



A Medical Professional Liability Master Policy (hereafter called the Policy) for the Association for Perioperative Practice (AfPP) and the AfPP Ltd (hereafter called the Policy Holder) and the Members of the Association for Perioperative Practice (AfPP) as listed in Schedule 'A' (hereafter called the Insured)

This is a "claims made" **Policy** which only provides cover in respect of **Claims** made against the **Insured** and notified to **Insurers** during the **Policy Period** and/or any reporting period.

Certain words and phrases have been specially defined for use in this **Policy**. These appear in **bold** type. Words importing the singular number shall include the plural and vice versa. The **Policy** and the **Proposal** shall be construed as one document. In the event of any conflict between this **Policy** and the **Proposal**, the **Policy** shall prevail.

This **Policy** has been underwritten by The Medical Professional Liability Company Limited (The MPLC) on behalf of certain **Insurers** at Lloyd's. The MPLC is an underwriting intermediary licensed in Gibraltar by the Financial Services Commission, under licence number FSC00659B. The MPLC has notified the FSC of its intention to provide cross border services in accordance with the requirements of the EU Insurance Mediation Directive.

The MPLC aims to provide a first class professional service to its customers. Should you have any questions, concerns or complaints about your **Policy** or the handling of a **Claim** you should, in the first instance, contact your broker.

Alternatively, you may wish to contact The MPLC by writing to:

Managing Director

The Medical Professional Liability Company Limited

Regal House, Queensway,

P.O. Box 1446,

Gibraltar.

Tel: +44 (0)20 3100 5151 / Fax: +350 20042239

Email: complaints@the-mplc.com

In the event that you are unable to resolve the situation you may, in certain circumstances, contact the Policyholder & Market Assistance Department at Lloyd's.

Address: Policyholder & Market Assistance, Lloyd's Market Services, 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

Finally, in the event that the Policyholder & Market Assistance Department is unable to resolve your complaint, it may be possible for you to refer it to the Financial Ombudsman Service (FOS) or other local dispute resolution body. Further details will be provided at the appropriate stage of the complaints process.

PLEASE READ THIS POLICY CAREFULLY

LLOYDS

1 Lime Street, London, EC3M 7HA

Telephone +44 (0)20 7327 1000

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The MPLC is the trading name of The Medical Professional Liability Company Ltd, an underwriting intermediary licensed in Gibraltar by the Financial Services Commission, under licence number FSC00659B. All indications, quotes, acceptances of proposals and issuances of policies are made by The MPLC in Gibraltar. The MPLC's insurances underwritten by certain underwriters at Lloyd's.

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The Schedule

ITEM 1 **Policy Number:** 017/00004593/00 **Broker's Reference:** B0621PFDO06517

ITEM 2.1 **Name of the Policy Holder:** The Association for Perioperative Practice (AfPP) and the AfPP Ltd

ITEM 2.2 **Name of Each Individual Insured:** As contained in Schedule 'A'

ITEM 3 **Address of Policy Holder:**

Daisy Ayris House 42 Freemans Way Harrogate HG3 1DH United Kingdom	Telephone:	
	Fax:	
	Email:	

Or as contained in Schedule 'A' in respect of each individual **Insured**

ITEM 4 **Policy Holder Policy Period:**

From: 01 April 2018	To: 01 April 2019
At: 00:01 hours	At: 00:01 hours

Local standard time at the Policy Holder's address stated in Item 3 above
Or as contained in Schedule 'A' in respect of each individual **Insured**

ITEM 5 **Limit of Indemnity:** Any one Claim as contained in Schedule 'A' in respect of each individual **Insured**

GBP 9,000,000.00	Blanket aggregate limit of indemnity during the Policy Period for the Insured
Excess: GBP 0.00	Each and every Claim including Defence Costs

ITEM 6 **Minimum and Deposit Premium:** As held on file by the AfPP

Minimum and Deposit Due Date: As held on file by the AfPP

ITEM 7 **Territories:** Great Britain, Northern Ireland, Channel Islands and the Isle of Man

ITEM 8 **Retroactive Date:** As contained in Schedule 'A' in respect of each individual **Insured**

ITEM 9 **Proposal Form:** To be provided as per the subjectivity and as contained in Schedule 'A' in respect of each individual **Insured**

Declaration Date: To be provided as per the subjectivity and as contained in Schedule 'A' in respect of each individual **Insured**

ITEM 10 Notice to be given to:

The Medical Professional Liability Company
Regal House
Queensway
PO Box 1446
Gibraltar

Telephone: +44 (0)20 3100 5151

Fax: +350 20042239

Email: claims@the-mplc.com

ITEM 11 Covered Jurisdictions:

Great Britain, Northern Ireland, Channel Islands and the Isle of Man

ITEM 12 Policy Jurisdiction and Applicable Law: England and Wales

Specimen - For reference only

A Medical Professional Liability Policy for the Association for Perioperative Practice (AfPP) and the AfPP Ltd and the Members of the Association for Perioperative Practice (AfPP) as listed in Schedule 'A'

Whereas it is the wish and the intent of the Association for Perioperative Practice (AfPP) (hereafter called the Policy Holder) to make available to its Members (Hereafter call the **Insured**) **Claims** Made Medical Professional Liability Insurance and whereas such **Insured's** to be indemnified hereunder are indemnified by name in Schedule 'A' which shall be appended to the Policy and whereas it is agreed that each **Insured** for whom the Policy Holder has paid premium in accordance with the premium payment schedule attached hereto shall be insured separately in accordance with the terms, conditions and limitations of the Contract of Insurance laid out within the Policy. It is agreed that an Evidence of Insurance document will be issued to each and every **Insured** named in Schedule 'A', it being clearly understood and agreed that such Evidence of Insurance document is not a legal Contract of Insurance and is provided solely for information.

In reliance upon the statements made by the Policy Holder and the **Insured** as individually named in Schedule 'A' in the **Proposal**, which statements are deemed to form the basis of and be incorporated in this policy, **Insurers** agree, subject to the terms, conditions, and exclusions contained herein to indemnify the **Insured** in excess of the sum specified in the Schedule as the **Excess** up to the Aggregate Limit of Indemnity against:

1 INSURING CLAUSES

1.1 In consideration of the payment of the premium stated in the Schedule and in reliance upon the statements made by the **Insured** in the **Proposal**, **Insurers** agree, subject to the terms, conditions and exclusions contained herein to indemnify the **Insured** in excess of the sum specified in the Schedule as the **Excess** for sums which the **Insured** shall become legally liable to pay as **Compensatory Damages** in accordance with the laws of the country/ies specified in Item 11 of the Schedule resulting from any **Claims** made against the **Insured** and notified to **Insurers** during the **Policy Period** arising in respect of the **Insured's** liability for death, bodily injury, mental injury, illness or disease of or to any patient of the **Insured** caused by any actual or alleged negligent act, negligent error or negligent omission committed by the **Insured** which arises either from:

- (a) the provision of **Clinical Services**; or
- (b) the performance of **Good Samaritan Acts**; and

which falls within the terms of this **Policy** and arises out of the **Insured's** business specified in the **Proposal** and to indemnify the **Insured** for **Defence Costs** incurred in connection with any such **Claim**.

1.2 JOINT AND SEVERAL LIABILITY: LIMITATION OF LIABILITY CLAUSE

In the event that a **Claim** is made against the **Insured** and an alleged concurrent wrongdoer, or in the event of a finding by a court or tribunal of joint and several liability between the **Insured** and a concurrent wrongdoer, then **Insurers'** liability to the **Insured** is limited to an amount representing the proportionate liability of the **Insured** as between the **Insured** and

the concurrent wrongdoer for any damage or loss. For the purposes of this clause a concurrent wrongdoer includes a joint tortfeasor and is a person who is one of two or more persons (including a **Medical or Dental Practitioner**) whose individual acts or omissions have caused or contributed to or been alleged to cause or contribute to the damage or loss and who is the subject of the **Claim** at least a part of which is made against the **Insured**.

2 LIMIT OF INDEMNITY

Insurers' total liability during the **Policy Period** in respect of all **Compensatory Damages** and **Defence Costs** shall not exceed the Limit of Indemnity specified in Item 5 of the Schedule or as contained in Schedule 'A' in respect of each individual Insured and **Insurers** shall not be liable to pay any sums after the Limit of Indemnity has been exhausted by payment of or agreement to pay **Compensatory Damages** and/or **Defence Costs**.

3 DEFINITIONS

3.1 Claim

shall mean any

3.1.1 suit or proceedings served upon or issued against the **Insured**;

3.1.2 oral or written allegation communicated to the **Insured**;

3.1.3 oral or written communication from or on behalf of a patient and/or a request to the **Insured** by or on behalf of a patient for medical records or copies of medical records to investigate or contemplate a potential **Claim** against the **Insured** arising out of **Clinical Services**;

provided always that a series of **Claims** arising out of or which are attributable to a single originating cause or source or which are otherwise causally connected shall constitute a single **Claim** for the purposes of this **Policy**.

3.2 Clinical Services

shall mean the provision of those professional services within the scope of Perioperative Practice as determined by the Association for Perioperative Practice.

3.3 Compensatory Damages

shall mean all sums payable in respect of any judgment, award or settlement and is deemed to include third party claimants' fees, costs and expenses for which the **Insured** is liable.

3.4 Defence Costs

shall mean reasonable and necessary fees and expenses incurred by or on behalf of the **Insured** with the prior written consent of **Insurers** which result from:

3.4.1 the investigation, defence and/or settlement of a **Claim**; or

3.4.2 the attendance or representation at or in connection with any examination, inquest or enquiry or proceedings commissioned by any official, administrative or regulatory body in the exercise of its powers over any **Insured** in relation to any circumstance, actual or alleged which has a direct relevance to any **Claim**;

and any appeal from any of the proceedings mentioned in 3.4.1 and 3.4.2 above.

3.5 **Excess**

shall mean the amount specified as such in Item 5 of the Schedule which the **Insured** as individually named in Schedule 'A' must incur in respect of each and every **Claim** (including **Defence Costs**) for which the **Insurers** are not liable and in excess of which this **Policy** is to apply.

3.6 **Good Samaritan Act**

shall mean treatment administered at the scene of a medical emergency, accident or disaster by the **Insured** who is present either by chance, or in response to an emergency call following a disaster.

3.7 **Health Care Professional and Allied Health Professional**

shall mean a person who has received special training or education in a health-related field, including administration, direct provision of patient care, or ancillary services and who holds, or is required by law to hold, a valid licence to practise in the relevant specialty, such licence having been issued by the relevant lawfully established and recognised licensing authority within the territories specified in Item 7 of the Schedule.

3.8 **Insured**

3.8.1 The individual Members of the Association for Perioperative Practice (AfPP) who are listed in Item 2.2 of the Schedule and individually listed in Schedule 'A', having legal capacity and providing **Medical Services** or performing a **Good Samaritan Act** or the Estate thereof solely in the territories specified in Item 7 of the Schedule.

3.8.2 The estates, legal representatives, heirs or assigns of any **Insured** in the event of the death, incapacity or insolvency of such **Insured** who would otherwise be indemnified under this **Policy**.

3.9 **Medical or Dental Practitioner**

shall mean a person who holds, or is required by law to hold, a valid licence to practise as a Doctor, Physician, Surgeon, Dental Surgeon or Dentist, such licence having been issued by the relevant lawfully established and recognised licensing authority within the territories specified in Item 7 of the Schedule.

3.10 Policy

shall mean:

3.10.1 the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein; and

3.10.2 any endorsement attaching to and forming part of this **Policy** either at its inception or during the **Policy Period**; and

3.10.3 the **Proposal**.

3.11 Policy Period

shall mean the period set out in Item 4 of the Schedule.

3.12 Principal

A **Principal** shall mean any person who directly or indirectly engages the **Insured** to provide **Clinical Services** as set out in the **Proposal**.

3.13 Product

shall mean any solid, liquid, or gaseous substance or device or component part thereof, manufactured, constructed, altered, repackaged, repaired, serviced, treated, administered, sold, supplied or distributed by or on behalf of the **Insured** or used by the **Insured** in the provision of **Clinical Services** but not any food and drink provided primarily for the benefit of staff, visitors or patients for consumption on the premises.

3.14 Proposal

shall mean the written **Proposal** or declaration bearing the date stated in Item 9 of the Schedule and/or any presentation, statements, declarations, warranties or information upon which the **Insurers** have relied made by or on behalf of the Policy Holder or the **Insured** to the **Insurers** for the insurance evidenced by this **Policy**.

3.15 Terrorism

shall mean any act or acts of force and/or violence

3.15.1 for political, religious or other ends and/or

3.15.2 directed towards the over-throwing or influencing of the Government de jure or de facto, and/or

3.15.3 for the purpose of putting the public or any part of the public in fear

by any person or persons acting alone or on behalf of or in connection with any organisation.

4 EXCLUSIONS

4.1 Retroactive Date

Insurers shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of or in any way connected with any act, error, omission, circumstances or event occurring or committed or alleged to have been committed prior to the Retroactive Date specified in Item 8 of the Schedule;

4.2 Prior Circumstances

Insurers shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of or in any way connected with any event or circumstance which might reasonably be expected to give rise to a **Claim** being made against the **Insured** and which the **Insured** knew about or reasonably could have foreseen or discovered prior to the **Policy Period**. Where the **Insured** has received either an oral or written communication from or on behalf of a patient and/or a request by or on behalf of a patient for copies of medical records, the **Insured** will be deemed to have been aware of a **Claim**,

Notwithstanding Exclusion 4.2 (Prior Circumstances), should a **Claim** which should have been notified, or a fact or circumstance which should have been notified, to **Insurers** under an earlier **Policy** placed through The MPLC, then **Insurers** may accept the notification of such **Claim**, fact or circumstance under this **Policy**, PROVIDED ALWAYS THAT:

4.2.1 The **Insured** has been covered continuously under a **Policy** placed through The MPLC between the date when such notification should have been given and the date when such notification was, in fact, given; and

4.2.2 The **Insurers** acting reasonably but otherwise at their discretion are satisfied that the failure by the **Insured** to notify the **Claim** fact or circumstance (as the case may be) was unintentional and attributable to good faith mistake or oversight on the part of the **Insured**; and

4.2.3 the terms and conditions applicable to this extension and to that notification shall not be those of this **Policy** but shall be the terms and conditions (including the unexhausted portion of the Limit of Indemnity and **Excess**) applicable to the **Insurers'** earlier **Policy** under which the notification should have been given.

4.3 Medical or Dental Practitioner

Insurers shall not be liable for any **Claim**, (or related **Defence Costs**) made against any **Medical or Dental Practitioner**, regardless of whether such individual is either employed by the **Insured** or acting as a self-employed contractor or sub-contractor.

4.4 Health Care Professional and Allied Health Professional

Insurers shall not be liable for any **Claim**, (or related **Defence Costs**) made against any **Health Care Professional** or **Allied Health Professional** who is acting as a self-employed contractor or sub-contractor for and on behalf of the **Insured**.

4.5 Other Insurances

Insurers shall not be liable for any **Claim** or **Defence Costs** which is the subject of insurance or indemnity or other form of compensation or payment provided by any medical defence organisation or similar scheme, club, association or arrangement, nor in respect of any circumstance, occurrence, fact, matter or **Claim** notified under any other insurance, indemnity or other form of compensation or payment provided by any medical defence organisation or similar scheme, club, association or arrangement prior to the **Policy Period**, it being understood and agreed that this **Policy** shall not be drawn into contribution with such other insurance, indemnity, compensation or payment; save to the extent that the **Claim** exceeds the limit of liability under such insurance or indemnity or compensation or payment or the **Insured** is not indemnified for its proportionate liability for the **Claim**.

4.6 Waived Recourse Rights

Insurers shall not be liable for any **Claim** or **Defence Costs** where **Insurers** have or would have rights of recourse in respect of such **Claim** but the **Insured** has granted without **Insurers'** prior consent a waiver of such recourse rights to others whether by express term or by reason of an assumption of liability under contract;

4.7 Wrongful Acts

Insurers shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of or in any way connected with

4.7.1 any deliberate or wilful misconduct

4.7.2 any actual or alleged dishonest, fraudulent or criminal or malicious act or omission

4.7.3 the performance of the activities of the **Insured** whilst under the influence of intoxicants or narcotics;

4.8 Products Liability

Insurers shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of or in any way connected with any **Product**;

4.9 Employers' Liability

Insurers shall not be liable for any **Claim** (or related **Defence Costs**) caused by or on behalf of any person who is an **Insured** or by any other person under a contract of service or apprenticeship with the **Insured** or under **Insured** supervision and made by or on behalf of an employee (or his/her estate) for death, bodily injury, mental injury, illness or disease or for any breach of any obligation owed by the **Insured** as an employer to any such person, or for

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 death, bodily injury, mental injury, illness or disease of any such person who is or becomes a patient of the **Insured** entirely independently of their employment;

4.10 Directors and Officers Liability

Insurers shall not be liable for any **Claim** (or related **Defence Costs**) made against any director or officer of the **Insured**, directly or indirectly caused by or arising out of or in any way connected with any unlawful, wrongful or negligent act, error or omission or breach of trust, breach of warranty of authority, or breach of duty, whether actual or alleged, committed, permitted or attempted by such director or officer where such **Claim** is made solely by reason of his holding the position of director or officer and having acted in that capacity;

4.11 Sexual Conduct

Insurers shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of or in any way connected with any actual or attempted or alleged sexual relations, sexual contact or intimacy, sexual harassment or sexual exploitation;

4.12 Radioactive Contamination

Insurers shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of or in any way connected with ionising radiations 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.

However this Exclusion does not apply to liability arising out of the ordinary use of health department approved medical and/or diagnostic equipment incorporating radioactive isotopes and/or radium compounds and/or involving the emission of ionizing radiation.

4.13 War

Insurers shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of or in any way connected with war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted Authority.

Provided always that this exclusion shall not apply to any **Claims** which may arise from the provision of any **Clinical Services** which are subsequently provided to any patients of the **Insured**.

It is understood and agreed that in any **Claim** and in any action, suit or other proceedings to enforce a **Claim** under this Insurance for loss or damage or legal liability, the BURDEN OF

PROVING that such loss or damage or legal liability does not fall within this exclusion shall be upon the **Insured**.

4.14 Terrorism

Insurers shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of or in any way connected with **Terrorism** (including, without limitation, contemporaneous or ensuing loss or damage or legal liability caused by fire and/or looting and/or theft).

Provided always that this exclusion shall not apply to any **Claims** which may arise from the provision of any **Clinical Services** which are subsequently provided to any patients of the **Insured**.

It is understood and agreed that in any **Claim** and in any action, suit or other proceedings to enforce a **Claim** under this Insurance for loss or damage or legal liability the BURDEN OF PROVING that such loss or damage or legal liability does not fall within this exclusion shall be upon the **Insured**.

4.15 Pollution

Insurers shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of or in any way connected with:

4.15.1 seepage, pollution or contamination

4.15.2 the cost of removing, nullifying or cleaning up seeping, polluting or contaminating substances;

Provided always that this exclusion shall not apply to any **Claims** which may arise from the provision of any **Clinical Services** which are subsequently provided to any patients of the **Insured**.

4.16 Fines and Penalties

Insurers shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of or in any way connected with fines, penalties, punitive or exemplary damages, aggravated damages or multiplication of compensation awards;

4.17 Insured versus Insured

Insurers shall not be liable for any **Claim** or **Defence Costs** made by one **Insured** against any other **Insured**. However, this exclusion shall not apply to any **Claim** arising out of any death, bodily injury, mental injury, illness or disease of any such person who is or becomes a patient of the **Insured**.

4.18 Toxic Mould

Insurers shall not be liable for any **Claim** or **Defence Costs** arising from

4.18.1 liability caused by or arising from 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;

4.18.2 any loss, cost or expense arising out of 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 does not apply to liability arising out of the diagnosis and/or treatment of patients of the **Insured** who are suffering from infection by such organisms.

4.19 **Principal's** liability

Insurers shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or arising out of or in any way connected with any actual or alleged act, error or omission committed by the **Insured's Principal** or by any director, officer or employee of the **Principal** or of any person acting for and on behalf of the **Principal** except the **Insured**.

4.20 Sanction Limitation and Exclusion Clause

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose that (re)insurer 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 CONDITIONS

5.1 Disclosure

5.1.1 Before this Policy is entered into, the **Insured** must make a fair presentation of the risk to the **Insurers**, in accordance with Section 3 of the Insurance Act 2015. In summary, the **Insured** must:

5.1.1.1 Disclose to the **Insurers** every material circumstance which the **Insured** knows or ought to know. Failing that, the **Insured** must give the **Insurers** sufficient information to put a prudent insurer on notice that it needs to make further enquiries in order to reveal material circumstances. A matter is material if it would influence the judgement of a prudent insurer as to whether to accept the risk, or the terms of the insurance (including premium);

5.1.1.2 Make the disclosure in clause 5.1.1 above in a reasonably clear and accessible way;

5.1.1.3 Ensure that every material representation of fact is substantially correct, and that every material representation of expectation or belief is made in good faith.

The unintentional non-disclosure of any individual **Insured** shall not be imputed to any other **Insured**.

5.1.2 For the purposes of clause 5.1.1 above, the **Insured** is expected to know the following:

5.1.2.1 If the **Insured** is an individual, what is known to the individual and anybody who is responsible for arranging his or her insurance.

5.1.2.2 If the **Insured** is not an individual, what is known to anybody who is part of the **Insured's** senior management; or anybody who is responsible for arranging the **Insured's** insurance.

5.1.2.3 Whether the **Insured** is an individual or not, what should reasonably have been revealed by a reasonable search of information available to the **Insured**. The information may be held within the **Insured's** organisation, or by any third party (including but not limited to subsidiaries, affiliates, the broker, or any other person who will be covered under the insurance). If the **Insured** is incurring subsidiaries, affiliates or other parties, the **Insurers** expect that the **Insured** will have included them in its enquiries, and that the **Insured** will inform the **Insurers** if it has not done so. The reasonable search may be conducted by making enquiries or by any other means.

5.1.3 If, prior to entering into this **Policy**, the **Insured** shall breach the duty of fair presentation, the remedies available to the **Insurers** are set out below.

5.1.3.1 If the **Insured's** breach of the duty of fair presentation is deliberate or reckless:

- i. The **Insurers** may avoid the **Policy**, and refuse to pay all **Claims**; and,
- ii. The **Insurers** need not return any of the premiums paid.

5.1.3.2 If the **Insured's** breach of the duty of fair presentation is not deliberate or reckless, the **Insurers** remedy shall depend upon what the **Insurers** would have done if the **Insured** had complied with the duty of fair presentation:

- i. If the **Insurers** would not have entered into the **Policy** at all, the **Insurers** may avoid the contract and refuse all **Claims**, but must return the premiums paid.
- ii. If the **Insurers** would have entered into the **Policy**, but on different terms (other than terms relating to the premium), the **Policy** is to be treated as if it had been entered into on those different terms from the outset, if the **Insurers** so require.
- iii. In addition, if the **Insurers** would have entered into the **Policy**, but would have charged a higher premium, the **Insurers** may reduce proportionately the amount to be paid on a **Claim** (and, if applicable, the amount already paid on prior **Claims**). In those circumstances, the **Insurers** shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{premium actually charged/higher premium}) \times 100$.

5.1.4 If, prior to entering into a variation to this insurance **Policy**, the **Insured** shall breach the duty of fair presentation, the remedies available to the **Insurers** are set out below.

5.1.4.1 If the **Insured's** breach of the duty of fair presentation is deliberate or reckless:

- i. The **Insurers** may by notice to the **Insured** treat the **Policy** as having been terminated from the time when the variation was concluded; and,
- ii. **Insurers** need not return any of the premiums paid.

5.1.4.2 If the **Insured's** breach of the duty of fair presentation is not deliberate or reckless, the **Insurers'** remedy shall depend upon what the **Insurers** would have done if the **Insured** had complied with the duty of fair presentation:

- i. If the **Insurers** would not have agreed to the variation at all, the **Insurers** may treat the **Policy** as if the variation was never made, but must in that event return any extra premium paid.
- ii. If the **Insurers** would have agreed to the variation to the **Policy**, but on different terms (other than terms relating to the premium), the variation is to be treated as if it had been entered into on those different terms, if the **Insurers** so require.
- iii. If the **Insurers** would have increased the premium by more than it did or at all, then the **Insurers** may reduce proportionately the amount to be paid on a **Claim** arising out of events after the variation. In those circumstances, the **Insurers** shall pay only X% of what it would

otherwise have been required to pay, where $X = (\text{premium actually charged/higher premium}) \times 100$.

- iv. If the **Insurers** would not have reduced the premium as much as it did or at all, then the **Insurers** may reduce proportionately the amount to be paid on a **Claim** arising out of events after the variation. In those circumstances, the **Insurers** shall pay only $X\%$ of what it would otherwise have been required to pay, where $X = (\text{premium actually charged/reduced total premium}) \times 100$.

Nothing in these clauses is intended to vary the position under the Insurance Act 2015.

5.1.5 It is a condition precedent to the right of the **Insured** to be indemnified under this **Policy** that, during the **Policy Period**, the **Insured** shall give as soon as practicable notice in writing to the party named in Item 10 of the Schedule of any alteration which materially affects the risk. The **Insurers** are entitled to refuse to cover the additional exposure or cancel the contract in accordance with the cancellation provisions of this **Policy**.

5.1.6 It is a condition precedent to the **Insured's** right to be indemnified under this **Policy** that the **Insured** shall meet the payment of the **Excess**.

5.2 Claims

5.2.1 Notice

It is a condition precedent to the right of the **Insured** to be indemnified under this **Policy** that notice of any **Claim** as well as any circumstances or incidents which might reasonably be expected to give rise to a **Claim** shall be given to **Insurers** immediately upon the **Insured** becoming aware thereof. Notice of such **Claim** or circumstances or incident shall be in writing (using the MPLC's First Notification Form) and shall be delivered by fax, email or by post to the address specified in Item 10 of the Schedule.

Notice of all **Claims** and circumstances must be made within the **Policy Period** provided that the **Insured** shall have an extra 28 calendar days to notify **Claims** of which they become aware on or immediately prior to the expiry of the **Policy Period**.

If the **Insured** provides **Insurers** with notice of circumstances or incidents as mentioned above during the **Policy Period** which are accepted by the **Insurers**, any **Claim** subsequently made which arises from those circumstances shall be deemed, notwithstanding the **Claim** was made after expiry of the **Policy Period**, to be reported to **Insurers** on the date when the circumstances were notified to them.

The simple noting of an incident in an incident book without other grounds for believing a **Claim** may be made shall not constitute a notifiable circumstance or incident.

5.2.2 Control of **Claims**

Insurers shall be entitled but not obligated to take control of the defence of any **Claim** in the **Insured's** name and shall have full discretion in the conduct of any negotiations or proceedings in the settlement of any **Claim**. The **Insured** shall assist the **Insurers** and co-operate fully with them in the investigation and/or defence of any **Claim** and the prosecution of any subrogation or recovery action without charge to **Insurers**.

5.2.3 Consent of **Insurers**

The **Insured** shall not:

5.2.3.1 disclose to any person, other than an **Insured** the terms of this **Policy**

5.2.3.2 admit liability

5.2.3.3 enter any agreement or arrangement (in relation to investigation, defence or settlement of **Claim**)

5.2.3.4 make any offer, payment or promise in relation to any **Claim**

5.2.3.5 incur any cost or expense without the prior written consent of **Insurers**.

5.2.4 Consent of the **Insured**

Insurers will not settle any **Claim** without the consent of the **Insured**.

If however the **Insured** refuses to consent to any settlement recommended by **Insurers** or their legal representatives then **Insurers'** liability will not exceed the total amount for which the **Claim** could have been settled plus the **Defence Costs** incurred with their consent up to the date of the refusal or the applicable Limit of Indemnity whichever is less.

5.2.5 Relinquishment

Insurers may at any time pay to the **Insured** in connection with any **Claim** the amount of the Limit of Indemnity remaining under this **Policy** or any lesser amount for which such **Claim** can be settled less any sums already paid and less any associated **Defence Costs** already paid. Upon such payment being made, the **Insurers** shall relinquish the conduct and control of and be under no further liability in connection with such **Claim** or associated **Defence Costs** incurred after the date of such relinquishment.

5.2.6 Subrogation

In relation to sums paid or payable by them, **Insurers** shall be entitled at any stage to bring an action for their own benefit seeking indemnity, damages or otherwise against any third party (other than the **Insured's Principal**) in the name of the **Insured**.

Insurers' expenses in the recovery shall always be deducted prior to the application of the recovery to the **Claim**.

5.2.7 Fraudulent **Claims**

5.2.7.1 If the Insured makes a fraudulent **Claim** under this **Policy**, the **Insurers**:

- i. Are not liable to pay the **Claim**; and
- ii. May recover from the **Insured** any sums paid by the **Insurers** to the **Insured** in respect of the **Claim**; and
- iii. May by notice to the **Insured** treat the **Policy** as having been terminated with effect from the time of the fraudulent act.

5.2.7.2 If the **Insurers** exercise their rights under clause (5.2.7.1) (iii) above

- i. The **Insurers** shall not be liable to the **Insured** in respect of a relevant event occurring after the time of the fraudulent act. A relevant event is whatever gives rise to the **Insurers'** liability under the **Policy** (such as the occurrence of a loss, the making of a **Claim**, or the notification of a potential **Claim**); and,
- ii. The **Insurers** need not return any of the premiums paid.

5.2.7.3 If this insurance **Policy** provides cover for any person who is not a party to the **Policy** ("a covered person"), and a fraudulent **Claim** is made under the **Policy** by or on behalf of a covered person, the **Insurers** may exercise the rights set out in clause (5.2.7.1) above as if there were an individual insurance **Policy** between the **Insurers** and the covered person. However, the exercise of any of those rights shall not affect the cover provided under the **Policy** for any other person.

Nothing in these clauses is intended to vary the position under the Insurance Act 2015.

5.3 Records

The **Insured** shall at all times:

5.3.1 maintain accurate descriptive records of all **Clinical Services** and equipment used in procedures. Such records shall be made available for inspection and use by **Insurers** or their appointed representatives in the investigation or defence of any **Claim** hereunder;

5.3.2 retain the records referred to in 5.3.1 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. Obstetric records must be retained and preserved indefinitely;

5.3.3 provide **Insurers** or their appointed representatives with such oral or written information, assistance, signed statements, evidence or depositions as **Insurers** may require;

5.4 Licensing of all **Health Care Professionals and Allied Health Professionals**

It is a condition precedent to the **Insured's** right to be indemnified under this **Policy** that the **Insured** keep accurate records of and ensure that throughout the **Policy Period** all **Health Care Professionals and Allied Health Professionals** or any other persons supplying **Clinical Services** hold valid licences to practise in their respective specialisations issued by the relevant lawfully established and recognised licensing authority within the territories specified in Item 7 of the Schedule.

This Condition, shall also apply to all **Medical or Dental Practitioners**, private consultants and those with visiting rights under the **Insured's** supervision or who otherwise work or provide services on or out of the **Insured's** premises.

5.5 Insurance or Indemnification of **Medical or Dental Practitioners**

It is a condition precedent to the **Insured's** right to be indemnified under this **Policy** that the **Insured** keep accurate records of and ensure that throughout the **Policy Period** all **Medical or Dental Practitioners** (whether an employee of the **Insured** or not) are fully paid up members of a defence organisation or similar scheme, club, association or arrangement from which such **Medical or Dental Practitioners** benefit from insurance, indemnity or other benefit or form of compensation or payment in respect of their activities as **Medical or Dental Practitioners**.

This condition shall apply in respect of all **Clinical Services** which are provided by **Medical or Dental Practitioners** during the **Policy Period**.

5.6 Cancellation

Insurers may cancel this **Policy** by giving written notice to the **Insured** at the address stated in Item 3 of the Schedule of thirty (30) calendar days before the effective date of cancellation. Premium will be refunded to the **Insured** on a pro rata basis.

If notice is mailed by registered post, proof of mailing will be sufficient evidence of notice being sent, and notice shall be deemed to have been served seven (7) calendar days after dispatch. Notice may also be validly served by email or fax to the **Insured** or the **Insured's** agent or broker. Notice by email will be deemed to have been duly received if within five (5) calendar days a reply, whether in the form of an acknowledgement or otherwise, has been sent to and received by the original sender or a telephone confirmation from a responsible person has been given. Notice by fax will be deemed to have been duly received if the sending machine has printed a valid confirmation of receipt. Notice by fax or email, duly received, will be deemed to have been served five (5) calendar days after the date of sending.

5.7 Premium Payment Warranty

It is warranted that all premiums due to The MPLC Limited under this **Policy** are paid by the premium due dates stated in Item 6 of the Schedule. Non-receipt by The MPLC Limited of such premiums by midnight of the respective premium due date shall discharge **Insurers'** liability from the time of the breach of warranty, regardless of whether the breach is subsequently remedied. Section 10 of the Insurance Act 2015 shall not apply to this Premium Payment Warranty

5.8 **Policy** Jurisdiction and Applicable Law

This **Policy** is governed by and should be construed in accordance with the law of the country specified in Item 12 of the Schedule.

Any dispute between the **Insurers** and the **Insured** concerning this **Policy**, its validity, existence or termination or relating to the interpretation of the terms, conditions, limitations and/or exclusions contained herein shall be determined in accordance with the law of the country specified at Item 12 of the Schedule. The parties agree to submit to the exclusive jurisdiction of any court of competent jurisdiction within that country and to comply with all requirements necessary to give such court jurisdiction.

621MILMPLC00218 (Amended 28 February 2017)

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Special Exclusion – Maternity and Obstetric Exclusion

The Underwriters shall not be liable for any **Claim** or **Defence Costs** directly or indirectly caused by or in any way connected with the performance or provision of any Maternity or Obstetric Services by a Midwife.

Notwithstanding the provisions of this Exclusion, cover shall be afforded to Theatre Nurses and Operating Department Practitioners (ODP's) who are listed on Schedule A while present during the provision of maternity or obstetric services in a hospital.

Sub-Limit of Indemnity:

The Underwriters shall not be liable under this extension to pay more than £1,000,000.00 in the aggregate in respect of all **Claims** made against the **Insured** and notified to Underwriters during this **Policy Period** in respect of any and all **Claims** arising directly or indirectly from or in any way connected with this extension.

Unless otherwise specified in the policy, the above limit shall be inclusive of all **Defence Costs**, provided always that this extension will not operate to increase any aggregate Limit of Indemnity already stated in the policy.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

621MILMPLC00029A (AfPP – amended February 2015)

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ENDORSEMENTS**1. It is hereby understood and agreed that:**

1.1. Retroactive Date

As detailed in Schedule 'A' in respect of each individual **Insured**

1.2. Warranted the overall Annual Aggregate Limit of Liability in respect of the Members of the Association for Perioperative Practice (AfPP)

(The **Insured**) is limited to a maximum blanket Limit of Liability of GBP 9,000,000.00 in the Annual Aggregate (including costs and expenses).

1.3. Run off cover is afforded solely to the individuals agreed by **Insurers** and listed in Schedule 'A'

It is hereby understood and agreed that any individual **Insured** named in Schedule 'A' who wishes to request Run Off cover must fulfil all of the following criteria prior to consideration by **Insurers**:

- a. The individual **Insured** must provide an up to date No Claims Declaration or current and satisfactory claims experience.
- b. The individual **Insured** must acknowledge that the maximum period of Run Off cover available is 12 months and any additional period must be reapplied for.
- c. The individual **Insured** must have been a member of and purchased Medical Malpractice from the Association for Perioperative Practice (AfPP) and been named in Schedule 'A' for a minimum of 12 months prior to the request to be afforded Run Off cover.
- d. Entitlement to Run Off cover is not automatic and **Insurers** will individually assess each individual request for Run Off cover and will then, if appropriate, provide the individual **Insured** with Run Off terms.

Warranted hereon Run Off cover is only afforded to individual **Insured**'s listed in Schedule 'A' whilst the MPLC provide the Medical Professional Liability Master Policy for the Association for Perioperative Practice and the AfPP.

24/7 LEGAL ADVICE & NOTIFICATION
PROCEDURES
AND
FIRST NOTIFICATION FORM

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A Guide to the MPLC Claims Handling Service

(For UK Policyholders only)

Kennedys
Legal advice in black and white

The MPLC believes one of the most important aspects of insurance is the provision of a professional and sensitive claims handling service.

As a result, The MPLC prides itself upon the quality and service which it provides to its policyholders. Not only does an MPLC policyholder have access to a 24/7 help line; they receive legal advice from one of the best defence firms in the United Kingdom.

Kennedys (www.kennedys-law.com/industries/healthcare.aspx) is recognised in the Legal 500 and Chambers as one of the leading law firms handling medical professional liability in the UK. The healthcare department has been advising healthcare providers, their insurers and NHS Trusts on clinical claims and healthcare issues for over 20 years.

Our policyholders appreciate and value the quality and level of service which they receive from The MPLC. For further information regarding what our policyholders say about working with us, please click: http://the-mplc.com/ourapproach_worldclasscompliance.php

Once a claim or circumstance is reported to The MPLC, Kennedys act as claims handlers. If the situation then requires, Kennedys may become the appointed as “Panel solicitors”.

1. **Claims Handling**

- Claim certainty is a very important aspect for our policyholders and to facilitate this, following notification of a claim, Kennedys will acknowledge receipt of, and advise our policyholder of their rights and obligations under the policy for each notification.
- Once the policy position has been confirmed, Kennedys will contact our policyholder to recommend the best course of action to take next.
- At all times, policyholders can contact Kennedys for advice on/or to discuss any incident or claim.

2. **Appointed “Panel” solicitor**

- If a claim is of a serious nature, or legal advice is required to deal with or respond to a Claimant or their solicitor, Kennedys are appointed as “Panel Solicitors” to defend our policyholders position and to provide expert legal advice.
- As a part of this role, Kennedys provide our policyholders with early and detailed advice on liability and quantum including recommendations on “ground up” reserves for damages, Claimant’s costs and defence costs. This allows our policyholders to accurately budget for any costs which may fall within the policy excess (as detailed in *Item 5* of the Policy Schedule of the MPLC MRC document). Kennedy’s defence costs will be incurred under the Policy excess and are charged on a “real time” basis in accordance with NHS rates.
- At all stages Kennedys will assist our policyholders (on a ‘ground-up’ basis) to negotiate a resolution or settlement of a claim. The speedy resolution of a claim will help to reduce Claimant and Defendant costs, which will save our policyholders money, particularly for any claims which may fall within the excess.

3. Summary Features and Benefits of the MPLC Claims Handling Service

- Our policyholders have the benefit of our unique 24/7 legal advice service (http://the-mplc.com/addingvalue_legaladvice.php). This 24/7 service provides access to an out-of-hours emergency telephone advice line allowing our policyholders to obtain guidance on any medico-legal query from Kennedys Lawyers.
- All claims or incidents reported to The MPLC are initially handled by a team of medical defence lawyers.
- Professional advice shall be provided on **all** claims, and their potential value, in terms of damages and costs (including within the excess). This ensures early identification of any potentially serious claims and allows early specialist legal advice to be provided.
- The MPLC encourage early notification of all claims and incidents. The benefits for our policyholders of this approach are as follows:
 - Early legal assessment of potential claims and incidents by the specialist medico-legal team
 - Providing a quicker and better response to patient complaints and claims
 - ‘Claim certainty’ for all parties
 - Allowing for early identification of claims which need to be re-directed to third parties. For example; A Doctor’s Medical Defence Organisation or any other separate defendants Insurer.
- Additional non-chargeable value added services:
 - Access to Kennedy’s medical law updates/bulletins
 - The availability of monthly financial reporting/bordereaux on all claims
 - The provision of seminars, lectures and in-house training

For further details regarding the team of professionals and services which are available please visit our Claims Handling Contact Information page: http://www.the-mplc.com/addingvalue_claims_handling.php

Some useful links are:

- 24/7 Legal Advice and Notification Procedures
http://www.the-mplc.com/downloads/claim/24_7_legal_advice_and_notification_procedures.pdf
- First Notification Sheet
http://www.the-mplc.com/downloads/claim/first_notification_sheet.pdf
- Contact information
<http://www.the-mplc.com/contactus.php>

DISCLAIMER:

This guide to The MPLC Claims Handling Service is provided for general information purposes only. For specific advice and information regarding the terms and conditions of your insurance policy please consult your policy wording or contact your insurance advisor.

**24/7 Legal Advice & Notification Procedures**

The MPLC provides a 24 hour / 7 days-a-week legal advice line which is manned by medical professional liability lawyers from Kennedys.
(www.kennedys-law.com).

24/7 Legal Advice

If you require any legal advice which relates to the provision of Medical Services which may give rise to a Claim please contact:

During business hours (09:30 – 17:30 L.S.T.)**Worldwide (Excluding Australia & Far East)**

Nico Fabri / Janet Sayers

Telephone: 020 7667 9667 (UK Clients)
or +44 20 7667 9667 (International Clients)**Australia & Far East**

The Duty Lawyer

Telephone +44 1603 481241

Outside business hours

The Duty Lawyer

Telephone: 01603 481241 (UK Clients)
or +44 1603 481241 (International Clients)

When telephoning please have your MPLC policy reference available and state that you are a MPLC policy holder.

Notification Procedures

To notify a Claim, please complete the attached form (www.the-mplc.com/downloads.php) and send it by email or fax to:

Facsimile: UK Clients 0845 127 5071

International Clients + 44 845 127 5071

Email: claims@the-mplc.com***Thank you***



First Notification Sheet For Medical Professional Liability Claims

Privileged & Confidential
Prepared For Underwriters And/Or Their Legal Representatives
In Contemplation Of Actual Or Anticipated Legal Proceedings

To be completed by Risk Manager/Company Secretary/Legal/Claims Department or similar person responsible for claims handling. Underwriters require the following basic information in order to confirm Policy response on new notifications and for compliance with Practice directions and Pre-action Protocols issued and approved from time to time by the Civil courts.

If you require more space for any of the answers, please use the 'Further Comments field on the 3rd page.

1. Insured:

2. The MPLC Policy Number:

3. Individual Member or Location:

4. Date of receipt of first communication or verbal complaint from third party:

5. Date of Writ/Proceedings:
(If applicable)

6. Date Incident Report Completed

7. Patient's Name: Surname: Forename:

8. Sex of Patient: MALE FEMALE

9. Date of Birth:

10. Occupation:

11. Age at Incident Date:

12. Marital Status: SINGLE MARRIED DIVORCED
SEPARATED WIDOWED COMMON LAW

13. Number of Dependents:

14. Date of Admission:

15. Date(s) of Treatment: From: To:

16. Date of Discharge

If transferred to another Hospital (if information is available)

17. Date of Admission:

18. Date of Discharge

19. Claimant's Name:
(If different from patient):

20. Claimant's relationship to patient:

21. Brief Description of Facts/Type of Injury sustained:

22. Allegations of Negligence:

23. Amount claimed (if known) including heads of damage:

24. Present Condition and Prognosis (if known):

25. Practitioner(s) and other parties involved:

Name	Employee / Independent Contractor	Medical Defence Organisation / Insurer	Membership / Policy No	Cover in Place
				Y/N
				Y/N
				Y/N
				Y/N
				Y/N

If there are additional parties involved, please provide information on a separate sheet.

26. Was your retainer/contract for services evidenced in writing: YES NO

27. If so, please attach a copy, if not please provide details of the service undertaken:

28. Further Comments

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Important Note

Please supply a copy of all correspondence pertaining to the claim, together with all documentation and medical records relating to the treatment in question.

The Insured is respectfully reminded of the Policy and accordingly that no details of the Policy may be disclosed, nor may liability be admitted, arrangement, offer, promise or payment be made, or cost or expense incurred by the Insured without the written consent of the Underwriters.

The Insured's attention is also drawn to the requirement under the Policy to provide Underwriters with IMMEDIATE NOTICE OF CLAIMS OR CIRCUMSTANCES which are likely to give rise to a claim. Accordingly, if the Insured is unable to complete all sections of the Notification Sheet, this should not delay its despatch to Underwriters and any further information or material can be provided as soon as possible thereafter.

Name:

Position:

For and on behalf of:

Signed:

Date:

Once completed, please send this form immediately to The MPLC

By email: claims@the-mplc.com

By fax: +44 (0)845 127 5071

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