



Non-Consultant Hospital Doctor (Private Hospitals) Medical Liability Insurance: Occurrence

Policy Wording

Policy Wording

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Reminder

It is important that:

The **Insured** checks that the information the **Insured** provides and has already provided to the **Insurer** is accurate and up to date and contact the **Intermediary** immediately if any inaccuracies are identified. See Clause 5.4 of the **Policy** for more information.

The **Insured** must read and understand the **Policy** and take independent professional advice on any issues of uncertainty or concern.

The **Insured** complies with the **Insured's** duties under each section and under the **Policy** as a whole.

The **Insured** checks that the sections that the **Insured** has requested are included in the **Schedule**.

If the **Insured** is uncertain regarding their responsibilities and how they relate to this **Policy**, the **Insured** should contact the **Intermediary** in the first instance.

 Telephone +353 (0)1 661 0504

 Email info@medisec.ie

Important Information

A. This Policy

This **Policy** is a legally binding contract and should be read as one document.

This **Policy** should be kept in a safe place. The **Insured** may need to refer to this **Policy** if the **Insured** has to make a **Claim** and/or is the subject of an **Inquiry**.

Wherever words appear in **bold** in this **Policy** they will have the meaning shown in the definitions in Section 6: Definitions or as otherwise stated in any particular section or the **Schedule**.

The section headings used in this **Policy** are for reference purposes only and will not affect the meaning or interpretation of this **Policy**.

B. Information provided by the Insured

In deciding to underwrite this **Policy** and in setting the terms and **Premium**, the **Insurer** has relied on the information the **Insured** provided. The **Insured** must take care when answering any questions the **Insurer** asks by ensuring that all information provided is accurate and complete.

If the **Insured** provided the **Insurer** with false, incomplete or misleading information, it may adversely affect the **Insured's Policy** and any payment of **Claims** and/or costs associated with or arising out of **Inquires** under the **Policy**.

If at any time the **Insured** becomes aware that information the **Insured** has given the **Insurer** is inaccurate or incomplete, the **Insured** must inform the **Intermediary** without delay.

C. Complaints

The **Insurer** aims to ensure that all aspects of the **Insured's** insurance are dealt with promptly, efficiently and fairly. At all times the **Insurer** is committed to providing the **Insured** with the highest standard of service. If the **Insured** has an inquiry or wishes to make a complaint, please contact the **Insurer**, using the contact details below, providing the policy/claim number and the name of the **Insured** to help the **Insurer** to address your comments quickly.



Email customerrelations@bhei.eu



Post Head of Compliance, Berkshire Hathaway European Insurance DAC,
7 Grand Canal Street Lower, Dublin D02 KW81




Telephone +353 (0)1 246 7246

The **Insurer** will acknowledge the complaint within five (5) business days of receiving it, will keep the **Insured** informed of progress, and do its best to resolve matters to the **Insured's** satisfaction within forty (40) business days. If the **Insurer** is unable to do this, the **Insured** may be entitled to refer the complaint to the Financial Services and Pensions Ombudsman who will review the **Insured's** case.

The **Insurer** will provide full details of how to do this when the **Insurer** provides its final response letter addressing the issues raised.

Please note: The Financial Services and Pensions Ombudsman may not be able to consider a complaint if the **Insured** has not provided the **Insurer** with the opportunity to resolve it. The contact details for the Financial Services and Pensions Ombudsman are:

-  Website www.fspo.ie
-  Email info@fspo.ie
-  Post The Financial Service and Pensions Ombudsman, Lincoln House,
Lincoln Place, Dublin 2, D02 VH29
-  Telephone +353 1 567 7000

D. The Insured's right to cancel

The **Insured** can cancel this **Policy** in accordance with its cancellation provisions at any time by giving written notice to the **Insurer**. The details of the **Insurer** are shown in this **Policy** and in the **Schedule**. Cancellation conditions are included in Clause 5.2.

E. Data Protection Notice

The **Insurer** collects and uses relevant information about the **Insured** to provide the **Insured** with insurance cover and to meet the **Insurer's** legal obligations. Full details in relation to how data is processed is set out in Clause 5.3 and in the [MedPro Data Privacy Notice](#). For more information about how the **Insurer** uses the **Insured's** personal information and the **Insured's** rights please see the full privacy notice, which is available here: www.medpro.international/privacy-policy

F. Claim Notification

The **Insured** must notify the **Intermediary** as soon as the **Insured** first becomes aware of any negligent act, error or omission, potential claim, **Claim** and/or **Inquiry** which may give rise to an indemnity under the **Policy**.

Claims should be notified to the **Intermediary** by a telephone call to the Medisec Medico-Legal Helpline listed below and/or in writing to either the mailing address or e-mail address listed below:

-  Email info@medisec.ie
-  Post Medisec Ireland CLG, 7 Hatch Street Lower, Dublin 2
-  Telephone +353 (0)1 661 0504

Full details of how to notify the **Intermediary** of any **Claim**, and what information is to be provided can be found in Clause 4.1 and 4.2 of the claims conditions of this **Policy**.

The **Insurer** will not pay any costs incurred by the **Insured** without the **Insurer's** prior written consent. The **Insured** will be responsible for any costs incurred if the **Insured** instructs their own solicitor, barrister or other legally qualified person without the **Insurer's** prior written agreement.

G. Basis of Insurance

The coverage provided in this **Policy** is on an occurrence basis.

The cover provided is subject to the terms, conditions and exclusions of this **Policy**, and is granted in consideration of the full payment of the **Premium** by the **Insured** and reliance by the **Insurer** upon the statements made by the **Insured** in the **Proposal**.

1 INSURING CLAUSES

In consideration of payment of the **Premium**, the **Insurer** will indemnify the **Insured**, up to the **Limits of Liability** as specified in the **Schedule**, against legal liability to pay **Damages** and **Defence Costs** caused by any negligent act, error or omission committed by the **Insured** during the **Policy Period** resulting in:

1.1 Medical Malpractice Liability

any **Bodily Injury** to a **Patient** arising from **Professional Medical Services** within the **Territorial Limits**.

1.2 Good Samaritan Act Liability

any **Bodily Injury** sustained by any person in the course of a **Good Samaritan Act** performed by the **Insured** anywhere in the world.

1.3 Professional Liability

any pecuniary or economic loss arising from the provision of **Professional Medical Services** within the **Territorial Limits**, that is not subject to indemnity under Insuring Clause 1.1, and which arises out of:

- a. any unintentional defamation, libel or slander; or
- b. any unintentional breach of professional confidentiality.

2 ADDITIONAL INSURING CLAUSES

The **Insurer** will indemnify the **Insured**, up to the **Limits of Liability** as stated in the **Schedule**, against costs and expenses incurred solely with the **Insurer's** prior written consent:

2.1 Criminal Defence Costs

in the defence of any criminal proceedings commenced against the **Insured** arising from any act, error or omission during the **Policy Period**.

2.2 Regulatory & Disciplinary Defence Costs

in connection with preparing for, cooperating with or attending interviews in respect of or responding to an investigation or disciplinary proceedings commenced against the **Insured** and brought by the **Insured's** professional body and/or regulatory body arising from any act, error or omission during the **Policy Period**.

2.3 Coroner's Inquest Representation Costs

in connection with the representation of the **Insured** at any Coroner's Inquest arising from any act, error or omission during the **Policy Period**.

2.4 Unlawful Discrimination

in connection with civil proceedings brought against the **Insured** for unlawful discrimination under the Equal Status Acts 2000 – 2015 arising from any act, error or omission during the **Policy Period**.

For the purposes of indemnity under Additional Insuring Clauses 2.1, 2.2., 2.3 and 2.4, all claims, **Inquiries** and/or proceedings must be brought within the **Jurisdictional Limits** and directly arise out of the **Insured's** provision of **Professional Medical Services** within the **Territorial Limits**.

3 EXCLUSIONS

The **Insurer** shall not provide indemnity to the **Insured** in respect of any liability or loss directly or indirectly caused by, arising out of, or in any way connected with:

3.1 Abuse or Molestation

any actual, alleged or threatened sexual abuse, harassment, exploitation or molestation or, mental or physical abuse to any person in the course of the provision of, including under the guise of, **Professional Medical Services** once determined by a final and binding adjudication by a competent authority or an admission of guilt by the **Insured**. **Defence Costs** will be afforded under this **Policy** until such final and binding adjudication or admission of guilt.

3.2 Activities outside Training or Accreditation

any **Professional Medical Services** in respect of which the **Insured** does not have experience, training or accreditation.

3.3 Administration/Prescription of Certain Drugs, Medicine or Pharmaceuticals

the use of any drug, medicine or pharmaceutical which has not been approved, or approval has been withdrawn, by the Irish Board under the Medical Preparations (Licensing, Advertisement and Sale) Regulations 1984 (S.I. No 210 of 1984) or any amendment thereto, unless such drug, medicine or pharmaceutical is routinely prescribed in general medical practice or its use has been approved in writing by the **Insurer**.

3.4 Asbestos

- a. the actual, alleged or threatened presence of asbestos in any form whatsoever, or any material or product containing, or alleged to contain, asbestos; and/or
- b. any obligation, request, demand, order, or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, neutralise, protect against or in any other way respond to the actual, alleged or threatened presence or any material or product containing, or alleged to contain, asbestos.

3.5 Claim outside the Jurisdictional Limits

any civil or criminal proceedings or **Inquiry** brought or threatened to be brought outside of the **Jurisdictional Limits**.

3.6 Clinical Trials

- a. any negligent act, error or omission in the planning, design, discharge of statutory requirements, organisation or implementation of a **Clinical Trial**;
- b. any drug, medical product or device used or tested in a **Clinical Trial**; and/or
- c. the provision of funding, sponsorship or organisation of a **Clinical Trial**.

This Exclusion shall not apply to any liability or loss which would otherwise be covered by Insuring Clause 1.1.

3.7 Contractual Liability

- a. any oral or written contract or agreement (including but not limited to express warranties or guarantees); and/or
- b. any liability of any party assumed by any **Insured** under any oral or written contract or agreement,

except insofar as any liability would have arisen to the same extent in the absence of such contract or agreement.

3.8 Cyber Loss

any **Cyber Act** or **Cyber Incident** including, but not limited to, any action in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**.

3.9 Data Protection

any actual or alleged breach of data protection laws or regulations by the **Insured** or any party acting on the **Insured's** behalf.

This Exclusion does not apply to any such liability or loss which would otherwise be covered by Insuring Clause 1.1 and, to the extent that a complaint is made to or an investigation is undertaken by the Irish Medical Council, Additional Insuring Clause 2.2.

3.10 Dishonest and Criminal Acts

- a. any dishonest or fraudulent act committed or condoned by the **Insured**;
- b. any malicious, criminal or intentional breach of the law (including performance of any activities whilst under the influence of intoxicants, alcohol or narcotics), committed or condoned by the **Insured**; and/or
- c. the gaining by the **Insured** of any profit or advantage to which the **Insured** is not legally entitled;

as determined by final and binding adjudication by a competent authority or an admission of guilt by the **Insured**. **Defence Costs** will be afforded under this **Policy** until such final and binding adjudication or admission of guilt.

3.11 Directors and Officers Liability

an **Insured's** capacity as a director, officer or trustee in respect of the performance or non-performance of their duties as a director, officer or trustee.

3.12 Employers' Liability

Bodily Injury to any person under a contract of service or apprenticeship with the **Insured** or under the **Insured's** supervision as an employee or for any breach of any obligation

owed by the **Insured** as an employer to any such person, including any such liability or loss in respect of which compensation is available or required under the Safety, Health and Welfare at Work Act 2005 (as amended).

This Exclusion shall not apply where any such **Claim** is brought by an employee of the **Insured** in their capacity as a **Patient**.

3.13 Excluded Territories

notwithstanding anything to the contrary in this **Policy**, this **Policy** excludes any loss, damage, liability, costs or expense of whatsoever nature, directly or indirectly arising from or in relation to any person or entity domiciled, resident, located, incorporated, registered or established in or involving the territory of: 1. Cuba; 2. Iran; 3. North Korea; 4. Syria; 5. the Crimea Region of Ukraine; 6. Russia; 7. Belarus; 8. Ukraine. Notwithstanding the **Territorial Limits** applicable to the **Policy**, all such territories stated above are excluded from the **Policy** and no cover whatsoever shall be deemed given under this **Policy** and no business activity being undertaken in that territory or the provision of any service to or shipment of any goods to, from or within that territory will be covered by this **Policy**.

3.14 Failure to Maintain Licence/Registration

the **Insured's** failure to secure and maintain any license/registration that is required by any government, regulatory or supervisory body.

3.15 Fines and Aggravated Damages

- a. any fines and/or penalties imposed by law; and/or
- b. any punitive, exemplary or aggravated **Damages**, or any other increase in **Damages** resulting from the multiplication of compensatory **Damages**.

3.16 Health Service Executive Indemnity

any activity where an **Insured** is employed or contracted to provide services for the Health Service Executive (HSE), any other equivalent body, and/or patient where that activity is covered by the Clinical Indemnity Scheme of the State Claims Agency or its equivalent or any other indemnification agreement for the **Insured**.

This Exclusion shall not apply to any costs and expenses, which would otherwise be covered by Additional Insuring Clauses 2.1, 2.2 and/ or 2.3.

3.17 Motor, Aviation, Property and Marine Liability

the ownership, possession or use by or on behalf of the **Insured** of any:

- a. motor vehicle or trailer or any aircraft, watercraft or hovercraft; and/or
- b. mobile or immobile buildings, structures, premises, land or property.

This Exclusion shall not apply to any such liability or loss involving an ambulance, rescue vehicle, hospital, nursing home, clinic, surgery or similar institution and which would otherwise be covered by Insuring Clause 1.1.

3.18 Nuclear Risk

- a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from combustion of nuclear fuel; or
- b. the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nucleus component thereof.

This Exclusion shall not apply to any such liability or loss which arises from the use of radiation or radioactive materials for clinical, medical or therapeutic purposes and which would otherwise be covered under Insuring Clause 1.1 and/ or 1.2.

3.19 Obstetrics and Antenatal Scanning

- a. any obstetric medicine or obstetric surgery; and/or
- b. any antenatal scanning except where this is prior to 20 weeks gestation, or the 'Anomaly Scan', whichever is soonest.

This Exclusion shall not apply to any costs and expenses, which would otherwise be covered by Additional Insuring Clauses 2.1, 2.2 and/or 2.3.

3.20 Overheads/Associated Insured's Costs

any internal or overhead expenses of the **Insured**, or the cost of or associated with the **Insured's** time, including salaries, wages, allowances, fees, awards and bonuses.

3.21 Partnership Disputes

any actual or alleged breach of the **Insured's** partnership or shareholder agreement or arrangement, including any equivalent agreement or arrangement where the **Insured** is an LLP or a company without a share capital, as opposed a breach of any duty in carrying out **Professional Medical Services**.

3.22 Pollution

- a. the actual, alleged or threatened discharge, dispersal, release, escape or failure to detect the presence of **Pollutants** in any form whatsoever; and/or
- b. the cost and expenses arising out of or in any way related to testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing **Pollutants**.

3.23 Products

- a. any **Products**; and/or
- b. the failure of any **Product** to fulfil the purpose for which it was designed, or to perform as specified, warranted or guaranteed.

This Exclusion shall not apply to any such liability or loss arising from any **Professional Medical Services** in respect of the application or preparation of any medicinal or

pharmacological **Products** which have been approved by the relevant regulatory, licencing or registration authority and which would otherwise be covered under Insuring Clause 1.1.

3.24 Public Liability

any liability for **Bodily Injury** or loss of or damage to tangible property of any person caused by a negligent act, error or omission of the **Insured**, other than in the course and scope of providing **Professional Medical Services**.

3.25 Territorial Limits

any **Professional Medical Services** performed or undertaken by the **Insured** outside of the **Territorial Limits** as stated in the **Schedule**.

This Exclusion shall not apply to Insuring Clause 1.2.

3.26 Toxic Mould

- a. the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of or presence of any fungi or bacteria on or within a building or structure, including its contents;
- b. the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposing of, or in any way responding to or assessing the effects of fungi or bacteria by any **Insured** or by any other person or entity

Fungi means any type or form of fungus, including mould or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.

However, this Exclusion shall not apply to any liability or loss arising out of the diagnosis and/or treatment of patients of the **Insured** who are suffering from infection by such fungi or bacteria.

3.27 War and Terrorism

- a. any war, invasion, acts of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government, public or local authority; and/or
- b. any **Act of Terrorism**;

regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Exclusion shall not apply to Insuring Clauses 1.1 and 1.2.

4 NOTIFICATION AND CLAIMS CONDITIONS

4.1 Notification

The **Insured** must give notice to the **Intermediary** as soon as reasonably practicable if:

- a. the **Insured** becomes aware of any negligent act, error or omission, **Claim** or potential claim which may give rise to indemnity under the **Policy**, including but not limited to any instance of:
 - i. **Bodily Injury**, or
 - ii. **Inquiry**;
- b. the **Insured** receives notice of any **Inquiry**, inquest, fatal accident inquiry, prosecution or other legal proceedings which include alleged **Bodily Injury**, or other losses covered under the **Policy**.

For details of how and where to give notice under the **Policy**, see Section F in the Important Information above.

All notifications must include a specific description of the matters for which indemnity is sought including the manner in which the **Insured** first became aware of it, all relevant dates, and details of the parties involved.

Copies of any written demands, assertions or documents relating to the commencement of proceedings against the **Insured** or any **Inquiry** must be provided to the **Intermediary** within seven (7) days of receipt by the **Insured**.

Where the **Insured's** breach of this Clause 4.1 has prejudiced the **Insurer**, the **Insurer** may take appropriate steps including reducing proportionately the amount to be paid and/or declining all indemnity to the **Insured** in respect of any potential claim, **Claim** or **Inquiry**.

4.2 Conduct of Claims

The **Insured** must comply with the following conditions at Clause 4.2.1, which are conditions to the **Insurer's** liability to indemnify the **Insured**.

4.2.1. In respect of any claim, the **Insured** must:

- a. ensure all relevant files, evidence, correspondence and documentation, whether hard copy or electronic, are preserved and not destroyed;
- b. assist and co-operate fully with the **Insurer**, and its appointed representatives, in the investigation, defence or settlement or any investigations for the purpose of enabling the **Insurer** to determine its liability to provide an indemnity under this **Policy**, including but not limited to, providing promptly upon request and at their own cost, all information, documentation and assistance as the **Insurer** or its representative may reasonably require;
- c. not admit responsibility or liability or make any offer, promise or payment without the **Insurer's** prior written consent, other than in accordance with their

professional and statutory duty of candour or otherwise in discharging a legal or regulatory obligation;

- d. not waive any rights of recovery against any other person and at **Insurer's** request and expense undertake such acts as may be required for the purpose of enforcing any rights and remedies; and
- e. not incur any costs, expenses or other loss, without the prior written consent of the **Insurer**, which shall not be unreasonably withheld or delayed.

Where the **Insured's** breach of Clause 4.2 has prejudiced the **Insurer**, the **Insurer** may take appropriate steps including reducing proportionately the amount to be paid and/or declining all indemnity to the Insured in respect of any potential claim, **Claim** or **Inquiry**.

4.3 Control and Settlement of Claims

- 4.3.1. The **Insurer** shall be entitled but not obligated to take full control of the defence of any **Claim** on behalf of the **Insured** and, if the **Insurer** exercises this right, the **Insurer** shall have full control of the conduct of any negotiations or proceedings.
- 4.3.2. The **Insurer** will not settle any **Claim** without the written consent of the **Insured**, which shall not be unreasonably withheld. In the event of any dispute arising in respect of the withholding of such consent by the **Insured**, the **Insurer** shall, at its own cost, refer the dispute to the **Insurer's** chosen independent Senior Counsel for a full and final binding decision regarding the reasonableness of the **Insured** withholding consent.

4.4 Fraudulent Claims

- 4.4.1. Where a request for payment made by the **Insured** under the **Policy** contains information that is false or misleading in any material respect and which the **Insured** either knows to be false or misleading or consciously disregards whether it is false or misleading, the **Insurer** shall be entitled to refuse to pay the potential claim, **Claim** and/or **Inquiry** and shall be entitled to terminate the **Policy**. The **Insurer** will not return any **Premium** and all payments to the **Insured** under the **Policy** shall be returned to the **Insurer**.

- 4.4.2.** Where the **Insurer** becomes aware that the **Insured** has made a fraudulent potential claim, **Claim** and/ or **Inquiry**, the **Insurer** may, as soon as is practicable after becoming aware of that fact, notify the **Insured** in writing that it is cancelling the **Policy**, and if the **Insurer** so notifies the **Insured**, the **Policy** shall be treated as having been terminated with effect on or after the date of the submission of the fraudulent potential claim, **Claim** and/ or **Inquiry**, and:
- a. the **Insurer** may refuse all liability to the **Insured** under the **Policy** in respect of any **Claim** made on or after the date of the fraudulent act; and
 - b. the **Insurer** need not return any of the **Premium** paid under the **Policy**.

4.5 Subrogation

- 4.5.1** The **Insured** grants to the **Insurer** all rights of recovery against any party from whom a recovery in respect of sums paid under the **Policy** can be made.
- 4.5.2** Notwithstanding Clause 4.5.1, the **Insurer** agrees to waive any right of recovery against an **Insured** unless liability has resulted in whole or part from:
- a. any dishonest, fraudulent, criminal or malicious act or omission; and/or
 - b. any sexual abuse, harassment, exploitation, molestation, or any mental or physical abuse;
- by the **Insured**.

The **Insured** must secure and preserve such rights, including full rights of recourse against any manufacturer or supplier with whom the **Insured** has entered into a legal contract for the provision of **Products**.

The **Insured** must assist and co-operate fully with the **Insurer** in the investigation, prosecution and settlement of any such claim which is brought in the name of the **Insured**.

5 GENERAL CONDITIONS

5.1 Limits of Liability & Excess

The **Insurer's** maximum liability during the **Policy Period** under this **Policy** shall not exceed the **Limit of Liability**, subject at all times to the **Annual Aggregate Limit of Liability**;

Unless otherwise provided, any sub-limit shall be subject to and not in addition to the **Limit of Liability**;

5.1.1. The **Insured** shall pay any applicable **Excess** in respect of each **Claim** or **Inquiry**, and the liability of the **Insurer** shall only be in excess of this sum.

5.1.2. Any **Claim, Inquiry**, or other insured loss irrespective of the number of claimants involved, arising from or attributable to:

- a. the same, related or repeated acts or omissions;
- b. a series of related or repeated acts or omissions;
- c. the continuous or repeated exposure to substantially the same harmful conditions; and/or
- d. the same originating cause;

will be considered one **Claim** for the application of the **Limits of Liability** and the **Excess** and will be deemed to attach to the policy in force at the time of the first negligent act, error or omission.

5.1.3. If a **Claim, Inquiry** or other insured loss is covered under more than one **Insuring Clause** and/or **Additional Insuring Clause** then the largest single applicable **Limit of Liability** and **Excess** shall apply, subject always to the **Annual Aggregate Limit of Liability**.

5.2 Cancellation

The **Insurer** may cancel the **Policy** or any part of it at any time by giving thirty (30) calendar days' written notice to the **Insured** at the address stated in the **Schedule**. The **Insurer** will provide the **Insured** with its reason(s) for the cancellation of the **Policy**. Except in the case of Clause 4.4, **Premium** will be refunded to the **Insured** on a proportionate basis corresponding to the unexpired **Policy Period**.

The **Insured** may cancel the **Policy** at any time by giving written notice to the **Intermediary**. Such cancellation shall be effective on the date requested by the **Insured** or the date the notice is received by the **Insurer**, whichever is later. **Premium** will be refunded to the **Insured** on a proportionate basis corresponding to the unexpired **Policy Period**.

Notice under Clause 5.2 shall be given to the **Intermediary** via one of the following methods:

-  Telephone +353 (0)1 661 0504
-  Email info@medisec.ie
-  Post Medisec Ireland CLG, 7 Hatch Street Lower, Dublin 2



5.3 Data Protection

This section describes how the **Insurer** processes the personal data of the **Insured**. The **Insurer** processes the personal data provided by the **Insured** including name, date of birth, contact details, date of qualification, training records.

The **Insurer** stores this personal data to communicate with the **Insured**, to set up and administer the **Policy** including handling claims, to meet any legal or regulatory needs and to fulfil the legitimate interests of the **Insurer**, such as to improve products and services. Calls may be monitored and recorded in order that the service may be improved and to help prevent and detect fraud. For the above purposes personal data may be shared with other **Insurer** group companies, brokers, other distribution parties, insurers and reinsurers and other service providers.

The **Insurer** retains the personal data for the period necessary to fulfil the purposes set out in this **Policy**, unless a longer retention period is required by any regulation or permitted by law.

If the **Insured** would like to access, correct, or delete their personal data, restrict or object to processing of their personal data, or if the **Insured** would like to request an electronic copy of their personal data is sent to another company, or to ask any questions related to the **Insurer's** use of personal data, please contact the **Insurer** using the details below:

-  Email data.privacy@bhei.eu
-  Post Data Protection Officer, Berkshire Hathaway European Insurance DAC, 7 Grand Canal Street Lower, Dublin D02 KW81

Please note the rights in relation to personal data may be restricted under applicable law. If the **Insured** objects to the processing of certain personal data by the **Insurer**, please be aware, it may not be possible to perform the **Insurer's** obligations pursuant to the **Policy**.

For more information about how the **Insurer** uses the **Insured's** personal information and the **Insured's** rights please see the full privacy notices, which are available in the **Insured's** online portal or by contacting the **Insurer** using the details above.

5.4 Disclosure and Material Change in the Risk Insured

The **Insured** must disclose, honestly and with reasonable care, and not misrepresent to the **Insurer**, before this **Policy** is entered into, every matter which is the subject of any question in the **Proposal**. This duty of disclosure also applies to any renewal, extension, variation or reinstatement of the **Policy**.

The **Insurer** has relied upon each of the **Insured's** disclosures in the **Proposal** in determining whether to underwrite this **Policy** and in determining the **Policy's** terms, conditions and exclusions, and the premium payable. The **Insured** shall promptly inform the **Insurer** of any material changes in their practice that occur after the **Insurer** agrees to underwrite the risk but before the **Policy** incept. Where there have been such material changes, the **Insurer** shall be entitled to amend the terms of the **Policy** as appropriate or cancel the **Policy** in accordance with Clause 5.2.

In the event of a negligent failure by the **Insured** to comply with the duty of disclosure with respect to any question in the **Proposal**, the **Insurer** shall apply a compensatory and proportionate test. This includes, but is not limited to, the **Insurer** taking the following steps at the **Insurers'** absolute discretion:

- i. if the **Insurer** would not have underwritten the **Policy** on any terms, the **Insurer** may avoid the **Policy** and refuse all potential claims, **Claims** and/or **Inquiries** but the **Insurer** shall return all **Premium**;
- ii. if the **Insurer** would have underwritten the **Policy**, but on different terms, excluding terms relating to the **Premium**, the **Policy** can be treated as if it had been entered into on those different terms; or
- iii. if the **Insurer** would have underwritten the **Policy**, whether the terms relating to matters other than the **Premium** would have been the same or different, but would have charged a higher premium, the **Insurer** may reduce proportionately the amount to be paid on a potential claims, **Claims** and/or **Inquiries** or charge additional **Premium**.

In the event of an intentional or fraudulent failure by the **Insured** to comply with the duty of disclosure, or the **Insured's** intentional or fraudulent misrepresentation to the **Insurer**, the **Insurer** shall be entitled to avoid the **Policy**.

The **Insured** should be aware that the consequences of not making a full disclosure of relevant facts may include:

- a. A policy may be cancelled;
- b. **Claims** may not be paid; and
- c. The **Insured** may face difficulty when trying to purchase insurance elsewhere.

During the **Policy Period**, the **Insured** shall give notice in writing within seven (7) days to the **Intermediary** named in the **Schedule** of any alteration which materially affects the risk or the subject matter covered by the **Policy**.

Where the **Insured's** breach of this paragraph has prejudiced the **Insurer**, the **Insurer** may decline all indemnity to the **Insured** in respect of any potential claim, **Claim** and/or **Inquiry**. The **Insurer** is entitled to refuse to cover the additional exposure or cancel the **Policy** in accordance with the cancellation provisions of this **Policy**.

Notice under this Clause 5.4 shall be given to the **Intermediary** using one of the following methods:

	Telephone	+353 (0)1 661 0504
	Email	info@medisec.ie
	Post	Medisec Ireland CLG, 7 Hatch Street Lower, Dublin 2

5.5 Contract Integrity

The **Policy** shall be read as one document. No alteration to the **Policy** shall be binding unless it is evidenced by written endorsement issued by or on behalf of the **Insurer**.

5.6 Insurance Act 1936

All monies that become or may become due and payable by the **Insurer** under the **Policy** shall, in accordance with Section 93 of the Insurance Act 1936, be payable and paid in the Republic of Ireland.

5.7 Maintenance of Records

The **Insured** must:

- 5.7.1. Maintain accurate descriptive records of all **Professional Medical Services** and products and equipment used in procedures. Such records shall be made available for inspection and use by the **Insurer** or its appointed representatives in the investigation or defence of any potential claim, **Claim** or **Inquiry** hereunder;
- 5.7.2. Retain the records referred to in 5.7.1 above for any applicable periods as established by law;

5.7.3. Provide the **Insurer** or its appointed representatives with such oral or written information, assistance, signed statements, or evidence as the **Insurer** may require.

5.8 Non-assignment / Change

No change in, modification of, or assignment or interest under this **Policy** shall be effective unless agreed in writing by the **Insurer** and endorsed.

5.9 Other Insurance

If, in respect of any liability or loss, there is any other valid and collectible insurance or indemnity arrangement available to the **Insured**, then the cover provided under this **Policy** will be in excess of, and will not contribute with, such other insurance or indemnity arrangement.

5.10 Policy Jurisdiction, Applicable Law & Disputes

This **Policy** is governed by and interpreted in accordance with the Laws of the Republic of Ireland.

Should any dispute arise out of or in connection with this **Policy**, other than under Clause 4.3.2, the **Insured** and the **Insurer** agree to submit to the exclusive jurisdiction of the Irish Courts to determine the dispute

5.11 Registered Medical Practitioners

The **Insured** must be registered and hold and maintain a valid licence to practice by the Irish Medical Council or equivalent within the **Territorial Limits** throughout the **Policy Period**.

5.12 Sanctions

The **Insurer** shall not provide cover nor be liable to pay any loss or provide any benefit to the extent that the provision of such cover, payment or benefit would expose them to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

5.13 Payment of Premium

All premiums due to the **Insurer** must be paid within thirty (30) days from this **Policy's** inception date or the instalment due date if applicable. Non-receipt by the **Insurer** of such premium within thirty (30) days shall entitle the **Insurer** to cancel this **Policy** with effect from its inception date.

6 DEFINITIONS

The following provisions have specific meanings where they appear in bold font:

6.1 Act of Terrorism means:

- 6.1.1** An act, or series of acts including but not limited to, the use of force, violence and/or threat thereof, by any person or group(s) of persons, whether acting alone, on behalf of, or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear; or
- 6.1.2** Any action taken in controlling, preventing, suppressing or in any way relating to anything in Clause 6.1.1 above regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

6.2 Annual Aggregate Limit of Liability means:

The limit specified in the **Schedule**.

6.3 Bodily Injury means:

Death, disease, illness, physical or mental injury of, or to, a person.

6.4 Claim means:

Any demand for, or an assertion of right to, **Damages**, or an intimation of an intention to seek such **Damages** or any monetary demand made against the **Insured**.

6.5 Clinical Trial means:

A structured study with predetermined protocols approved by an institutional review board, an independent ethics committee, an ethical review board or a research ethics board which has been formally designated to approve, monitor, and review research involving humans in order to develop effectiveness or safety data or treatment plans, pharmaceutical products or medical devices.

6.6 Computer System means:

Computer, software, hardware, communications system, server, cloud, microcontroller and firmware including any similar system or configuration of the aforementioned and including any associated input and output devices including wireless and mobile devices, data storage devices, networking equipment and backup facilities, including cloud computing devices and facilities, owned or operated by the **Insured** or any other party.

6.7 Cyber Act means:

An unauthorised, criminal or malicious act or series of related unauthorised, criminal or malicious acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System** or any **Electronic Data** by any person or group(s) of persons.

6.8 Cyber Incident means:

- a. Any error or omission or series of related errors or omissions involving access to processing of, use of or operation of any **Computer System** or **Electronic Data**; or
- b. Any partial or total unavailability or failure or series of related partial or total unavailability, or failures to access, process, use or operate any **Computer System** or **Electronic Data**.

6.9 Damages means:

Sums payable in respect of any judgment, award or settlement including third party claimants' fees, costs and expenses for which the **Insured** is liable.

6.10 Defence Costs means:

Reasonable and necessary legal and other professional fees, costs and expenses incurred by the **Insured** and with the prior written consent of the **Insurer** and resulting from:

6.10.1. an investigation, defence or settlement of any potential claim or **Claim**; and

6.10.2. any appeal from any of the proceedings mentioned in 6.10.1 above. Any such appeal may only be pursued at the sole discretion of the **Insurer**.

6.11 Document means:

Any physical document, excluding **Electronic Data**, for which the **Insured** is legally responsible and is connection with the **Insured's** business. However, **Document** shall not mean bank notes, currency, cheques, postal order, money orders, e-documents and / or similar items.

6.12 Electronic Data means:

Information, facts or programs stored as or on, created or used on, or transmitted to or from a **Computer System**.

6.13 Excess means:

The amount specified on the **Schedule** which is the first amount of any **Damages, Defence Costs** or any other insured loss payable by the **Insured** and for which the **Insurer** is not liable and in excess of which the **Insurer's** obligation to indemnify under this **Policy** applies.

6.14 Good Samaritan Acts means:

Treatment or care administered without remuneration at the scene of a medical emergency, accident or disaster, outside of the premises principally used by the **Insured**, by the **Insured** whether or not under the **Insured's** direction and where they were present by chance and not by design.

6.15 Insured means:

- a. The person named in the **Schedule**; and
- b. The estate, heirs or legal representatives of the deceased or legally incapacitated person named in the **Schedule**, but only to the extent that such person would have been covered under this **Policy** in the absence of such death or legal incapacity.

No person defined above is an **Insured** with respect to acts or omissions committed or alleged to have been committed during a period of suspension of that person's license to practice.

6.16 Insurer means:

Berkshire Hathaway European Insurance DAC, trading as MedPro, with registered office 7 Grand Canal Street Lower, Dublin, D02 KW81 and regulated by the Central Bank of Ireland, Company Registration No. 636883.

6.17 Inquiry means:

- 6.17.1.** A formal or official inquiry, investigation, examination or criminal proceeding, before a duly constituted court or tribunal or a governmental, regulatory, professional, statutory or official body or institution that is empowered by law to investigate the performance or failure to perform **Professional Medical Services** (including any inquest or coroner's inquiry, and any hearing before any disciplinary body of an accredited medical professional association), into the conduct of the **Insured's** provision or failure to provide **Professional Medical Services**; or
- 6.17.2.** Any investigation following a requirement imposed on the **Insured** by the Irish Medical Council relating to the ability of the **Insured** to practice.

The definition of **Inquiry** does not include any formal or official inquiry, investigation, examination or criminal proceeding under any data protection laws or regulations.

6.18 Intermediary means:

Medisec Ireland CLG, registered in Ireland with company number 216570, whose registered office is at 7 Hatch Street Lower, Dublin 2. Authorised and regulated by the Central Bank of Ireland.

6.19 Jurisdictional Limits means:

The territory or territories as stated in the **Schedule**.

6.20 Limit of Liability means:

The applicable limit as specified in the **Schedule**.

6.21 Patient means:

Any person receiving **Professional Medical Services** from the **Insured**.

6.22 Policy means:

This contract of insurance between the **Insurer** and the **Insured** and includes the **Schedule** and any amendments and endorsements approved by the **Insurer**.

6.23 Policy Period means:

The period set out in the **Schedule**.

6.24 Pollutant means:

Any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, other air emission, acids, toxic chemicals, alkalis, mould, spores, fungi, germs, odour, waste water, oil or oil product, infectious or medical waste, lead or lead product, noise, and electric, magnetic or electromagnetic field chemicals or waste (which includes medical waste and material to be recycled, reconditioned or reclaimed).

6.25 Premium means:

The sum shown in the **Schedule**.

6.26 Product means:

Any solid, liquid, or gaseous substance, or device or instrument or component part thereof, designed, manufactured, constructed, altered, packaged, repaired, serviced, treated, administered, sold, supplied, or distributed, by or on behalf of the **Insured**.

6.27 Professional Medical Services means:

6.27.1. The medical, clinical or therapeutic activities by the **Insured** that the **Insured** is qualified, licensed and registered to provide to patients within the **Territorial Limits**, and which are set out in the **Schedule**; and

6.27.2. The secretarial and administrative tasks which are reasonably ancillary to the provision of the activities in 6.27.1 and which are carried out by or on behalf of the **Insured**.

6.28 Proposal means:

The written proposal or declaration and/or any application, presentation, statements, declarations or information upon which the **Insurer** has relied, including renewal documentation and material facts declarations, made by or on behalf of the **Insured** to the **Insurer** for the insurance evidenced by this **Policy**.

6.29 Schedule means:

The schedule issued to the **Insured** by the **Insurer**, including any subsequent or amended version, which together with this contract forms the **Policy**.

6.30 Territorial Limits means:

The territory or territories as stated in the **Schedule**.