



# 2021 MALPRACTICE INSURANCE

## POLICY WORDING

Policy Number 82070802

Issued by Aviva Insurance Company of Canada



## 8. GLOSSARY

All words and phrases that are in boldface in this **Master Policy Agreement** (except the word "Section" and the titles of the various Section) have special meanings which are either introduced on the title and recital pages, or in certain Sections, or which are defined as follows:

**"Company"** means Aviva Insurance Company of Canada (the insurer).

**"Dental Services"** means: Any treatment or procedure or any other act included as part of the permitted scope of practice of a person who is licensed or certified as a dental hygienist, certified dental assistant, registered nurse or dental therapist under the provisions of the applicable provincial or territorial statute regulating the provision of such dental services in the relevant jurisdiction.

**"Dentist"** means a person who is licensed or possesses a certificate to practice **Dentistry** in a province or territory of Canada and **"Dentist"** includes, if specifically permitted under the provisions of the applicable provincial or territorial statute regulating the practice of dentistry in the relevant jurisdiction:

- (a) a person whose license or certificate is limited to the practice of dentistry for volunteer purposes; and
- (b) a student, in full time attendance at an accredited undergraduate dental educational program at a University in Canada who is participating in a Program sanctioned by such University while acting under the supervision of a person who is licensed or possesses a certificate to practice **Dentistry** in the province or territory of Canada where the Program is undertaken.

**"Dentistry"** means: Any treatment or procedure or any other act included as part of the permitted scope of practice of a person who is licensed or possesses a certificate to engage in the practice of dentistry as a **Dentist** under the provisions of the applicable provincial or territorial statute regulating the practice of dentistry in the relevant jurisdiction and **"Dentistry"** includes:

- (a) any treatment or procedure within the permitted scope of practice for charitable purposes when delivered by a person whose license or certificate is limited to the practice of dentistry for volunteer purposes if it is specifically permitted under the provisions of the applicable provincial or territorial statute regulating the practice of dentistry in the relevant jurisdiction; and
- (b) any treatment or procedure within the permitted scope of practice of a student, who is participating in a Program and acting as further described in the definition of *"Dentistry"*.

**"Extended Coverage"** is described in Section 10(a)(iii) of this **Master Policy Agreement**.

**"Master Policyholder"** means CDSPI.

**"Non-Practicing Status coverage"** is described in Section 10(a)(ii) of this **Master Policy Agreement**.

The **Period of Insurance** for **Insureds** with **Practicing Status** or **Non-Practicing Status coverage** is the time during which the **Memorandum of Insurance** is in force, subject to cancellation by either party during the term of coverage. The **Period of Insurance** for **Insureds** with **Extended Coverage** is the time during which the **Company** provides **Extended Coverage** under this **Master Policy Agreement**.

**"Practicing Status coverage"** is described in Section 10(a)(i) of this **Master Policy Agreement**.

**"Underwriting Requirements"** means any instructions or limitations with respect to insurance applications, underwriting rules, binding authority, rates and rating procedures, set out in or issued by the **Company** pursuant to this **Master Policy Agreement**.

## 9. INSURING AGREEMENT

### (a) Agreement of the **Company**

The **Company** will pay all amounts in excess of the deductible amount stated in the **Memorandum of Insurance** applicable to each claim for which the **Insured** is legally liable or for which the **Insured** is determined to have assumed liability under contract, for compensatory damages sustained by any person arising out of malpractice, error or omission in providing or failing to provide professional services:

- (i) in the practice of **Dentistry** by the **Insured** or any person for whose acts or omissions the **Insured** is legally responsible, or
- (ii) in the performance by the **Insured** or any person for whose acts or omissions the

**Insured** is legally responsible of **Dental Services** in the office of or under the direction or supervision of a **Dentist**.

In order for the **Company** to be liable:

- (i) a claim for damages must be made against the **Insured** within the **Period of Insurance** and reported to the **Company** in accordance with Section 14 of this **Master Policy Agreement**; or
- (ii) the **Insured** must have notified the **Company** during the **Period of Insurance** of circumstances that may reasonably be expected to give rise to a claim and the **Insured** was not reasonably aware of such circumstances prior to the **Period of Insurance**.

The **Company** will also provide coverage for claims which arise from circumstances described below under the heading "**Duty to notify Company of Claims**".

## 10. ELIGIBILITY FOR INSURANCE

### (a) Who is Eligible for Malpractice Liability Insurance

Individuals may be eligible for **Practicing Status** or **Non-Practicing Status coverage** or may qualify for **Extended Coverage** under this **Master Policy Agreement**.

#### (i) Practicing Status Coverage

An individual is eligible for **Practicing Status coverage** if he or she is in one of the following categories:

- (1) a **Dentist** who is licensed or possesses a certificate to practice **Dentistry** in a province or territory of Canada;
- (2) a dental hygienist or certified dental assistant, or dental nurse, who is employed by, or under contract to, a **Dentist** described in Category I; or
- (3) a dental therapist who is employed by and under the direct supervision of a **Dentist** described in Category 1;

and has been approved by the **Company**. The **Company's** approval is evidenced by the issuance of a **Memorandum of Insurance** by the **Master Policyholder**.

#### (ii) Non-Practicing Status Coverage

An individual is eligible for **Non-Practicing Status coverage** if he or she is a **Dentist** described in Category 1 above who, at the time of an event described in (A), (B), (C), (D) or

(E) below was insured with **Practicing Status coverage** and who:

- (A) voluntarily and completely retires from the practice of **Dentistry** and surrenders his or her license to practice **Dentistry**;
- (B) moves to the Province of Ontario or Quebec and surrenders his or her license to practice **Dentistry** in all other provinces, the Yukon, Nunavut and the Northwest Territories;
- (C) moves to another country and/or surrenders his or her license to practice **Dentistry** in all provinces, the Yukon, Nunavut and the Northwest Territories; or
- (D) becomes disabled as a result of sickness (including treatment for drug or alcohol abuse), injury or complications due to pregnancy and is, as a result, unable to perform the whole of the duties of the practice of **Dentistry**, and surrenders his or her license to practice **Dentistry** in all provinces, the Yukon, Nunavut and the Northwest Territories;
- (E) or otherwise voluntarily surrenders his or her license to practice **Dentistry** in all provinces, the Yukon, Nunavut and the Northwest Territories;

The estate of any person described in Category 1, 2 or 3 in clause (a)(i) above who was insured with **Practicing Status coverage** on the date of his or her death is eligible to continue the deceased's coverage as **Non-Practicing Status coverage**.

If a named **Insured** with **Practicing Status coverage** or his or her legal representative declares in writing to the **Company** that the **Insured** has satisfied one of the conditions set out above as (A), (B), (C), (D) or (E) or that the **Insured** has died, the **Insured** will continue to be covered as an **Insured** with **Non-Practicing Status coverage** under this **Master Policy Agreement** and the limit of liability and the deductible set out in his or her **Memorandum of Insurance** on the date of the event described above will continue to apply until the earlier of:

- (1) the end of the event described above, and
- (2) the date the **Company** ceases to be the insurer for malpractice liability insurance for the Canadian Dentists' Insurance Program.

The **Insured's Non- Practicing Status coverage** under this **Master Policy Agreement** will only apply to acts or omissions which occur while the **Insured** is:

- (A) licensed to practice **Dentistry** or to perform **Dental Services**, and
- (B) insured with **Practicing Status coverage**.

Each **Memorandum of Insurance** issued to an **Insured** who is covered by these provisions will include the words "Non-Practicing Status".

**(iii) Extended Coverage**

An individual qualifies for **Extended Coverage** under this **Master Policy Agreement** if he or she satisfies all of the following conditions:

- (A) he or she is a **Dentist** who is currently or was formerly licensed to practice **Dentistry** in a province other than Ontario or Quebec or in the Yukon or in Nunavut or the Northwest Territories;
- (B) he or she does not have **Practicing Status** or **Non-Practicing Status coverage** under this **Master Policy Agreement**; and
- (C) he or she does not have any other malpractice liability coverage.

(b) Who is the **Insured** under this **Master Policy Agreement**

The **Insured** is:

- (i) the named **Insured** identified in the **Memorandum of Insurance**, if the named **Insured** has **Practicing** or **Non-Practicing Status coverage**, or the individual who qualifies for **Extended Coverage** under this **Master Policy Agreement** as described above under the subheading "**Who is eligible for Malpractice Liability Insurance**";
- (ii) any interest owned, controlled or operated by the named **Insured** or such individual;
- (iii) any present or former partner, officer, director, employee, student, professional associate or shareholder of the named **Insured** or such individual with respect to acts performed, including any failure or omission to act, on behalf of the named **Insured** or such individual, respectively; and
- (iv) any present or former partner of the named **Insured** or such individual with respect to liability arising from the partnership.
- (v) any volunteer chairside assistant who is not an employee of the named **Insured**, who is acting under the direct supervision of the named **Insured** when the named **Insured** is engaged in the practice of dentistry, outside of his or her offices, for volunteer purposes; and

The names of the named **Insureds** are as shown in the records of the **Master Policyholder**.

## 11. **PERIOD OF INSURANCE**

(a) When coverage begins:

(i) **Practicing Status Coverage**

Unless a later date is requested by the applicant, the effective date of coverage for the initial **Period of Insurance** will be the date the **Master Policyholder** receives the application, either by mail or by electronic transmission.

This effective date of coverage for the initial **Period of Insurance** is shown on the **Memorandum of Insurance** issued to the named **Insured**.

(ii) **Non-Practicing Status Coverage**

The effective date for the initial **Period of Insurance** for **Non-Practicing Status coverage** will be shown on the **Memorandum of Insurance** issued to the named **Insured** or, in the case of the death of the named **Insured**, the personal representatives of the deceased named **Insured**.

**(iii) Extended Coverage**

Extended coverage for the initial **Period of Insurance** will take effect on the later of:

- (A) January 1, 2021 at 00:01 Eastern Standard Time at the address of the **Master Policyholder**; and
- (B) the date on which the **Insured** qualifies for **Extended Coverage** under this **Master Policy Agreement**.

(b) When the **Period of Insurance** ends

The **Period of Insurance** will end on January 1, 2022 at 00:01 Eastern Standard Time at the address of the named **Insured** or, in the case of **Extended Coverage**, at the address of the **Master Policyholder**.

**12. EXCLUSIONS FROM COVERAGE**

This Malpractice Liability Insurance coverage does not apply

to: **(a) Criminal acts**

- Any criminal act committed by or at the direction of the **Insured**.

**(b) Acts committed without a professional license and other illegal or improper acts**

- injury arising out of the knowing violation of any law or ordinance, including, without limitation, any acts committed by the **Insured** after his or her license to practice **Dentistry**, or if the **Insured** is not a **Dentist** his or her professional license, has been surrendered, canceled, suspended or revoked;
- injury arising out of any acts committed by the **Insured** which are prohibited by restrictions placed on the **Insured** by his or her applicable regulatory authority.

**(c) Acts committed outside the scope of practice or for other than a charitable purpose by limited licensee**

- injury arising out of any act committed or omission made by an **Insured** whose license or certificate is limited to the practice of dentistry for volunteer purposes, if made while rendering any Treatment or Procedure in consideration of any fee or compensation;
- injury arising out of any acts committed by an **Insured** whose license or certificate is limited to the practice of dentistry for volunteer purposes if such acts are prohibited by his or her applicable regulatory authority through restrictions placed on the **Insured** or on the class of license or certificate held by the **Insured**;

(d) **Acts committed outside the scope of practice for Dental Students**

- injury arising out of any acts committed by an **Insured** whose license or certificate is limited to the practice of dentistry as a student participating in a Program as contemplated in paragraph (b) of the definition of “Dentistry” if such acts are prohibited by his or her applicable regulatory authority through restrictions placed on the **Insured** or on the class of license or certificate held by the **Insured**.

(e) **Unauthorized acts by Dental Hygienists, Dental Assistants, Dental Therapists or Dental Nurses**

- any claims arising out of malpractice, error or omission committed by a dental hygienist, dental assistant, dental therapist or dental nurse:
  - (i) while knowingly acting outside of the supervision requirements imposed by any applicable health discipline legislation, or
  - (ii) while such person is not directed or supervised by a **Dentist**;
- any claims arising out of malpractice, error or omission committed by a dental hygienist, dental assistant, dental therapist or dental nurse while performing **Dental Services** other than in the office of a **Dentist** unless such **Dental Services** are performed under the direction or supervision of a **Dentist**.

(f) **Intoxicated Practitioner Exclusion**

- Any service performed by a person who is intoxicated or impaired by legal or illegal substances.

(g) **Abuse Exclusion**

- Claims or actions arising directly or indirectly from abuse (committed or alleged to have been committed by an **Insured**, including the transmission of disease arising out of any act of abuse.
  - (i) “**Abuse**” means any act or threat involving molestation, harassment, corporal punishment or any other form of physical, sexual or mental abuse.
  - (ii) “**Claims**” or “**actions**” include those:
    - (A) based on your practices of employee hiring, acceptance of volunteer

workers or supervision or retention of any person alleged to have committed abuse; and

(B) alleging knowledge by an **Insured** of, or failure to report, the alleged abuse to the appropriate authority(ies).

(h) **Nuclear Energy Hazard**

- any claims arising out of:
  - (i) liability imposed by or arising under any nuclear liability act, law or statute, or any law amendatory thereof;
  - (ii) **Bodily Injury or Property Damage** with respect to which an **Insured** under this **Master Policy Agreement** is also insured under a contract of nuclear energy liability insurance (whether the **Insured** is unnamed in such contract and whether or not it is legally enforceable by the **Insured**) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;
    - (i) **Bodily Injury or Property Damage** resulting directly or indirectly from the **nuclear energy hazard** arising from:
      - (A) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an **Insured**;
      - (B) the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility;
      - (C) the possession, consumption, use, handling, disposal or transportation of fissionable substances or other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an **Insured**.

As used in this **Master Policy Agreement**:

- The term “**nuclear energy hazard**” means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- The term “**radioactive material**” means uranium, thorium, plutonium, neptunium, their respective derivatives and the compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use of or application of atomic energy;

- The term “**nuclear facility**” means:
  - (i) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them
  - (ii) any equipment or device designed or used for
    - (A) separating the isotopes of plutonium, thorium and uranium or any one or more of them,
    - (B) processing or utilizing spent fuel, or
    - (C) handling, processing or packaging waste;
  - (iii) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if any at any time the total amount of such material in the custody of the **Insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (iv) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material; and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
- The term “**fissionable substance**” means any substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
- The term “**Bodily Injury**” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- The term “**Property Damage**” means:
  - (i) Physical injury to tangible property, including all resulting loss of use of that property; or
  - (ii) Loss of use of tangible property that is not physically injured.

**Claims of which Insured had prior knowledge**

- claims the **Insured**:
  - (i) had knowledge of, or

- (ii) could reasonably have foreseen would likely arise from the services provided, prior to the date of commencement of the initial **Period of Insurance** for the Malpractice coverage.

**Reimbursement for fees**

- claims for reimbursement of fees paid by the Claimant to the **Insured** for **Dentistry or Dental Services**.

**Data Exclusion**

- claims:
  - (i) for erasure, destruction, corruption, misappropriation, misinterpretation of data; or
  - (ii) for erroneously creating, amending, entering, deleting or using data; and any loss of use arising therefrom; or
  - (iii) arising out of the distribution or display of data, by means of an Internet Website, the Internet, an intranet, extranet, or similar device or system designed or intended for electronic communication of data.

**Data** means representations of information or concepts in any form.

**Terrorism Exclusion**

- liability arising directly or indirectly, in whole or in part, out of terrorism or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate terrorism. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the claim.

Terrorism means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s), or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.

**Asbestos Exclusion**

- liability, whether actual or alleged, in respect of any loss or losses, damage, cost or expense directly or indirectly caused by, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the claim, loss, damage, cost or expense.

**Fungi and Fungal Exclusion**

liability for:

- any other cost, loss or expense incurred by others, arising directly or indirectly, from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any fungi or spores however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of fungi or spores;

any supervision, instructions, recommendation, warnings, or advice given or which should have been given in connection with the testing for, assessment, monitoring, removal, abatement, mitigation, treatment, detoxification or neutralization of, fungi or spores; or

- any obligation, whether imposed under statute or common law, to share damages with, to pay or repay someone else who must pay damages because of the claim, damage or activity referred to above.

This exclusion applies regardless of the cause of the loss or damage, other causes of the claim, damage, expense or costs or whether other causes acted concurrently or in any sequence to produce the claim, damage, expenses or costs.

**“Spores”** includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any fungi.

**“Fungi”** includes, but is not limited to, any form or type of mould, yeast, mushroom, mildew, wet or dry rot, or bacteria whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any fungi or spores or resultant mycotoxins, allergens, or pathogens.

#### **War Exclusion**

- loss or damage caused by war, invasion, act of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military power.

#### **Services provided in Ontario or Quebec**

- claims or liability arising out of professional services provided in the Provinces of Ontario or Quebec but this exclusion does not apply to dental hygienists, dental assistants, dental nurses and dental therapists in Ontario and Quebec who have purchased this Malpractice coverage.

#### **Services provided outside Canada**

- claims or liability arising out of professional services provided anywhere in the world outside Canada where there is an applicable government statute regulating the practice of **Dentistry**.

#### **Contagious Disease Exclusion**

This exclusion forms a part of the insurance policy to which it is attached (the “Policy”) and is applicable to all liability coverages and endorsements contained in the Policy.

1. Notwithstanding any provision to the contrary within this Policy (but except as provided in paragraph 2 below), this Policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a **Contagious Disease** or the fear or threat (whether actual or perceived) of a **Contagious Disease**.
2. a) This exclusion does not apply to any **Common Oral Disease** arising out of malpractice, error or mistake by an Insured in providing or failing to provide any dental treatment or procedure which the Insured is authorized to perform as part of the permitted scope of the Insured's practice. As used in this exclusion, **Common Oral Disease** means any infection, disease or illness that is directly caused by or resulted from bacteria, virus or pathogen that is commonly developed in the oral cavity after undergoing any dental treatment or procedure. **Common Oral Disease** does not include any Coronavirus, Severe Acute Respiratory Syndrome (SARS), Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), Middle East Respiratory Syndrome Coronavirus (MERS-CoV), H5N1, Ebolaviruses, Flavivirus, Pandemic H1N1/09 virus or Legionella including, but not limited to, MERS, COVID-19, Avian Influenza (Avian Bird Flu), Ebola, Zika virus, West Nile virus (WNV), Dengue virus (DENV), H1N1 (Swine Flu) and Legionnaire's Disease, or any other strain, derivative, mutation or variation of any of these infections, diseases or illnesses or any other infection, disease or illness caused by or arising from these infections, diseases, illnesses, bacteria, virus or pathogens or any strain, derivate, mutation or variation thereof.  
  
b) The maximum amount the Insurer is liable to pay under paragraph 2(a) is:
  - i) \$1 million Limit per Claim per Memorandum of Insurance;
  - ii) Annual aggregate limit: The lesser of \$5 million or the Malpractice Claim limit per Memorandum of Insurance.
3. For the purposes of this exclusion, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a **Contagious Disease**.
4. As used herein, a **Contagious Disease** means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - 4.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - 4.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
  - 4.3. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

All other terms and conditions of the Policy shall remain unchanged.

### 13. CONDITIONS OF COVERAGE

- (a) Amount of premium and when it must be paid

(i) **Practicing Status Coverage**

The amount payable by the named **Insured** for **Practicing Status coverage** is set out in the invoice issued to the named **Insured** by or on behalf of the **Master Policyholder**. Such amount includes the amount of the coverage premium (including administration fees) and, when applicable, a contribution to the Rate Stabilization Fund established and maintained by annual agreement between the **Company** and the **Master Policyholder**. Such amount is due on or before the effective date of the coverage for which the invoice is issued.

(ii) **Non-Practicing Status Coverage**

If an **Insured** with **Practicing Status coverage** or his or her legal representative declares in writing to the **Company** that any of the events described under the subheading "**Non-Practicing Status Coverage**" in the subsection with the heading "**Who is Eligible for Malpractice Liability Insurance?**" has occurred, the **Company** will waive further premium charges and will refund to the **Insured** his or her pro rata share of the premium from the date such event occurred. Premiums will be waived until the earlier of:

- (A) the end of the event referred to above, and
- (B) the date the **Company** ceases to be the insurer for malpractice liability insurance for the Canadian Dentists' Insurance Program.

(iii) **Extended Coverage**

There are no additional premiums payable for the **Extended Coverage**.

(b) Amount of the deductible

(i) **Practicing Status and Non-Practicing Status Coverage**

The amount of the deductible is set out in the **Memorandum of Insurance** issued to the named **Insured**. The deductible is not applicable to an **Insured** with **Non-Practicing Status coverage** who has voluntarily and completely retired from the practice of his or her profession or who has died.

(ii) **Extended Coverage**

There is a deductible amount of \$5,000 for each claim.

(iii) **General**

The deductible amount does not apply to expenses incurred by the **Company** to investigate and defend any claim. The terms of this **Master Policy Agreement** including those with respect to notice of claim and the **Company's** right to defend and make settlement of such claims apply irrespective of the application of the deductible amount.

(c) Amount of the **Company's** limit of liability

(i) **Practicing Status and Non-Practicing Status Coverage**

The **Company's** limit of liability for each claim and its annual aggregate limit of liability are set out in the **Memorandum of Insurance** issued to the named **Insured**. The annual aggregate limit is the most the **Company** will pay for all claims made against the **Insured** in any one calendar year.

(ii) **Extended Coverage**

The **Company's** limit of liability for each claim is \$2,000,000. The **Company's** annual aggregate limit of liability is \$2,000,000. The annual aggregate limit is the most the **Company** will pay for all claims made against the **Insured** in any one calendar year.

(d) Amount of partners' limits of liability

If a claim is made against an **Insured** who has **Practicing Status** or **Non-Practicing Status coverage** based solely on the laws of partnership and more than one **Memorandum of Insurance** provides coverage for such claim, the amount the **Company** will pay with respect to that claim under all applicable **Memorandums of Insurance** will not exceed the highest per claim limit shown in any one **Memorandum of Insurance**.

If a claim arises against an **Insured** who has **Extended Coverage** under this **Master Policy Agreement** and also arises against a partner of the **Insured** who has such **Extended Coverage** based solely on the laws of partnership, the amount the **Company** will pay with respect to that claim will not exceed \$2,000,000.

If a claim arises against an **Insured** and his or her partner(s), one or more of whom has **Practicing Status** or **Non-Practicing Status coverage** and one or more of whom has **Extended Coverage**, and the claim against the partner(s) is based solely on the laws of partnership, the amount the **Company** will pay with respect to that claim will not exceed the highest per claim limit shown in any one applicable **Memorandum of Insurance**.

(e) **Company's** limit of liability - professional corporations

If a claim is made against a professional corporation which is an additional named **Insured** under a **Memorandum of Insurance** issued to a **Dentist** with **Practicing Status** or **Non-Practicing Status coverage** and more than one **Memorandum of Insurance** provides coverage for such claim, the amount the **Company** will pay with respect to that claim under all applicable **Memorandums of Insurance** will not exceed the highest per claim limit shown in any one **Memorandum of Insurance**.

(f) Action by one **Insured** against another **Insured**

The insurance provided by this **Master Policy Agreement** applies with respect to any claim or action brought by any one **Insured** against another **Insured** in the same manner and to the same extent as if a separate **Memorandum of Insurance** had been issued to each **Insured**. Under Section 13 Condition of Coverage, any breach under this section by any one **Insured** will not affect the protection given by this **Master Policy Agreement** to any other **Insured**.

(g) Territory

This Malpractice coverage applies to acts or omissions committed by the **Insured**:

- (i) in Canada (subject to the exclusion of professional services provided by **Dentists** in Ontario and Quebec) and
  - (ii) in Haiti arising out of volunteer practices approved by the **Company**. The **Company** will indemnify the **Insured** for any losses covered by this **Master Policy Agreement** and occurring in this territory and
  - (iii) anywhere else in the world where there is no applicable government statute regulating the practice of **Dentistry**. However, the **Company** is only liable for actions first brought in Canada to recover for such acts or omissions.
- (h) Canadian Currency Clause

All limits of insurance, premiums, deductibles and other amounts set out in this **Master Policy Agreement** and the related Declarations and Premium Tables are in Canadian Currency.

#### 14. NOTICE OF CLAIMS

- (a) Duty to notify **Company** of claims

The **Insured** must notify the **Company** as soon as possible after:

- (i) a circumstance occurs which may reasonably be expected to give rise to a claim under this Malpractice coverage, or
- (ii) he or she receives a claim under this Malpractice coverage, including a demand, notice, summons or other process.

If, during the **Period of Insurance**, the **Insured** becomes aware of any circumstances which may subsequently give rise to a claim against the **Insured** under this Malpractice coverage, and the **Insured** notifies the **Company** of such circumstances during the **Period of Insurance**, any claim made against the **Insured** resulting from such circumstances will be deemed to be made during the **Period of Insurance**, regardless of when such claim is actually made.

- (b) How notice of a claim must be given

The **Insured** must give notice of a claim or potential claim under this Malpractice coverage to the **Company** or its adjusters or to the **Master Policyholder**. The notice given must contain all available information relating to the circumstances giving rise to the claim. If a claim is made against the **Insured**, the **Insured** must immediately forward to the **Company** copies of all demands, notices or pleadings received from the other party by the **Insured** or his or her representative.

#### 15. HOW LEGAL PROCEEDINGS ARE TO BE CONDUCTED

- (a) **Company's** duty to defend actions

The **Company** will defend all claims, actions or other proceedings brought against the **Insured** at any time demanding damages arising from any circumstances or claims covered by the terms of this Malpractice coverage, even if such circumstances, claims, actions or other proceedings are groundless, false or fraudulent.

All claims arising out of the same wrongful act or inter-related wrongful act shall be deemed one claim such that only one limit is available.

The **Company** may settle such claims as it deems expedient. However, the **Company** will not admit liability on behalf of the **Insured** without the consent of the **Insured**.

The **Company** has the sole right to and shall appoint legal counsel while carrying out its duty to defend.

(b) Payments by **Company** in connection with any legal action

If an action is brought against the **Insured** seeking damages for which the **Insured** is covered under this **Master Policy Agreement**, except for the amount of the deductible, the **Company** will:

- (i) pay all judgments issued against the **Insured** and protect the **Insured** against any executions resulting from such judgments;
- (ii) pay:
  - (A) all expenses which the **Company** incurs in investigating, negotiating and defending any such claim or proceeding;
  - (B) all costs taxed against the **Insured** in any such proceeding;
  - (C) all premiums on bonds to release attachments and appeal bonds up to the **Company's** limit of liability under the **Insured's** coverage, provided that the **Company** does not have any obligation to apply for or provide such bonds;
  - (D) all interest accruing on the judgment from the date of the judgment until the date the **Company** pays its share of the judgment;
  - (E) for any expenses the **Insured** incurs to provide immediate medical or surgical relief to others at the time they sustain bodily injury; and
  - (F) for all reasonable expenses incurred at the **Company's** request; and
- (iii) reimburse the **Insured** if the **Insured** is required to attend at an examination for discovery, pre-trial, trial or appeal, to a maximum of \$400 a day and \$1,600 for each claim, provided that this reimbursement will not apply to dental hygienists, certified dental assistants, dental nurses or dental therapists unless the malpractice insurance is in their own name.

The **Company** will pay the amounts described in subparagraphs (B) and (C) above in addition to its limit of liability under this **Master Policy Agreement**.

If the **Company** is prevented by law or otherwise from defending the **Insured** in a claim, action or other proceeding, it will reimburse the **Insured** for defense costs and expenses incurred with the consent of the **Company**.

(c) Payment of deductible

The **Company** may pay all or part of the deductible amount in order to achieve a settlement of a claim. The **Insured** must immediately reimburse the **Company** for such amount.

(d) Assistance and cooperation of **Insured**

The **Insured** must cooperate with the **Company**, and if the **Company** requests, assist in:

- (i) making settlements;
- (ii) the conduct of actions; and
- (iii) enforcing any right of contribution or indemnity of any other person who may be liable to the **Insured** because of any injury or damage for which coverage is provided under this **Master Policy Agreement**.

The **Insured** must attend hearings and trials and assist in collecting and giving evidence and obtaining the attendance of witnesses.

(e) Assumption of liability by **Insured**

The **Insured** will not voluntarily make any payment, assume any obligation or incur any expenses other than for first aid to others at the time of accident. By the **Insured** assuming liability, it is of the discretion of the **Company** if coverage will respond or if the obligations of the **Company** are void. However, any activities carried out under the authority of any provincial or local society grievance committee or in compliance with the patient care management guidelines of the **Insured's** provincial licensing body are permitted without prejudice to the **Insured's** insurance coverage.

(f) Other insurance

(i) **Practicing Status and Non-Practicing Status Coverage**

If the **Insured** has other collectible insurance with another insurer covering a loss also covered by the **Insured's Practicing Status or Non-Practicing Status coverage** under this **Master Policy Agreement**, the **Insured** may collect under this coverage only after the limits of the other insurance have been exhausted. It is understood and agreed that coverage under this **Master Policy Agreement** is strictly excess to such other insurance.

(ii) **Extended Coverage**

If other collectible insurance with any other insurer is available to any **Insured** who has **Extended Coverage**, such **Insured** has no coverage under this **Master Policy Agreement**.

(g) Action by the **Insured** against the **Company**

The **Insured** can only bring an action against the **Company** if:

- (i) the **Insured** has fully complied with all the terms of this **Master Policy Agreement**;
- (ii) the amount the **Insured** is obligated to pay has been finally determined either by:
  - (A) judgment of a court following trial,
  - (B) written agreement of the **Insured**, the claimant and the **Company**;  
and
- (iii) such action is brought within one year of the date of such judgment or written agreement.
- (iv) Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act* (for actions or proceedings governed by the laws of Alberta, British Columbia, and Manitoba), the *Limitations Act, 2002* (for actions or proceedings governed by the laws of Ontario), or other applicable legislation.

Nothing in this **Master Policy Agreement** gives any person or organization any right to join the **Company** as a co-defendant of the **Insured** in any action to determine the **Insured's** liability.

(h) Subrogation of **Company** to **Insured's** rights of recovery

If the **Company** makes any payment on behalf of the **Insured**, it will acquire all of the **Insured's** rights of recovery with respect to the amount of such payment against any third party, unless the amount of settlement exceeds the aggregate of:

- (i) any amounts paid by the **Company** under this **Master Policy Agreement**; and
- (ii) any other valid insurance which is collectible by the **Insured**.

In that case, the **Insured** retains all of its rights of recovery until it has received such excess amount. The **Insured** must execute all required documents and take all necessary actions in order to secure such rights of recovery.

(i) Optional Extended Reporting Period if this **Master Policy Agreement** is terminated

(i) **Practicing Status Coverage**

If the **Company** cancels or does not renew this **Master Policy Agreement** for any reason other than non-payment of premium, the named **Insured** has the right to purchase an Optional Extended Reporting Period of 365 days following the effective date of

cancellation or non-renewal. Coverage during the Optional Extended Reporting Period only applies to claims made for acts committed or alleged to have been committed prior to the effective date of cancellation or non-renewal.

The premium payable by the named **Insured** to extend the reporting period for his or her **Practicing Status coverage** is based on the annual premium for the named **Insured's** coverage in effect in the policy year which ends on the effective date of the cancellation or non-renewal.

In order to purchase the Optional Extended Reporting Period, the named **Insured** must:

- (A) give written notice within 30 days of the effective date of cancellation or non-renewal; and
- (B) pay an additional premium of 75% of the annual premium for the named **Insured's** coverage as described above.

At the end of the first Optional Extended Reporting Period the named **Insured** may purchase one additional Optional Extended Reporting Period of 365 days.

In order to purchase the Additional Optional Extended Reporting Period, the named **Insured** must:

- (C) give written notice within 30 days after the expiration of the first Optional Extended Reporting Period; and
- (D) pay an additional premium of 50% of the annual premium for the named **Insured's** coverage as described above.

The named **Insured's** purchase of the Optional Extended Reporting Period does not increase the **Company's** limit of liability under this **Master Policy Agreement**.

(ii) **Non-Practicing Status and Extended Coverage**

The Optional Extended Reporting Period does not apply to **Non-Practicing Status coverage** or **Extended Coverage**.

## 16. GENERAL TERMS

- (a) **Company's** right of inspection

The **Company** has the right to inspect the **Insured's** premises and operations at any reasonable time during the **Period of Insurance**. The **Company** does not waive any of its rights under this **Master Policy Agreement** by either inspecting or not inspecting such premises and operations.

- (b) Notification of third parties of malpractice claims

The **Company** may provide information on claims made under this **Master Policy Agreement** to the **Master Policyholder** and, if requested, to the licensing body of the appropriate province or territory, except where prohibited by law.

(c) Waiver

The policy terms may only be waived by a written agreement between the **Insured** and the **Company**. Knowledge of or notice to any person or agent does not cause a waiver or change of any term of this **Master Policy Agreement**.

(d) Special Statutes

Terms of this **Master Policy Agreement** which conflict with the statutes of the province governing this **Master Policy Agreement** are hereby amended to conform to such statutes.

(e) Assignment by the **Insured**

The **Insured** may only assign his or her rights under his or her coverage if such an assignment is consented to in writing by the **Company**, unless such assignment is a change of title by succession, death or proceedings under any bankruptcy act.

(f) Bankruptcy of the **Insured**

The **Company** remains liable for all of its obligations to the **Insured** under this **Master Policy Agreement** if the **Insured** or the **Insured's** estate becomes bankrupt or insolvent.

## 17. STATUTORY CONDITIONS

### Property of others

1. The insurer is not liable for loss or damage to property owned by a person other than the insured unless
  - (a) otherwise specifically stated in the contract, or
  - (b) the interest of the insured in that property is stated in the contract.

### Change of interest

2. The insurer is liable for loss or damage occurring after an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada) or a change of title by succession, by operation of law or by death.

### Material change in risk

3. (1) The insured must promptly give notice in writing to the insurer or its agent of a change that is
  - (a) material to the risk, and
  - (b) within the control and knowledge of the insured.

- (2) If an insurer or its agent is not promptly notified of a change under subparagraph (1) of this condition, the contract is void as to the part affected by the change.
- (3) If an insurer or its agent is notified of a change under subparagraph (1) of this condition, the insurer may
  - (a) terminate the contract in accordance with Statutory Condition 4, or
  - (b) notify the insured in writing that, if the insured desires the contract to continue in force, the insured must, within 15 days after receipt of the notice, pay to the insurer an additional premium specified in the notice.
- (4) If the insured fails to pay an additional premium when required to do so under subparagraph (3)(b) of this condition, the contract is terminated at that time and Statutory Condition 4 (2)(a) applies in respect of the unearned portion of the premium.

#### **Termination of insurance**

4. (1) The contract may be terminated
  - (a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 15 days' written notice of termination personally delivered, or
  - (b) by the insured at any time on request.
- (2) If the contract is terminated by the insurer,
  - (a) the insurer must refund the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event may the prorated premium for the expired time be less than any minimum retained premium specified in the contract, and
  - (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund must be made as soon as practicable.
- (3) If the contract is terminated by the insured, the insurer must refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time specified in the contract, but in no event may the short rate premium for the expired time be less than any minimum retained premium specified in the contract.
- (4) The 15 day period referred to in subparagraph (1) (a) of this condition starts to run on the day the registered letter or notification of it is delivered to the insured's postal address.

#### **Notice**

5. (1) Written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province.
- (2) Written notice to the insured may be personally delivered at, or sent by registered mail addressed to, the insured's last known address as provided to the insurer by the insured.



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