Appointed Representative. In conducting the Proceedings, compliance by the Appointed Representative with the terms of the Procedures Manual shall be a condition precedent to any liability of the Insurer to make payment under the LitPlan Policy.

## 2. Conditional Fee Agreement

The Insured and the Appointed Representative shall ensure that the Conditional Fee Agreement entered into meets the requirements of Section 58(1) of the Courts and Legal Services Act 1990 as well as any rules and regulations made thereunder or amendments to that Act or legislation, rules and regulation superseding or relating to that Act. Further, it is a condition precedent to the Insurer's liability to make a payment hereunder that the Conditional Fee Agreement relating to the Proceedings is in force during the course of the Proceedings, has not been terminated for any reason whatsoever and that it contains an obligation on the part of the Insured to make a Part 36 Offer immediately prior to the issue of legal proceedings or as soon thereafter as is practicable.

## 3. Progress of the Proceedings

(a) The Insurer shall at all times have direct access to the Appointed Representative and the Insured shall co-operate fully with the Insurer in this respect. The Insured and the Appointed Representative shall keep the Insurer informed in writing as promptly as reasonably practicable of all material developments in the Proceedings.

For the avoidance of doubt, material developments will include but is not limited to:

- (i) any material amendments to the Insured's or the Opponent's pleadings;
- (ii) the discovery of any fact or evidence or other matter (including but not limited to (a) the failure of any witness who is necessary to support the Insured's claim to assist the Insured voluntarily or at all and (b) the discovery that the Opponent is or is no longer insured in respect of the outcome of the Proceedings) which adversely affects the Insured's prospect of success in the Proceedings or the prospects of any judgment being successfully enforced or the Insured's prospect of recovering in excess of £1500 in damages from the Opponent;
- (iii) the cessation of the Proceedings or the refusal by the Insured to make or accept a

Part 36 Offer or a Part 36 Payment into Court as advised by the Appointed Representative.

- (b) It shall be conditions precedent to the Insurer's liability to make payment under this Policy that the Insured shall unconditionally allow the Insurer (or its duly appointed agent) to inspect or to receive from the Appointed Representative any information, document or advice whether privileged or otherwise and at the request of the Insurer shall instruct the Appointed Representative to release to the Insurer the entire file of papers relating to the Proceedings.
- (c) The Insured shall not terminate his/her retainer in relation to the Proceedings with the Appointed Representative without the prior written consent of the Insurer.
- (d) The insured agrees that proceedings will not be commenced without the insurer's prior written consent. Furthermore the insured agrees to request the insurer's consent to reject a Part 36 Offer of settlement, and to request authority to proceed to trial. A request to proceed to trial must be made at the earliest point possible and in any event within 14 days of a listing date becoming available. If such consents are not obtained no indemnity will be provided and the Premium will become immediately payable.

## 4. Indemnity

- (a) The Insurer shall only be liable to make a payment under this LitPlan Policy if either:
  - (i) the Court orders the Insured to pay Opponent's Legal Costs and the Proceedings are not subject to any further legal action; or
  - (ii) the Insurer has agreed to the terms of a settlement of the Proceedings in circumstances where the Appointed Representative advises that the Insured has no reasonable prospects of success on the question of liability of the Opponent and the Insurer has given its prior written consent to the compromise, discontinuance or withdrawal of the Proceedings including the terms of such a settlement.
- (b) Until the Conclusion no payment shall be made under this Policy by the Insurer unless the Court orders the Insured to make a payment of interim costs to the Opponent prior to the Conclusion in which case the Insured shall be entitled to indemnity immediately.
- (c) The Opponent's Legal Costs shall be subject to detailed assessment by the Court, where requested by the Insurer. However, upon receipt of the Appointed Representative's detailed explanation as to the Opponent's Legal Costs (including but not limited to any adverse costs Order), the Insurer may make such payment on account of Opponent's Legal Costs as the Insurer in its absolute discretion deems reasonable in the light of all the circumstances

of the case at that time. The Insurer reserves the right to conduct any assessment of costs on behalf of the Insured.

- (d) For the purpose of reviewing Own Disbursements payable under the Policy, the Insured shall ensure that the Appointed Representative allows the Insurer or the Insurance Intermediary to inspect any or all papers, documents or other material held by the Appointed Representative in respect of the Proceedings.

## 5. Subrogation

In relation to any claim or loss paid or payable under this Policy, the Insurer shall be subrogated to the Insured's rights of recovery. In this regard, the Insured shall do and concur in doing and permit to be done all such acts and things as may be necessary or required by the Insurer for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the Insurer shall be or would become entitled or subrogated upon their paying for any claim or loss under this Policy, whether such acts and things shall be or become necessary or required before or after the Insured's indemnification by the Insurer.

## 6. Shortfall

If the insured recovers monies from the opponent in the proceedings, whether as damages or costs, interim damages or interim costs howsoever described and whether by way of judgement or settlement, such monies shall be first applied to set off against any opponent's costs and disbursements.

## 7. Payment of the Premium

It is a condition of this Policy that the Premium shall be paid within 28 days of the recovery by the insured of any damages or costs howsoever described provided always that the total accumulated amount of such recovery or recoveries shall exceed the value of the premium.

## 8. Fraud

Without prejudice to the Insurer's rights of recovery, if the Insured makes any request for payment under this Policy knowing it to be fraudulent or false in any respect (or in circumstances where it ought reasonably to be known to be so) or where there is collusion between the parties to the Proceedings, this Policy shall become void and any Premium paid to the Insurer shall be forfeited.

## 9. Schedule Void or Voidable

In the event of misrepresentation, misdescription or non-disclosure of any material particular by the Insured in relation to either the formation of the contract for this insurance or the conduct of the Proceedings, the Insurer shall become entitled to avoid this Schedule *ab initio* forthwith upon giving notice of such avoidance to the Insured and the net Premium paid to the Insurer shall be forfeited.

## 10. Third Parties

Any person who is not a party to this agreement has no right by statute or otherwise to enforce any term of this Policy to enforce any term of this Policy.

## 11. Arbitration

- (a) Any dispute between such of the Insured, the Appointed Representative, Insurance Intermediary and the Insurer shall be referred to a single arbitrator who shall be a solicitor of at least ten years call and experienced in the subject matter of the dispute agreed upon by both parties, or failing agreement, one who is nominated by the President of the Law Society.
- (b) The parties to the dispute shall each present such information relevant to their differences as shall be required by the arbitrator whose decision shall be final and binding upon them. All costs of the arbitration shall be met in full by the party against whom the decision is made or as decided by the arbitrator.

## 12. Jurisdiction

The Policy shall be subject to and construed in accordance with the laws of England and Wales as applicable.

## 13. Communications

- (a) All communications and notices to the Insurer shall be deemed to have been duly given if sent by first class post to the Insurer's address set out herein.
- (b) All communications and notices to the Insured or the Appointed Representative shall be deemed to have been duly given if sent by first class post or facsimile to the last known address of the Appointed Representative.

## EXCLUSIONS

The Insurer shall not be liable to indemnify the Insured hereunder in respect of the following:

1. Premium and Own Disbursements where these are payable by the Opponent either as a result of an order of the Court in favour of the Insured or pursuant to a settlement agreement between the Insured and the Opponent whether or not such costs are actually paid by the Opponent or where the claimant's case is a success.
2. The interest incurred by the insured on any loan taken out to facilitate the funding of the case.
3. Any disbursement which is not recoverable in whole or in part from the Opponent in accordance with the Civil Procedure Rules.
4. Where the Insured has or may have no reasonable prospect of recovering more than the Small Claims Track limit that may be applicable from time to time.

5. Proceedings where the Insured is, or would be but for the existence of the Policy, entitled to indemnity under any other suitable insurance unless the Limit of Indemnity under that other insurance is exhausted.
6. Proceedings which have been conducted in such a manner that, in the reasonable opinion of the Insurer, their position as insurers has been prejudiced as a result of the delay or other default by the Insured or the Appointed Representative, save where such delay does not occasion material loss.
7. Proceedings which are compromised (including by any consent, judgment or Court order) or discontinued or withdrawn by the Insured unless the prior written consent of the Insurer has been obtained including their agreement to contribute to the terms of such a settlement, such consent to be given only where the Appointed Representative advises that the Insured has no reasonable prospects of success on the question of liability against the Opponent or where the Appointed Representative advises that the Insured has no reasonable prospect of recovering more than the Small Claims Track limit that may be applicable from time to time.
8. Proceedings where it is discovered during the course of the Proceedings that the Opponent is not insured in respect of the outcome of the Proceedings except in respect of Own Disbursements incurred before discovery and the Premium.
9. Disbursements or opponents costs if the Proceedings are struck out or dismissed for want of prosecution or otherwise costs as a result of:
  - i) the negligence of the Appointed Rep
  - ii) the dishonesty of the insured
  - iii) the failure by the insured to act in accordance with the Advice of the Appointed Representative or to comply with any order of the Court
10. Costs ordered to be paid by the insured to the opponent arising from any application for security for costs and/or any monies ordered to be paid by the court
11. Disbursements or opponents costs which become payable either:
  - i) as a result of medical records which are consistent with instructions given by the insured
  - ii) as a result of fraudulent false or misleading information given by the insured in connection with the proceedings,
12. Unreasonable or un-necessary disbursements
13. Proceedings brought or commenced outside the Territorial Limits.
14. Fines or other penalties imposed by the Court.
15. Any dispute between the Insured and the Appointed Representative, the Insurance Intermediary or the Insurer.
16. Any claim directly or indirectly resulting from any electronic device failing, failing to recognise, interpret or process any date as its true calendar date.
17. Any loss, damage, expense or liability directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, 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.
18. any expense, consequential loss, legal liability or any loss or damage to property directly or indirectly caused by or contributed to by:
  - (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
  - (b) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### TERMINATION

1. The Schedule and insurance hereunder shall be terminated on the earlier date of either:
  - (a) the Conclusion; or
  - (b) the termination of the Insured's agreement with the Insurance intermediary; or
  - (c) the termination of the Conditional Fee Agreement, except where the Insurer in its absolute discretion has agreed to a change in the Appointed Representative.
2. In cases where the Insurer is informed (or should have been informed) of any material development the Insurer may at its absolute discretion withdraw the benefit of this Policy and will have no liability to make any payment under this Policy from the date upon which the Insurer was notified or should have been notified of such material development. The Insurer shall provide the Insured with a written notification that the benefit under this Policy has been withdrawn.
3. In connection with any Part 36 Offer or payment into Court by the Opponent, the Insured will not decline any Part 36 Offer or payment into Court without obtaining the prior agreement of the Insurer, such agreement not to be unreasonably withheld, based upon the merits of pursuing the Proceedings for a greater amount. If the Insured declines the offer or payment into Court without the Insurers consent, and following due consultation between with the Insurance Intermediary and the Appointed Representative, the Insurer disagrees with such course of action, the Insurer will withdraw the

benefit of this Policy and will have no liability to make any payment under this Policy except in respect of Own Disbursements incurred before the declining of the Part 36 Offer or payment into Court together with the Premium.

## COMPLAINTS

If the **Insured** is not satisfied with the service provided by the **Appointed Representative**, the **Insured** should write to the **Insurer** at the following address:

The Managing Director  
Enterprise Insurance Company PLC  
R22-24 Ragged Staff Wharf  
Queensway Quay  
Gibraltar

### About the Insurer

If the **Insured** is not satisfied with the service provided by the **Insurer**, the **Insured** should write to the **Insurer** at the address shown above. If the **Insured** is still not satisfied that the **Insurer** has dealt with the complaint to the satisfaction of the **Insured**, the **Insured** can write to the Financial Ombudsman Service at the following address

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

**IN WITNESS WHEREOF** the Policy has been signed by the Insurer on the date stated in the Schedule.

Enterprise Insurance Company PLC