

ERRORS & OMISSIONS INSURANCE POLICY (MEDICAL ESTABLISHMENT)



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1. OPERATIVE CLAUSE

Whereas the insured named in the Schedule hereto and carrying on the business/profession described in the said Schedule has applied to Magma HDI General Insurance Co. Ltd. (hereinafter called the Company) for the indemnity hereinafter contained and has made a written proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein and has paid the premium as consideration for or on account of such indemnity.

Now this Policy witnesseth that subject to the terms exceptions and conditions contained herein or endorsed hereon the Company will indemnify the Insured against their legal liability to pay compensation including defence costs, fees and expenses anywhere in India in accordance with Indian Law.

2. INDEMNITY

The Indemnity applies only to claims arising out of bodily injury and/or death of any patient caused by or alleged to have been caused by error, omission or negligence in professional service rendered or which should have been rendered by the Insured or qualified assistants named in the Schedule or any nurse or technician employed by the Insured (hereinafter referred to as the 'Act').

PROVIDED ALWAYS THAT

There shall be no liability hereunder for any claim made against the insured for act committed or alleged to have been committed prior to the Retroactive Date specified in the Schedule.

For the purpose of determining the Indemnity granted

- (a) 'Policy Period' means the period commencing from the effective date and hour shown in the Policy Schedule and terminating at midnight on the expiry date as shown in the Policy Schedule.
- (b) 'Period of Insurance' means the period commencing from the Retroactive date and terminating on the expiry date as shown in the Policy Schedule.
- (c) 'Bodily Injury' means death, injury, illness or disease of or to any person.
- (d) 'Retroactive date' means the date on which the risk is insured under the insurance policy for the first time with any insurer and renewed thereafter without any break in insurance, any break in renewal alters the retroactive date.

3. LIMIT OF INDEMNITY

Irrespective of the number of persons or entities named as insured in the Schedule or added by endorsement/s, the total liability of the Company hereunder for damages inclusive of defence costs (as hereinafter defined) shall not exceed the limit of indemnity set out in the Schedule for Any One Act (A.O.A.) in respect of any or all claims made against the insured arising out of Any One Act.

The Indemnity Limit for Any One Year as set out in the Schedule shall represent the aggregate amount of company's liability during the Policy Period arising out of all Acts.

4. DEFENCE COSTS

The Company will pay all costs, fees and expenses incurred with their prior consent in the investigation, defence or settlement of any claim made against the Insured and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any claim made or which might be made against the Insured, provided such claim or claims are the subject of indemnity by the Policy whether liability ultimately attaches or not. Such costs, fees and expenses are called 'Defence Costs'.

5. (a) NOTIFICATION EXTENSION CLAUSE

Should the Insured notify the Company during the Policy Period in accordance with General Condition No. 10.1 of any specific event or circumstance which the company accepts may give rise to a claim or claims which form the subject of indemnity by this Policy, then the acceptance of such notification means that the Company will deal with such claim or claims as if they had first been made against the Insured during the Policy Period. The extension under the Clause will be subject to the maximum time limit laid down under the Indian Limitation Act in force from time to time.

(b) EXTENDED CLAIM REPORTING CLAUSE

In the event of non-renewal or cancellation of this Policy either by the Company or by the Insured, the Company will allow a time limit not exceeding 90 days from the date of expiry or cancellation of the Policy, provided no insurance is in force during this extended reporting period for the same interest, for notification of claims for accidents which had taken place during the Period of Insurance but could not be made during the Policy Period, provided however, all claims made during the extended reporting period shall be handled as if they were made on the last date of the expiring Policy Period and are subject to the Limits of Indemnity and the terms, conditions and exceptions of the Policy.

6. CLAIMS SERIES CLAUSE

For the purpose of this Policy where a series of losses and/or bodily injuries and/or deaths are attributable directly or indirectly to the same cause or error or omission relating to discharge of professional services all such losses and/or bodily injuries and/or deaths shall be treated as one claim and such claim shall be deemed to have been made at the point in time when the first of the claims was made in writing. There shall, however, be no coverage for claims made arising from one specific cause which are made later than 3 years after the first claim of the series.

7. COMPULSORY EXCESS

The Insured shall bear for each and every claim a Compulsory Excess of 0.25 pct of the Indemnity Limit shown in the Schedule subject to minimum of Rs. 1000/- and maximum of Rs. 1,00,000.

8. VOLUNTARY EXCESS

In the event of the Insured opting, the Policy shall be subject to a Voluntary Excess as mentioned in the Schedule. This Voluntary Excess shall be applicable to each and every claim. The Company's liability shall attach for the claim in excess of such Compulsory and Voluntary excess.

9. EXCLUSIONS

1. No liability shall attach to the Company in respect of
 - (a) any criminal act or any act committed in violation of any law or ordinance.
 - (b) services rendered while under the influence of intoxicants or narcotics.
 - (c) Third Party Public Liability
 - (d) claims made against the insured arising from the performance of cosmetic plastic surgery, hair transplants, punch grafts, flap rotations and the like (hereinafter referred to as cosmesis) it being understood that the following shall not be deemed to be cosmesis:
 - i) Anaesthetic x-ray or other medical nursing or laboratory services provided in connection with the performance of cosmesis.
 - ii) Plastic surgical repair of scar tissue being the result of previous surgery unrelated to cosmesis performed by the Insured.
 - iii) Plastic surgery in connection with burns or other traumatic injury.
 - (e) claims arising from any condition directly or indirectly caused by or associated with Human T-Cell Lymphotropic Virus type III (HTLV 111) or LYMPHADENOPATHY ASSOCIATED VIRUS (LAV) or the mutants derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome or any Syndrome or condition of a similar kind howsoever it may be named.
2. This Policy does not cover liability
 - (i) assumed by the Insured by agreement and which would have attached in the absence of such agreement.
 - (ii) arising out of deliberate, willful or intentional non-compliance of any Statutory provision.
 - (iii) arising out of loss of pure financial nature such as loss of goodwill, loss of market etc.
 - (iv) arising out of all personal injuries such as libel, slander, false arrest, wrongful eviction, wrongful detention, defamation, etc. and mental injury, anguish or shock.

- (v) arising out of fines, penalties, punitive or exemplary damages.
- (vi) directly or indirectly occasioned by happening through or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.
- (vii) directly or indirectly caused by or contributed by
 - i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
 - ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- (viii) arising out of genetic injuries caused by x-ray treatment/diagnostic or treatment/diagnosis with radioactive substances.
- (ix) in respect of professional services rendered by the Insured prior to the Retroactive Date in the Schedule.
- (x) the deliberate conscious or intentional disregard of the insured's technical or administrative management of the need to take all reasonable steps to prevent claims.
- (xi) injury/death to any person under a contract of employment or apprenticeship with the Insured when such injury/death arises out of the execution of such contract.

10. CONDITIONS

10.1 The Insured shall give written notice to the Company as soon as reasonably practicable of any claims made against the Insured (or any specific event or circumstances that may give rise to a claim being made against the Insured) and which forms the subject of indemnity under this Policy and shall give all such additional information as the Company may require. Every claim, writ, summons or process and all documents relating to the event shall be forwarded to the Company immediately they are received by the Insured.

10.2 No admission offer promise or payment shall be made or given by or on behalf of the Insured without the written consent of the Company.

10.3 The Company will have the right but in no case the obligation, to take over and conduct in the name of the insured the defence of any claims and will have full discretion in the conduct of any proceedings and in the settlement of any claim and having taken over the defence of any claim may relinquish the same. All amounts expended by the Company in the defence, settlement or payment of any claim will reduce the Limits of Indemnity specified in the Schedule of the Policy.

In the event that the Company, in its sole discretion chooses to exercise its right pursuant to this condition, no action taken by the Company in the exercise of such right will serve to modify or expand in any manner, the company's liability or obligations under this Policy beyond what the company's liability or obligations would have been had it not exercised its rights under this condition.

10.4 The Insured shall give all such information and assistance as the Company may reasonably require.

10.5 The Insured shall give notice as soon as reasonably practicable of any fact, event or circumstance which materially changes the information supplied to the Company at the time when this Policy was effected and the Company may amend the terms of this Policy.

10.6 The Company may at any time pay to the Insured in connection with any claim or series of claims under this Policy to which an indemnity limit applies the amount of such limit (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and upon such payment being made the Company shall relinquish the conduct and control of and be under no further liability in connection with such claims.

10.7 The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning had been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear. The terms and exclusions of this Policy (and any phrase or word contained therein) shall be interpreted in accordance with the Indian Law.

10.8 If at the time of happening of any event resulting into a liability under this Policy, there be any other liability insurance or insurances effected by the Insured or by any other person covering the same liability, then the Company shall not be liable to pay or contribute more than its rateable proportion of such liability.

10.9 This Policy does not cover liability which at the time of happening of any event resulting into such liability, be insured by or

would but for the existence of this Policy, be insured by, any other Policy (but not a liability policy) or policies, except in respect of any excess beyond the amount which could have been payable under such Policy/policies had this insurance not been effected.

10.10 The Company may cancel this Policy by giving thirty days notice in writing of such cancellation to the Insured's last known address and in such an event the company will return a pro-rata portion of the premium (subject to a minimum retention of 25 per cent of the annual premium) for the unexpired part of the Insurance.

This Policy may also be canceled by the Insured by giving thirty days notice in writing to the Company in which event the Company will retain premium at Short Period Scale provided there is no claim under the Policy during the Period of Insurance. In case of any claim under the Policy, no refund of premium shall be allowed.

10.11 In the event of Liability arising under the Policy or the payment of a claim under this Policy, the limit of indemnity per any one year under the Policy shall get reduced to the extent of quantum of liability to be paid or actual payment of such claim. Under no circumstance it shall be permissible to reinstate the aggregate Limit of Indemnity to the original level even on payment of extra premium.

10.12 It is also hereby further expressly agreed and declared that if the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within 12 calendar months from the date of such disclaimer have been made the subject matter of suit in a court of law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

10.13 The Company shall not be liable to make any payment under this Policy in respect of any claim if such claim shall be in any manner fraudulent or supported by any statement or device whether by Insured or by any person on behalf of Insured and/or if the insurance has been continued in consequence of any material mis-statement or the non-disclosure of any material information by or on behalf of the Insured.

10.14 No claim shall be payable under this Policy unless the cause of action arises in India and the liability to pay claim is established against the insured in an Indian Court. It is further agreed and understood that only Indian Law shall be applicable to any such action.

10.15 Policy Disputes Clause

Any dispute concerning the interpretation of the terms conditions limitations and/or exclusions contained herein is understood and agreed to by both the Insured and Company to be subject to Indian Law. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction within India and to comply with all requirements necessary to give such Court of jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such Court.

10.16 Arbitration

If any dispute or difference shall arise as to the quantum to be paid under the policy (liability) being otherwise admitted) such difference shall independently of all other questions be referred to the decision of the sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration the same shall be referred to a panel of 3 arbitrators, comprising of 2 arbitrators, 1 to be appointed by each of the parties to the dispute/difference and the 3rd arbitrator to be appointed by 2 such arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as herein before provided, if the company has disputed or not accepted liability under or in respect of this policy. It is understood, however, that the Insured shall have the right at all times during currency of the Policy to communicate only, with the leading or issuing office in all matters pertaining to this insurance. Subject otherwise to the terms, exceptions, conditions and limitations of this policy.