

AMBULATORY SURGERY CENTER PROFESSIONAL LIABILITY INSURANCE

Claims-Made

THIS IS A CLAIMS-MADE AND REPORTED POLICY. PLEASE READ THIS POLICY CAREFULLY. OUR LIMIT OF LIABILITY AVAILABLE WILL BE REDUCED BY THE AMOUNTS PAID FOR DAMAGES AND CLAIMS EXPENSES.

Throughout this policy the words **you** and **your** refer to the **Named Insured** as defined in Section II G. The words we, us and our refer to Admiral Insurance Company (Company). Words which are in **bold** writing throughout this document are defined terms within the Definitions section of this policy.

In consideration of the premium paid, in reliance upon the statements in the Application which is made a part of this policy and subject to the terms and conditions of this policy, the Company agrees with the **Named Insured** as follows:

I. INSURING AGREEMENTS

- A. We will pay on behalf of the **insured** those amounts which the **insured** is legally obligated to pay as **damages** caused by a **professional incident** taking place within the policy territory and subsequent to the retroactive date and prior to the expiration or termination date of this policy, for which a **claim** is first made against the **insured** during the **policy period** and reported to us in writing during the **policy period** or any applicable extended reporting period, as described in Section VI Extended Reporting Period; provided that prior to the inception date of this policy, no **insured** knew, nor could have reasonably foreseen, that the **professional incident** might result in a **claim**.
- B. We have the right and duty to defend any **claim** brought against the **insured** seeking **damages** caused by a **professional incident** to which this insurance applies, including the right to appoint counsel to defend the **insured**, and will do so even if any of the allegations of the **claim** are groundless, false or fraudulent. We may make such investigation and settlement of any **claim** as we deem expedient. Our right and duty to defend ends when we have used up the applicable Limits of Liability in the payment of **damages** and/or **claims expenses** or have tendered the applicable Limits of Liability to a court of competent jurisdiction. We have no obligation or duty to defend any **claim** for which coverage is excluded hereunder or not otherwise afforded by this policy and we are not obligated to pay any **claim expenses** incurred by the **insured** in the defense of any **claim** not covered by this policy.

II. DEFINITIONS

- A. **Advertising Activities** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:
 - 1. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - 2. Only that part of a web-site that promotes your goods, products or services for the purpose of attracting customers or supporters shall be considered **Advertising Activities**.
- B. **Advertising Injury** means injury arising out of one or more of the following offenses committed in the course of the **Named Insured's Advertising Activities**:
 - 1. Libel, slander or defamation;
 - 2. Disparaging a person's or organization's goods, products or services;
 - 3. Oral or written publication of material that violates a person's right of privacy;
 - 4. Misappropriation of advertising ideas or style of doing business;
 - 5. Piracy or unfair competition;
 - 6. Use of another's advertising ideas; or
 - 7. Infringing upon another's copyright, title, slogan, patent, trademark, trade name, trade dress or service mark.
- C. **Claim** means:
 - 1. a written demand received for money or services by any **insured** resulting from a **professional incident**.

2. service of **suit** against an **insured**.

D. Claim Expenses means:

1. Fees, costs and expenses resulting from the investigation, adjustment, settlement and defense of a **claim**.
2. Allowable expenses of \$250 per day but no more than \$5,000 in total for the compensation of all **insureds** for personally attending any legal proceeding at our request. These allowable expenses shall not be applied to the applicable limit of liability or to the deductible.
3. The premiums for appeal, attachment or similar bonds, but only for bond amounts within the applicable Limits of Liability. We do not have to furnish these bonds.
4. Prejudgment interest awarded against the **insured** on that part of any covered judgment we pay. If we make an offer to pay the applicable Limits of Liability, we will not pay any prejudgment interest based on that period of time after the offer.
5. All interest on the full amount of any covered judgment that accrues after entry of the judgment and before we have paid, offered to pay, or have tendered or deposited to a court of competent jurisdiction the part of the judgment that is within the applicable Limits of Insurance.

Claim Expenses do not include:

1. salaries or expenses of our regular employees or officials;
2. fines, penalties, or taxes levied against the **insured**;
3. fees, costs, or expenses incurred by the **insured** without our prior written consent. These unilaterally incurred fees, costs, or expenses will not be reimbursed by us nor reduce the deductible under the policy.

E. Damages mean a monetary and compensatory judgment, award or settlement. However, **damages** do not include:

1. punitive or exemplary **damages** or any **damages** which are a multiple of compensatory **damages**;
2. amounts the **insured** is required to pay or return as restitution;
3. fines, penalties, sanctions, taxes or fees assessed against the **insured**;
4. judgments or awards arising from acts deemed uninsurable by law;
5. fees or charges, including over-charges or cost overruns incurred by an **insured**;
6. collecting fees of an **insured** from a third party;
7. the return of fees or other compensation paid to an **insured**;
8. non-pecuniary relief.

F. Direct Patient Care means examination, diagnosis, testing and/or the treatment of any patient.

G. Insured means:

1. the **Named Insured**;
2. your current and former employees, principals, partners, executive officers, directors, members, managers, stockholders, trustees, volunteer workers, or **medical directors** while acting on your behalf within the course and scope of their duties; except coverage will not be afforded to the following professionals: physicians, dentists, chiropractors, podiatrists, nurse midwives or certified registered nurse anesthetists (CRNA's);
3. in the event of death or incapacity of any **insured**, their legal representative in his or her capacity as such, for any **claim** against the **insured**;
4. Any student enrolled in a training program, but only while acting within the scope of their duties as such and under the direct supervision of faculty members or educators of such training program.

H. Medical Director means a healthcare professional employed or contracted by you in an administrative capacity.

I. Named Insured means the entity or individual named in the Declarations.

J. Other Insurance includes, but is not limited to, coverage or benefits provided by self-insurance arrangements, pools, self-insurance trusts, captive insurance companies, inter-insurance exchanges, mutual insurance companies, stock insurance companies, risk retention groups, reciprocal exchanges, mutual benefit or assistance programs, or any other plan or agreement of risk assumption.

K. Personal Injury means injury arising out of one or more of the following offenses;

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. wrongful entry or wrongful eviction;
4. invasion of right of private occupancy;
5. oral or written publication of material that slanders or libels a person or organization or defames or disparages a person's or organization's goods, products or services;
6. oral or written publication of material that violates a person's right of privacy.

L. Policy Period means the period from the inception date stated in the Declarations to the expiration date stated in the Declarations, or its earlier termination date, if any.

M. Professional Incident means a negligent act, error or omission in the rendering of or failure to render **professional services** by the **insured** or a person acting under the **insured's** direction, control or supervision and for whose acts, errors or omissions the **insured** is legally liable. All **professional incidents** that are logically or causally connected will be deemed one **professional incident** that, for the purpose of determining coverage under this policy, occurred at the time of the earliest act, error or omission.

N. Professional Services means services performed by an **insured** for others involving specialized training, knowledge and skill while in the pursuit of the business stated in the Declarations.

O. Property Damage means:

1. physical injury to or destruction of tangible property, including all resulting loss of use of that property; or
2. clean up costs; or
3. loss of use of tangible property that has not been physically injured or destroyed.

P. Suit means a civil proceeding in which **damages** resulting from a **professional incident** are alleged. **Suit** includes an arbitration proceeding to which the **insured** is required to submit or to which the **insured** has submitted with our consent.

III. INCIDENT REPORTING PROVISIONS

If during the **Policy Period**, you first become aware of any specific and identifiable **professional incident** and during the **Policy Period** give written notice to us of:

- a) The specific **professional incident** including the date(s) and parties involved; and
- b) The **damages** which have or may result from such **professional incident**; and
- c) The circumstances by which you first became aware of such **professional incident**;

For the purposes of this insurance, a **professional incident** reported under this provision shall be deemed a **claim**.

IV. POLICY TERRITORY

This policy applies to **professional incidents** anywhere in the world provided the original **suit** for **damages** is first filed and maintained continuously within the United States of America, its territories or possessions and Canada.

V. EXCLUSIONS

This policy does not apply to:

- A.** A **claim** made by an **insured** or their spouse or relatives, against any other **insured**;
- B.** **Professional services** provided by a **Medical Director** involving **direct patient care**;
- C.** Any act, error or omission which is knowingly wrongful, dishonest, fraudulent, criminal or malicious;
- D.** Any **professional incident** caused by any **insured** while under the influence of intoxicants or narcotics;
- E.** Any **claim** based upon or arising out of the insolvency or bankruptcy of any **insured** or any person, firm or organization;
- F.** Any **claim** for discrimination, violation of civil rights, or any allegation that a person was subjected to unfair treatment or a denial or reduction of benefits, privileges or accommodation in violation of any law, statute, ordinance or regulation designed to ensure equal access to opportunities, goods, services, facilities, and accommodations;

- G. Any **claim** for sexual abuse, molestation of a sexual nature, sexual advances, or sexual acts or any behavior or communications intended to lead to, or culminating in, sexual abuse, molestation of a sexual nature, sexual advances or sexual act;
- H. Any **claim** for sexual harassment, coercion, quid-pro-quo offer of **professional services** for sexual favors, or other verbal or physical conduct of a sexual nature that detrimentally affects the working environment or that creates a hostile work environment;
- I. Any **claim** for any **insured's** activities as owner, sole proprietor, superintendent, executive officer, director, partner, trustee or employee of any organization which is not shown as a **Named Insured** on this policy;
- J. Any liability based upon or arising out of the presence, discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, oil or other petroleum substances or derivatives, waste materials or other irritants, contaminants, pollutants or any substances including asbestos which are or may be injurious to public health or the environment (herein called hazardous substances) into or upon land, the atmosphere or any water course or body of water.

It is further agreed that this policy does not apply to any liability including expenses for:

1. the costs of clean up or removal of hazardous substances; or
 2. the cost of such actions as may be necessary to monitor, assess and evaluate, the presence, discharge, dispersal, escape, release, or threat of same, of hazardous substances; or
 3. the cost of disposal of hazardous substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
 4. any loss, cost, or expense arising out of any government direction or request that the **Named Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.
- K. Any **claim** for which you or any carrier as your insurer may be liable, under any Workers' Compensation, Unemployment Compensation, Disability Benefits Law, the Employee Retirement Income Security Act of 1974 and as amended, or under any similar law or regulation; or to any liability of the **insured** arising out of the injury, sickness, disease or death resulting there from of any employee of the **insured** arising out of and in the course of his employment by the **insured**;
 - L. Any nuclear reaction, radiation or contamination, under any circumstances and regardless of cause, within or originating from a nuclear facility;
 - M. Any misappropriation, infringement, or use of a copyright, title, slogan, patent, trademark, trade-name, trade dress, service mark, domain name, trade secret or any violation of an intellectual property right or law;
 - N. Any **property damage, advertising injury or personal injury**.

However, we will reimburse your patient for **property damage** sustained while on your office premises for the purpose of receiving **professional services** provided that:

1. The **property damage** occurs during the **policy period**; and
2. You report the **property damage** to us as soon as practicable during the **policy period** or any Extended Reporting Period we provide as described in Section VI EXTENDED REPORTING PERIOD.

The most we will pay under this coverage is \$500 per **property damage** incident. No deductible applies and payments under this coverage will not erode the Limits of Liability.

- O. Any **claim** based upon or arising out of liability you assume under any contract or agreement; however, this exclusion does not apply to liability you would have in the absence of such contract or agreement;
- P. Any **claim** against an **insured** that is brought by or on behalf of any federal, state or local government agency or professional or trade licensing organization; however, this exclusion shall not apply where the **claim** is alleging a **professional incident**;
- Q. Any **claim** alleging an **insured** exceeded a contract price, cost guarantee or cost estimate;
- R. Any **professional incident** for which an **insured** has coverage under any other policy issued by us.

VI. EXTENDED REPORTING PERIOD

As a condition precedent to your right to obtain an Automatic Extended Reporting Period (AERP) or an Extended Reporting Period (ERP), the full premium of this policy, premium for endorsements or audits, and payment of deductibles must have been paid in full. Neither the AERP nor the ERP reinstate or increase the Limits of Liability. Neither the AERP nor the ERP extend the **policy period** or change the scope of coverage afforded by this policy.

A. Automatic Extended Reporting Period (AERP)

If we or you cancel or non-renew this policy for any reason other than non-payment of premium, non-payment of deductible, non-compliance with any terms and conditions of this policy, fraud or material misrepresentation then you shall be entitled to an Automatic Extended Reporting Period (AERP) of (60) sixty days from the date of policy expiration or cancellation to report **claims** in writing to us which are first made against the **insured** during the **policy period** and arise out of a **professional incident** which takes place subsequent to the retroactive date and prior to the policy expiration or cancellation date. If the ERP in section B below is purchased then this AERP shall be included within such ERP.

B. Extended Reporting Period (ERP)

If we or you cancel or non-renew this policy for any reason other than non-payment of premium, non-payment of deductible, non-compliance with any terms and conditions of this policy, fraud or material misrepresentation then you shall be entitled to purchase an ERP from the options below which begin from the date of policy expiration or cancellation to report **claims** in writing to us which are first made against the **insured** during the **policy period** or ERP and arise out of a **professional incident** which takes place subsequent to the retroactive date and prior to the policy expiration or cancellation date.

1. ERP Options

- a. One year for a premium not to exceed 125% of the annual premium.
- b. Two years for a premium not to exceed 150% of the annual premium.
- c. Three years for a premium not to exceed 175% of the annual premium.

2. Your right to purchase the ERP must be exercised by notice in writing to us no later than (30) thirty days after the expiration or cancellation date of this policy and must include payment of premium for the ERP. Upon receipt of the written notice to us and the premium for the ERP, the entire premium is deemed fully earned and is non-refundable.

VII. LIMITS OF LIABILITY AND DEDUCTIBLE

A. Limit of Liability – Each **Claim**

The Limit of Liability – Each **Claim**, as stated in the Declarations, is the maximum amount we will pay for **claim expenses** and **damages** attributable to any one **claim** covered under this policy.

B. Limit of Liability – Aggregate

Subject to Limit of Liability – each **Claim**, the Limit of Liability – Aggregate, as stated in the Declarations, is the maximum amount we will pay for all **claims expenses** and **damages** for all **claims** covered under this policy.

- C. Our duty to defend will end when our Limits of Liability have been exhausted by payment of **damages** and/or **claims expenses**, or have been tendered to a court of competent jurisdiction.

- D. The applicable Limit of Liability stated in the Declarations is the maximum we will pay regardless of the number of **insureds**, individuals or organizations that make a **claim**, or number of **claims** made.

E. Deductible

The deductible amount stated in the Declarations applies to each **claim** and shall be paid by the **Named Insured**. The deductible applies to **claims expenses** and **damages** and is part of, and not in addition to, the Limits of Liability shown in the Declarations. We may advance payment of part or all of the deductible amount and upon notification of such payment being made, the **insured** must promptly reimburse the Company for the deductible amounts advanced by us.

VIII. CONDITIONS

A. INSURED'S DUTIES IN THE EVENT OF A CLAIM

1. If a **claim** to which this policy applies is made against an **Insured**, you must give us written notice, as soon as practicable, but in no event, subject to Section VI EXTENDED REPORTING PERIOD, no later than policy ex-

piration or cancellation date at Admiral Insurance Company (A Berkley Company), Attention: Claims Department, Mt. Laurel Corporate Park, 1000 Howard Blvd., P.O. Box 5430, Suite 300, Mt. Laurel, NJ 08054. Or e-mail: admclaims@admiralins.com.

2. All **insureds** must fully cooperate with us in the conduct, defense and investigation of any **claim** or **suit**. Upon the Company's request, we may require the **insured** to submit to an examination under oath; provide us with written statements as requested by us or your attendance at meetings with us; produce and make available records, documents and other materials which we deem relevant to the claim; attend hearings, depositions and trials; assist in affecting settlements, securing and giving evidence and obtaining the attendance of witnesses.
3. The **insured** must not make any payment, admit any liability, settle any **claim**, assume any obligations, or accept or reject arbitration without our prior written consent.
4. The **insured** must do whatever is necessary to secure and affect any rights of indemnity, contribution or apportionment that the **insured** may have.
5. The **insured** shall accept our assignment of counsel and the **insured** shall refrain from discussing any **claim** or **suit** with anyone other than counsel retained to represent the **insured** or our representatives.

B. Transfer of Rights of Recovery

If there is a payment made by us, we shall be subrogated to all of the **insured's** rights of recovery against any person or organization. The **insured** will cooperate with us and do whatever is necessary to secure these rights.

C. How Other Insurance Applies

This insurance shall be excess of and not contribute with **other insurance**, whether collectible or not, that affords coverage for a **professional incident**. If a policy issued by us and one or more policies issued by another insurer apply to the same **professional incident**, our pro-rata share will be determined by the total of the Limits of Liability of our policy in effect at the time the first **claim** was made and reported to us in writing and the Limits of Liability of all **other insurance**.

This condition does not apply to **other insurance** that is written to apply in excess of the limits provided by this policy.

D. Changes Made to this Policy

The terms and conditions of this policy cannot be waived or changed except by specific written endorsement issued by us and made part of the policy.

E. Assignment of the Insured's Interest

The interest of the **insured** under this policy is not assignable to any other person or organization, except with the Company's written consent.

F. Cancellation

This policy may be canceled by the **Named Insured** by returning the policy to us or our authorized representatives. The **Named Insured** can also cancel this policy by written notice to us stating at what future date cancellation is to be effective. If the **Named Insured** cancels, earned premium shall be computed using the customary short rate table or the amount stated elsewhere in this policy as Minimum Earned Premium, whichever is greater.

We can cancel the policy by written notice to the **Named Insured**, at the address last known to us. We will provide written notice at least thirty (30) days before cancellation is to be effective and the earned premium will be computed pro-rata. However, if we cancel because you fail to pay a premium or deductible when due, only ten (10) days written notice of cancellation will be given and earned premium will be computed using the customary short rate table.

The mailing of any notice of cancellation shall be sufficient proof of notice.

This policy will terminate on the effective date of the cancellation. Return of unearned premium is not a condition of cancellation. Unearned premium will be returned by us as soon as practicable.

G. Bankruptcy

Bankruptcy or insolvency of the **insured** or the **insured's** estate shall not relieve us of any of our obligations under this policy.

H. Application

The statements made in the Application are all **insureds'** representations and are deemed material. This policy is issued based upon the truth and accuracy of such representations. Upon the binding of coverage, the application shall be attached and become part of this policy.

I. Audit

We may examine and audit your books and records at any time during the **policy period** and within three (3) years after the expiration or termination date of this policy, as far as they relate to this policy.

J. Action Against Us

No action shall be brought against us by any **insured**, unless, as a condition precedent thereto:

1. all **insureds** have fully complied with all the terms and conditions of this policy; and
2. the amount of **damages** has been fixed or rendered certain;
 - a. by final judgment against the **insured** after trial of the issues; or
 - b. the time to appeal such judgment has expired without an appeal being taken; or
 - c. if appeal is taken, after the appeal has been determined; or
 - d. the **claim** is settled in accordance with the terms and conditions of this policy.

In no event shall any action brought by anyone be maintained against us unless such action is brought within twenty-four (24) months from the time the right to bring action first became available.

K. False or Fraudulent Claims

If an **insured** reports any **claim** knowing such **claim** to be false or fraudulent, this policy shall become void and all insurance coverage hereunder shall be forfeited as of the inception date of this policy.

L. Terms and Conditions of Policy Conformed to Statute

Where necessary, the terms and conditions of this policy will be amended to conform to applicable law.

M. Premium

The premium amount for this policy is stated in the Declarations and is for coverage for the **policy period**. If during the **policy period** there is a change in coverage afforded, we have the right to adjust the premium as of the date of change. Any premium adjustment shall be made in accordance with our prevailing rules and rates.

Premium shown as advance premium is a minimum and deposit premium. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable by notice to the first **Named Insured**.

If the premium for this policy is a flat premium, it is not subject to adjustment.

This policy shall not be binding upon the Company unless completed by an Application which is made a part of this policy and a Declarations Page, countersigned on the aforesaid Declarations Page by a duly authorized representative of the Company.