

# MEDICAL PROFESSIONAL LIABILITY COVERAGE FORM

## CLAIMS MADE BASIS

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Throughout this document, the word “Insured” means any person or entity qualified as such under **Part I. E. Covered Persons and Entities**. The word “Company” refers to the Company providing the insurance shown on the Declarations.

Other words and phrases that appear in **bold** have special meaning. Refer to **Part III. Definitions**.

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### Part I. Insuring Agreements

#### A. Covered Services

The Company will pay on behalf of the Insured, as shown in the Declarations, all sums that the Insured becomes legally obligated to pay as **Damages** and associated **Claim Expenses** arising out of a negligent act, error or omission, even if such **Claim** is groundless, false or fraudulent, in the rendering of or failure to render professional services as described in the Declarations, provided that the:

1. **Claim** is first made against the Insured during the **Policy Period**, and reported to the Company no later than thirty (30) days after the end of the **Policy Period**;
2. Negligent act, error or omission took place in a covered territory;
3. Negligent act, error or omission took place after the **Retroactive Date** as shown in the Declarations.

#### B. Defense and Settlement

The Company will have the right and duty to defend any **Claim** against an Insured seeking **Damages** to which this policy applies, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Company’s right and duty to defend any **Claim** shall end when the Company’s Limit of Liability has been exhausted by payment of **Damages** and/or **Claim Expenses**, or has been tendered to the Insured or to a court of competent jurisdiction.

The Company shall not settle any **Claim** without the Insured’s written consent. If, however, the Insured refuses to consent to any settlement recommended by the Company and elects to contest the **Claim**, or continue any legal proceedings in connection with such **Claim**, then the Company’s maximum liability shall be limited to the amount for which the **Claim** could have settled, including the total amount of **Claims Expenses** incurred up to the date of the Insured's refusal. Such amounts are subject to the provisions of section **C. Policy Limits**.

The Insured shall not admit any liability for or settle any **Claim** or incur any costs, charges or expenses without the written consent of the Company.

#### C. Policy Limits

Regardless of the number of persons or entities insured or included in **Part I. E. Covered Persons and Entities**, or the number of claimants or **Claims** made against the Insured:

1. The maximum liability of the Company for **Damages** and **Claim Expenses** resulting from each **Claim** first made against the Insured during the **Policy Period** and the Extended Reporting Period, if purchased, shall not exceed the amount shown in the Declarations as each **Claim**;
2. The maximum liability of the Company for all **Damages** and **Claim Expenses** as a result of all **Claims** first made against the Insured during the **Policy Period** and the Extended Reporting Period, if purchased, shall not exceed the amount shown in the Declarations as Aggregate.

The Company shall not be obligated to pay any **Claim** for **Damages** or defend any **Claim** after the applicable Limit of Liability has been exhausted by payment of judgments, settlements, **Claim Expenses** or any combination thereof. **Claim Expenses** are part of and not in addition to the applicable Limits of Liability. Payment of **Claim Expenses** by the Company reduces the applicable Limits of Liability.

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The inclusion of more than one Insured, or the making of **Claims** by more than one person or organization, does not increase the Company's Limit of Liability. In the event two or more **Claims** arise out of a single negligent act, error or omission, or a series of related negligent acts, errors or omissions, all such **Claims** shall be treated as a single **Claim**. Whenever made, all such **Claims** shall be considered first made and reported to the Company during the **Policy Period** in which the earliest **Claim** arising out of such negligent act, error or omission was first made and reported to the Company, and all such **Claims** shall be subject to the same Limit of Liability.

#### **D. Deductible Provisions**

The deductible amount as shown in the Declarations shall be paid by the Insured and applies to each **Claim**, and includes **Damages** or **Claim Expenses**, whether or not a loss payment is made. If the deductible amount is initially paid by the Company, the Named Insured shall reimburse the amount paid within thirty (30) days, upon written request of the Company.

#### **E. Covered Persons and Entities**

1. Named Insured as shown in the Declarations, and if the Named Insured is an individual, his or her spouse, but only with respect to the professional services rendered by or on behalf of the Named Insured;
2. Any present or former principal, partner, officer, director, employee or volunteer worker of the Named Insured, but only as respects professional services rendered on behalf of the Named Insured;
3. Heirs, Executors, Administrators, and in the event of an Insured's death, incapacity or bankruptcy, legal representatives of any Insured, but only with respect to professional services rendered prior to such Insured's death, incapacity or bankruptcy;
4. Any Medical Director while acting within the scope of his/her administrative duties for the Named Insured. It is further agreed that coverage does not apply to the Medical Director while acting within his/her capacity as Physician, Surgeon or Dentist in the treatment, or direction of the treatment, of any patient;
5. 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;
6. Any faculty member or educator of a training program, but only while acting within the scope of their duties as such.

#### **F. Covered Territory**

This policy applies to covered **Claims** arising out of negligent act(s), error(s) or omission(s) committed by the Insured anywhere in the world, provided that either the **Claim** or suit is first filed and maintained continuously in the United States of America, its territories or possessions, Puerto Rico or Canada.

#### **G. Extended Reporting Period**

If the policy is not renewed for any reason, or is cancelled for any reason other than for nonpayment of premium or deductible (whether cancelled by the Company or by the Named Insured), the Named Insured as shown on the Declarations, has the right to purchase, within thirty (30) days of policy termination, an extension of the coverage granted by this policy. This reporting period extension shall remain in force for a period of either twelve (12), twenty-four (24), or thirty-six (36) months after the policy terminates, but only for **Claims** resulting from negligent acts, errors or omissions committed before the effective date of the cancellation or nonrenewal, and otherwise covered by this policy. Increased premiums or deductibles or modifications of coverage terms or conditions upon renewal do not constitute cancellation or nonrenewal.

The premium for this Extended Reporting Period will not exceed one hundred percent (100%) for twelve months, one hundred fifty percent (150%) for twenty-four months, or one hundred seventy-five percent (175%) for thirty-six months of the full annual premium set forth in the Declarations and any attached endorsements, and must be elected and paid within thirty (30) days after the effective date of the policy's termination. Such additional premium is deemed fully earned immediately upon the inception of the Extended Reporting Period.

The Extended Reporting Period is added by endorsement and, once endorsed, cannot be cancelled. The Extended Reporting Period does not reinstate or increase the Limits of Liability. The Company's Limits of Liability during the Extended Reporting Period are part of, and not in addition to, the Company's Limits of Liability stated in the Declarations.

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## Part II. Exclusions

This policy does not apply to any **Claim** or **Claim Expenses** based upon or arising out of:

- A. Personal Injury or Advertising Liability.**
- B.** Obligations of any Insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.
- C. Bodily Injury** to any of the following:
  - 1. Officers, directors, partners, employees or volunteer workers of the Insured arising out of and in the course of employment by the insured;
  - 2. The spouse, child, parent, or sibling of **C. (1.)** above.
- D.** The insolvency or bankruptcy of an Insured or of any other person, firm or organization.
- E.** Dishonest, fraudulent, criminal or intentional acts, errors or omissions committed by or at the direction of the Insured.
- F.** Any business enterprise not named in the Declarations which is owned, controlled, operated or managed by any Insured.
- G.** A **Claim** by one Insured under this policy against another Insured under this policy.
- H.** Any obligation or liability assumed by the Insured under any contract or any oral or written agreement, unless liability would have attached in the absence of such a contract or agreement.
- I.** The ownership, rental, leasing, maintenance, use (including operation, loading and unloading), or repair of any real or personal property, including **Damage** to property owned, occupied or used by, rented to or leased to an Insured.
- J.** The rendering or failure to render professional services by the Insured as a physician, surgeon or dentist.
- K.** Participation in or contribution to any organ transplant or the administration of anesthesia.
- L.** The use of excessive influence or power on any patient, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by the plaintiff to be sexual or in any way unwelcome.
- M.** The performance of any service by any Insured while under the influence of intoxicants or drugs.
- N.** The ownership, maintenance, use (including operation, loading and unloading), or entrustment to others of any aircraft, automobile, motor vehicle, mobile vehicles or watercraft owned or operated by or rented or loaned to any insured. This exclusion includes the movement of patients in and out of any motor vehicle, aircraft, automobile or watercraft.
- O.**
  - 1. The actual, alleged or threatened presence, discharge, dispersal, seepage, migration, release or escape of **Pollutants** or asbestos;
  - 2. The failure to discover or disclose the existence or amount of **Pollutants** or asbestos;
  - 3. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with **O. (1.)** or **(2.)** above;
  - 4. Any request, demand or order that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or, in any way respond to or assess the effects of **Pollutants** or asbestos;
  - 5. Any **Claim** or suit by or on behalf of a governmental authority for **Damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or, in any way, responding to, or assessing the effect of **Pollutants** or asbestos.
- P.**
  - 1. Refusal to employ;
  - 2. Termination of employment;
  - 3. Coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment related practices, procedures, policies, acts or omissions;
  - 4. Consequential **Bodily Injury** or **Personal Injury** as a result of **P. (1.)** through **(3.)** above.

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This exclusion applies whether the Insured may be held liable as an employer or in any other capacity and to any obligation to share **Damages** with or to repay someone else who must pay **Damages** because of the injury.

It is further agreed that no coverage shall apply under this policy to any **Claim** brought by or against any spouse, child, parent, brother or sister of the Insured or any other person. The Company shall not have a duty to defend any **Claim**, suit, arbitration or any other form of trial court proceeding.

- Q. Any alleged act, error, omission, or circumstance likely to give rise to a **Claim** that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to, any prior **Claim** or possible **Claim** referenced in the Insured's application.
- R. Infringement of copyright, patent, trademark, trade name, trade dress, service mark, title or slogan.
- S. Performance of surgical procedures or assisting in the performance of surgical procedures including, but not limited to, pre-surgical consultation, screening, informed consent and all post surgical care, other than superficial fascia.
- T. The actual or alleged invasion of privacy, or the infringement or interference with the right of privacy, resulting from the use, visitation to, or browsing of any BBS (bulletin board system or service), web site or URL location.
- U. Violation of, implementation of or failure to implement or abide by any posted privacy policy or the failure to have such policy posted, displayed or otherwise accessible.
- V. The gathering, use or dissemination of "Personal Information" in any form, including but not limited to any violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). "Personal Information" means any numerical, letter, symbol, image, sound, genetic or biological characteristic, or any combination thereof, unique to an individual or group of individuals and/or assigned to an individual or group of individuals by any person, governmental or non-governmental entity.
- W. Experimental procedures and experimental products, including procedures using experimental products. Experimental procedures and products are those not approved by the United States Food and Drug Administration (FDA).
- X. Obstetrical procedures, including but not limited to any emergency obstetrical procedures.

### Part III. Definitions

- A. **Advertising Liability** means injury arising out of one or more of the following offenses:
  - 1. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - 2. Oral or written publication of material that violates a person's right of privacy;
  - 3. Misappropriation of advertising ideas or style of doing business.
- B. **Bodily Injury** means physical or mental harm, sickness or disease sustained by a person, including death resulting from any of these at any time.
- C. **Claim** means a written or verbal demand, including any incident, occurrence or offense which may reasonably be expected to result in a claim, received by the Insured for money or services, including service of suit or institution of arbitration proceeding against the Insured.
- D. **Claim Expense** means expenses incurred by the Company or the Insured with the Company's consent in the investigation, adjustment, negotiation, arbitration, mediation and defense of covered **Claims**, whether paid by the Company or the Insured with the Company's consent, and includes:
  - 1. Attorney fees;
  - 2. Costs taxed against the Insured in any **Claim** defended by the Company;
  - 3. Interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Liability;
  - 4. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the available applicable policy limit and only if said **Claims** are covered by the policy;

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5. Reasonable expenses incurred by the Insured at the Company's request other than:
- a. Loss of earnings;
  - b. Salaries or other compensation paid to the Insured or any employee of the Insured.
- E. **Damages** means monetary judgment, award or settlement, except those for which insurance is prohibited by law. **Damages** does not include punitive or exemplary damages, fines, or amounts that are multiples of any covered **Damages**, penalties, or disputed fees, deposits, commissions or charges for goods or services.
- F. **Policy Period** means the period of time stated in the Declarations or any shorter period resulting from policy cancellation or amendment to the policy.
- G. **Personal Injury** means injury, other than **Bodily Injury**, arising out of one or more of the following offenses:
1. False arrest, detention or imprisonment;
  2. Malicious prosecution or abuse of process;
  3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  5. Oral or written publication, in any manner, of material that violates a person's right of privacy.
- H. **Retroactive Date** means the date stated in the Declarations on or after which any alleged or actual negligent act, error or omission must have first taken place in order to be considered for coverage under this policy.
- I. **Pollutants** means any solid, liquid, gaseous or thermal irritant, contaminant or toxin, whether live or inanimate, including but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, silica, lead, lead compounds or materials containing lead, asbestos, asbestos compounds or materials containing asbestos, radon, waste or any like substances. Waste includes materials to be recycled, reconditioned or reclaimed.

#### Part IV. General Conditions

##### A. Notice of Claim

The Insured must notify the Company as soon as practicable of an incident, occurrence or offense that may reasonably be expected to result in a **Claim**. Where notice to the Company of such incidents, occurrences or offenses has been acknowledged as adequate by the Company in writing, subsequent **Claims** derived from such incidents, occurrences or offenses will be deemed as first made at the time the incident, occurrence or offense giving rise to such **Claim** was first provided. The Insured also must immediately send copies to the Company of any demands, notices, summonses or legal papers received in connection with any **Claim**, and must authorize the Company to obtain records and other information. Please send all claim information to:

Attention: **Claims** Dept.  
RSUI Group, Inc.  
945 East Paces Ferry Road, Suite 1800  
Atlanta, Georgia 30326-1160

##### B. Prohibition of Voluntary Payments and Settlements

With respect to any **Claim** covered under this policy, the Insured will not make payment, admit liability, settle **Claims**, assume any obligation, agree to arbitration or any other means of resolution of any dispute, waive any rights or incur **Claim Expenses** without prior written Company approval, except at the Insured's own cost.

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### C. Cooperation

The Insured will cooperate with the Company in the conduct of a **Claim**, and upon the Company's request, submit to examination and interrogation by the Company representative, under oath if required, and will attend hearings and trials and assist in affecting settlements, securing and giving evidence, and obtaining the attendance of witnesses.

### D. Notice of Cancellation and Nonrenewal

The Named Insured may cancel this policy by mailing or delivering to the Company advance written notice of cancellation.

For other than nonpayment of premium or deductible, the Company will give the Named Insured sixty (60) days written notice prior to cancellation or nonrenewal of this policy by mailing or delivering the notice to the first Named Insured's last known mailing address. If the Company cancels the policy due to the Named Insured's failure to pay a premium when due, this policy may be cancelled by the Company giving not less than 10 days written notice of cancellation.

The cancellation notice will state the effective date of the cancellation and the policy will terminate on that date. If cancelled by the Company, the earned premium will be computed pro-rata. If cancelled by the Insured, the earned premium will be computed short rate.

### E. Premium and Audit

Premium for this coverage is computed in accordance with the Company's rules and rates. Any premium shown as advance premium may be a deposit premium only. If the premium is a deposit premium, at the close of each audit period, the Company will compute the earned premium for that period. Audit premiums are due and payable upon notice.

The Company may examine and audit the Insured's books and records at any time during the **Policy Period** and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy.

The first Named Insured as shown in the Declarations must keep records of information the Company will need for premium computation and upon request must send the Company copies of the information.

### F. Authorization

The first Named Insured listed in the Declarations agrees to act as the Named Insured with respect to the giving and receiving of all notices, exercising of the Extended Reporting Period option, canceling of the policy, paying of all premiums and deductibles and the receiving of any return premiums that may become due.

### G. Change

This policy contains all of the agreements concerning the insurance provided. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with the Company's consent. The policy terms can be amended or waived only by endorsement issued by the Company, and made a part of this policy.

### H. Subrogation

In the event of any **Claim** under this policy, the Company will be subrogated to all the Insured's rights of recovery against any person or organization, and the Insured will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured will do nothing after the loss to prejudice such rights.

### I. Other Insurance

This policy will be excess over, and will not contribute with, any other existing insurance, unless such other insurance is specifically written to be excess of this policy.

If it is determined that both this insurance and other insurance or self insurance apply to any **Claim** on the same basis, whether primary, excess or contingent, the Company will not be liable under this policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable Limit of Liability under the policy for such **Damages** bears to the total applicable Limit of Liability of all other insurance or self insurance, whether or not collectible against such **Claims**.

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**J. Actions Against the Insurer**

No action will be taken against the Company unless, as a condition precedent, the Insured is in full compliance with all of the terms of this policy, and until the amount of the Insured's obligations to pay shall have been finally determined, either by judgment against the Insured after actual trial, or by written agreement of the Insured, the claimant and the Company.

**K. Non-Transferability**

The Insured's rights and duties under this policy may not be transferred without the written consent of the Company.

**L. Coverage in Bankruptcy**

Bankruptcy or insolvency of the Insured or of the Insured's estate does not relieve the Company of its obligations under this policy.

**M. False or Fraudulent Claims**

If an Insured makes any **Claim** that is false or fraudulent, this insurance shall become void and entitlement to coverage for all **Claims** hereunder shall be forfeited.

**N. Application**

The Insured agrees that the statements in the application are personal representations, that they shall be deemed material and that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the Insured and the Company, or any of its agents, relating to this insurance.