



MEDICAL INSTITUTION MALPRACTICE INDEMNITY POLICY

Important Notice:

Please read the terms and conditions of this Policy carefully, and if there is any error or misdescription be found herein, or if the cover is not in accordance with your wishes, please return the policy to us immediately for alteration.

THIS IS A CLAIMS MADE POLICY.

For Non-Consumer Insurance Contracts (Insurance for purposes related to the Insured's trade, business or profession)

This Policy is issued in consideration of the payment of premium as specified in the Policy Schedule and pursuant to the answers given in the Insured's Proposal Form (or when the Insured applied for this insurance) and any other disclosures made by the Insured between the time of submission of the Insured's Proposal Form (or when the Insured applied for this insurance) and the time this contract is entered into. The answers and any other disclosures given by the Insured shall form part of this contract of insurance between the Insured and **Berjaya Sampo Insurance Berhad** (hereinafter called "the Company"). In the event of any pre-contractual misrepresentation made in relation to the Insured's answers or in any disclosures made by the Insured, it may result in avoidance of the Insured's contract of insurance, refusal or reduction of the Insured's claim(s), change of terms or termination of the Insured's contract of insurance.

This Policy reflects the terms and conditions of the contract of insurance as agreed between the Insured and the Company.

In consideration of the Insured having made a written proposal to the Company containing particulars and statements which are to be considered as incorporated in this policy, and having paid the premium stated in the Schedule, the Company will indemnify the Insured in accordance with and subject to the limitations, terms, conditions and endorsements of this policy.

MEDICAL MALPRACTICE INSURING CLAUSE

1.1 The Company will, subject to the following limitations, terms, conditions and endorsements:

- 1.1.1 indemnify the Insured against any Claim which may be made against the Insured during the Period of Insurance and notified to the Company in accordance with Condition 6.5 of this policy:
 - a) for actual or alleged breach of professional duty (including breach of confidentiality) of a qualified Health Care Provider; or
 - b) for any libel, slander or defamation by reason of words written or spoken by the Insured or any employee of the Insuredin the Provision of Nursing and Health Care Services by reason of any act, error or omission committed or allegedly committed by the Insured or others working for or on behalf of the Insured provided that the alleged act, error or omission occurs after the retroactive date stated in the Schedule, if a date is specified as such in the Schedule; and
- 1.1.2 pay the costs and expenses incurred with the written consent of the Company in the defence or settlement of any such Claim. Such payments shall form part of the Limit of Indemnity and are not additional thereto.

If, during the Period of Insurance, the Insured shall become aware of any circumstances which might subsequently give rise to a Claim under this policy and elect, during the Period of Insurance, to give written notice to the Company of such circumstances, then any such Claim which might subsequently arise out of such circumstances will be deemed to have been made during the Period of Insurance.

EXCLUSIONS

2.1 This policy will not indemnify the Insured against any Claim:

- 2.1.1 in respect of liability imposed upon the Insured pursuant to any contract if such liability would not have been imposed upon the Insured in the absence of any such contract; or for fines, penalties, aggravated damages, exemplary or punitive damages of any description; or
- 2.1.2 arising directly or indirectly out of any act, error or omission committed outside Malaysia; or
- 2.1.3 in respect of any action for damages brought against the Insured in a court of law outside Malaysia, nor in respect of actions brought about in a court of law within Malaysia to enforce a foreign judgement whether by way of reciprocal agreement or otherwise; or

- 2.1.4 for which the Insured are or would but for the existence of this policy be entitled to any indemnity under any other insurance required by law to be in effect or any other insurance, medical defence fund, statutory fund or fidelity fund of any description except in respect of an excess beyond the amount which would have been payable under such other policy of policies had this Policy not been affected; or
- 2.1.5 made against the Insured prior to the commencement of the Period of Insurance nor in respect of any claim(s) or circumstance(s) notified under any previous policy, nor in respect of any claim(s) or circumstance(s) which might give rise to a Claim which was known to the Insured at the inception date of this insurance or which is stated on the proposal form, declaration or underwriting information being the basis of this insurance; or
- (This exclusion relates to the act, error or omission from which the claim(s) or circumstance(s) known to the Insured arises, irrespective of how, or whether, that claim(s) or circumstance(s) is declared to the Company)
- 2.1.6 for loss, damage or liability directly or indirectly occasioned by or happening through or in consequence of:
- 2.1.6.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority; or
- 2.1.6.2 any act of terrorism.
- For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- This exclusion also excludes loss, damage, liability, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (2.1.6.1) and/or (2.1.6.2) above.
- If the Company alleges that by reason of this exclusion, any loss, damage, liability, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured; or
- 2.1.7 for loss, damage or liability directly or indirectly occasioned by or:
- 2.1.7.1 caused by or arising from or in consequence of or contributed to by nuclear weapons materials, or
- 2.1.7.2 arising from or in consequence of or contributed to by ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self-sustaining process of nuclear fission; or
- 2.1.8 made against the Insured which relates to any duty or obligation assumed by the Insured which is not assumed in the normal conduct of the professional practice of a qualified Health Care Provider in the Insured's Business as stated in the Schedule; or
- 2.1.9 arising from the transmission of a contagious disease or virus which an Insured person or employee was infected with to someone else unless management procedures designed to locate and remove from patient contact any such person or employee so infected was both in place and followed as regards the person or employee involved; or
- 2.1.10 arising from a legal obligation to refund, waive or offset any fee charged by the Insured; or
- 2.1.11 which arises in any way out of the ownership, use or occupation or state of any premises or the use of any vehicle designed for use on public roads; or
- 2.1.12 which arises in any way out of the manufacture, distribution or sale of any product; or
- 2.1.13 which arises in any way out of the unlawful sale, supply, use or application of a prohibited substance; or
- 2.1.14 which arises in any way out of any actual or alleged sexual harassment, sexual misconduct or unlawful discrimination by the Insured or any employee; or
- 2.1.15 which arises from services rendered by any person while under the influence of intoxicants and/or drugs or any failure to render services competently or at all due to such influence if such service was performed with the knowledge or a director, partner, administrator, supervisor, manager or a proprietor of the Insured; or
- 2.1.16 which arises directly or indirectly from any breach of any laws, enactments or regulations relating to the operation and conduct of the Insured and/or the business or operations of the Insured in Malaysia.
- 2.2 This policy will not indemnify the Insured in respect of any Claim made against them brought about or contributed to by any dishonest, fraudulent, criminal, malicious or deliberate act or omission of the Insured.
- 2.3 This policy shall not indemnify the Insured for any legal liability arising directly or indirectly from the loss or destruction of or damage to any property or any resulting loss or expense, including any consequential loss.
- However, this exclusion shall not apply in respect of Claims for loss of Documents in the care or custody of the Insured provided that such loss was not brought about by wear and tear or other gradually operating causes, and no liability shall attach for any loss brought about or contributed to by the dishonesty of any Insured person unless Optional Extension 9.1 is included in the indemnity provided by this policy, in which case Optional Extension 9.1 shall apply.

For the purpose of this exclusion, "Documents" means deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms, and documents of any nature whatsoever, written, printed or reproduced by any other method but does not include electronic data, bearer bonds, coupons, bank-notes and negotiable instruments.

- 2.4 This policy shall not apply to and does not cover any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of asbestos in whatever form or quantity.

- 2.5 The Company shall not be liable to indemnify the Insured against any claim or claims including costs and expenses brought about by or contributed to by or consequent upon or in any way arising out of any failure of any computer (by whomsoever owned or operated) to recognise or respond to, correctly and effectively, any particular date or period of time (continuous or otherwise).

"Computer" herein shall mean any computer or other electronic data processing device, equipment or system, any hardware, software, program, instruction, data or component utilised or intended to be utilised therein or thereby, or any actual or intended function of or process performed by any of the foregoing.

- 2.6 arising from the transmission of a contagious disease or virus which an Insured person or employee was infected with to someone else unless management procedures designed to locate and remove from patient contact any such person or employee so infected was both in place and followed as regards the person or employee involved.

CONTINUOUS COVER CLAUSE

- 3.1 Notwithstanding Exclusion 2.1.5, in the absence of fraudulent non-disclosure and subject to clause 3.2, where:
- (a) a Claim is made against the Insured by reason of an act, error or omission of the Insured which occurred prior to the period of insurance stated in the Schedule; and
 - (b) the Company was the Insured's medical malpractice insurer at the time when the Insured first became aware of the circumstance which subsequently gave rise to the Claim ("Circumstances"); and
 - (c) the Company continued without interruption as the Insured's medical malpractice insurer from the time when the Insured first became aware of the Circumstances up until such time as the Claim is made against the Insured and notified to the Company,
- the Company agrees to indemnify the Insured against the Claim subject to and on the terms and conditions of this policy.
- 3.2 The Company reserves the right to reduce its liability in respect of the Claim by the amount which fairly represents the extent to which the Company's interests are prejudiced as a result of the late notification.
- 3.3 Where clauses 3.1 and 3.2 apply, the Company agrees that it will not deny indemnity for the Claim as a consequence of any non-disclosure on the part of the Insured with respect to the Claim."

LIMIT OF LIABILITY AND EXCESS

- 4.1 The total liability of the Company will not exceed in the aggregate for any all Claims (including all the costs and expenses incurred in the defence or settlement of any Claim) under this policy the Limit of Indemnity stated in the Schedule.
- All Claims made against the Insured shall, unless they arise from acts, errors or omissions that are different and totally unrelated, be regarded as one aggregated Claim and the Company's total liability under this policy for the aggregated Claim (including all the costs and expenses incurred in the defence or settlement of any such aggregated Claim) will not exceed the Limit of Indemnity stated in the Schedule.
- 4.2 In respect of each Claim the amount of the Excess shall be borne by the Insured at their own risk and the Company will only be liable to indemnify the Insured in excess of that amount. Notwithstanding the provisions of Clause 4.1 above, should any Claim involve more than one act, error or omission which do not occur contemporaneously then the Excess shall apply to each such act, error or omission separately. All causally connected or interrelated negligent acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy.
- 4.3 The Excess will apply to any costs and expenses incurred with the written consent of the Company in the defence or settlement of any Claim first, and then to amounts (if any), which are subject to indemnity under Insuring Clause 1.1.1.

DEFENCE AND SETTLEMENT

- 5.1 The Company will be entitled to take over and conduct, in the name of the Insured, the defence and settlement of any Claim.
- 5.2 The Insured will, when instructed by the Company, pay promptly (or within the terms of any proposed settlement) any Excess amount payable by them under this policy. Any failure or refusal by the Insured to make such payment will entitle the Company to deduct such amount from any amount(s) required to settle any Claim, judgement, order or any other payment to be made by the Company under this policy.

- 5.3 The Insured will not be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the Insured and the Company) advises that such proceedings should be contested.
- 5.4 In the event that the Company elects to settle any Claim, the Company may discharge its total liability under this policy by paying the then available Limit of Indemnity to the Insured.
- 5.5 In the event that the Insured wishes to continue to contest any Claim which, in the opinion of the Company should be settled, then, with the consent of the Company the Insured may so elect, provided that the Company's liability in respect of any such Claim shall not exceed the amount for which, but for such election, the Claim could have been settled, together with costs and expenses payable in accordance with this policy and incurred up to the date of such election.
- 5.6 The Company may, if it believes that any Claim will not exceed the policy Excess, instruct the Insured to conduct the defence of the Claim, keeping the Company advised of developments as they occur. In these circumstances Company will reimburse the Insured for all reasonable defence costs in the event that any payment made to dispose of the Claim by way of damages exceeds the Excess.

CONDITIONS

- 6.1 The Insured shall at all times exercise reasonable care in seeing the Insured's buildings, ways, works, implements, plant, machinery and appliances are maintained in sound and proper order and fit for the purpose for which they are used and that all reasonable safeguards are used and precautions are taken to prevent accidents.
- 6.2 Apart from probationary nurses, students or trainees all acting under the supervision of the fully qualified staff, the Insured shall not employ in connection with medical matters any staff other than those fully qualified medical practitioners, matrons, nurses or health workers who are fully qualified to give treatment and/or nursing in the field which they are engaged.
- 6.3 It is a condition precedent to liability of the Company towards the Insured that all medical practitioners whilst providing health care services at the Insured premises, must hold valid license to practise as registered medical practitioners in Malaysia.
- 6.4 The Insured will not admit liability for or settle any Claim or incur any costs or expenses in connection with any Claim without the written consent of the Company.
- 6.5 The Insured will, as a condition precedent to any coverage under this policy, give the Company notice in writing as soon as practical and within forty-five (45) days of any Claim whether oral or in writing and will provide all information and assistance to the Company as it may reasonably require to enable it to investigate and defend any Claim and/or to enable the Company to determine its liability under the policy. Such information and assistance will include, but not limited to, releasing or causing to be released to the Company any and all data and documents the Company may require to determine the existence or extent of the Company's obligation and asserting all rights of contribution or indemnification as against any and all other culpable persons, entities or organisations.
- 6.6 On notification of any Claim under the policy, the Company may appoint legal representatives to investigate the Claim, and/or assume, direct and control the conduct of the defence of any allegation contained in any such Claim. As a condition precedent to any coverage under this Policy, the Insured must provide all information and assistance to the legal representatives appointed by or on behalf of the Company, and waive in favour of the Company legal professional privilege which may arise between the Insured and the legal representatives appointed by or on behalf of the Company in the conduct of such defence. The Company will pay such costs of defence and all such amounts shall be considered costs pursuant to Insuring Clauses 1.1.2. If indemnity under the policy is subsequently denied, the Company's obligation to defend such Claims will cease but the Insured agrees that the legal representatives appointed by or on behalf of the Company will continue to have a positive duty to the Company alone to advise and/or represent it on all matters pertaining to the Claim including, but not limited to, the Company's liability under the policy.
- 6.7 It is a condition precedent to the Insured's right to be indemnified under this policy that the Insured shall exercise reasonable skill and care and do all things reasonably practicable to avoid or diminish any liability hereunder.
- 6.8 It is a condition precedent to the Insured's right to be indemnified under this policy that the Company will be entitled to claim indemnity or contribution at any time in the name of the Insured from any party against whom the Insured may have (or had) such rights.
- 6.9 All notifications to the Company will be made to the Company at the address specified on the Schedule.
- 6.10 To be valid, this policy must have a Schedule attached signed by an authorised underwriter of the Company.
- 6.11 The interpretation of the terms, exclusions, limitations and conditions of this policy shall be determined in accordance with the laws of Malaysia.

CANCELLATION CLAUSE

- 7.1 The Insured or the Company may cancel this policy by giving 30 days notice in writing to the other party.

- 7.2 If the policy is cancelled by the Company, the Company will arrange a refund of premium pro-rata to the unexpired period of insurance.
- 7.3 If the policy is cancelled by the Insured, the Company will allow a refund of premium for the unexpired period of insurance calculated at the customary short period scale after deduction of the Value of The Incurred Claims, if any.
- 7.4 For the purpose of this clause, "Value of The Incurred Claims" shall mean the sum of:
- 7.4.1 all the indemnity paid by the Company (including costs and expenses incurred) in all the Claims made against the Insured and reported to the Company during the period of insurance; and
 - 7.4.2 the total reserve for indemnity maintained by the Company as of a date three months after the date of cancellation of this policy in all the Claims made against the Insured and reported to the Company during the period of insurance.

AUTOMATIC EXTENSIONS

The Company will indemnify the Insured, pursuant to Insuring Clause 1.1 and always subject to all other limitations, terms, conditions and endorsements of this policy, as follows:-

8.1 Emergency First Aid

This policy is extended to indemnify any medically qualified employee of the Insured in respect to legal liability arising from the rendering of emergency first aid assistance to any person (other than relatives of the employee's who reside with him/her). However, the Company shall not be liable where the employee was acting under a contract of employment with any employer other than the Insured.

8.2 Legal Representation Costs

This policy is extended to indemnify the Insured for reasonable legal costs and expenses incurred with the written consent of the Company in the representation of the Insured at any coronial inquiry, provided the Insured is legally required to attend such inquiry.

OPTIONAL EXTENSIONS

9.1 Dishonesty of Employees

If a limit for this extension is specified in the Schedule, Exclusion 2.2 shall not apply in respect of Claims made against the Insured arising out of or contributed to by the dishonest, fraudulent, criminal, malicious or deliberate conduct of the Insured's employees (not including any principals, partners, directors or controlling officers of the insured). However, no indemnity will be provided to any person who commits or condones any dishonest, fraudulent, criminal or malicious act(s).

This extension does not cover claims arising out of or in connection with for loss of money, negotiable instruments, bear bonds or coupons, stamps, bank or currency notes.

The liability of the Company under this Extension shall not exceed the limit for the Extension specified in the Schedule which forms part of the Limit of Indemnity in the Schedule.

9.2 One Automatic Reinstatement

If this extension is specified as "included" in the Schedule, the Company agrees to reinstate the Limit of Indemnity in respect of subsequent Claims arising from acts, errors or omissions which are totally unrelated to any previously advised Claim or act, error or omission. However, the liability of the Company will not exceed twice the Limit of Indemnity in the aggregate for all Claims under this policy (including the costs and expenses incurred in the defence, settlement of any Claim). In the event that the Insured has additional coverage in excess of this policy then any reinstatement(s) will only operate when such coverage is exhausted.

DEFINITIONS

10.1 "Claim" or "Claims" means:

- 10.1.1 any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter-claim or third or similar party notice issued against or served on the Insured for compensation; or
- 10.1.2 the receipt by the Insured of any written or verbal notice of demand for compensation made against the Insured.

10.2 "Excess" means the excess applicable stated in the Schedule.

10.3 "Health Care Provider" means medical practitioner, Chinese medicine practitioner, nurse, health worker, personal care worker and para-medical practitioner.

10.4 "Insured" means:

- 10.4.1 the company, corporation, statutory authority, association, legal entity, members of the partnership, or person(s) specified in the proposal form, declaration or underwriting information being the basis of this contract providing that such definition includes their predecessor(s) in business; and
- 10.4.2 any person who is, becomes, or ceases to be a principal, partner, director, controlling officer, employee of any entity specified in 10.4.1 above, but in each case solely in respect of work carried out for and on behalf of that entity.
- 10.5 "Limit of Indemnity" means the sum stated as the limit of indemnity in the Schedule.
- 10.6 "Period of Insurance" means the period of insurance specified in the Schedule.
- 10.7 "Provision of Nursing and Health Care Services" and "Nursing and Health Care Services" means provision of nursing or health care services to elderly persons, patients or children at the premises of the Insured, in a professional capacity by an insured person, those services or that advice being of a type that a qualified Health Care Provider with similar qualification would ordinarily provide.

<p style="text-align: center;">THE FOLLOWING WARRANTY IS NOT APPLICABLE UNLESS SPECIFICALLY DECLARED THERETO IN THE SCHEDULE AND/OR BY ENDORSEMENT</p>

PREMIUM WARRANTY

It is a fundamental and absolute special condition of this contract of insurance that the premium due must be paid and received by the insurer within sixty (60) days from the inception date of this Policy/Endorsement/Renewal Certificate.

If this condition is not complied with then this contract is automatically cancelled and the insurer shall be entitled to the pro rata premium for the period they have been on risk.

Where the premium payable pursuant to this warranty is received by an authorised agent of the insurer, the payment shall be deemed to be received by the insurer for the purposes of this warranty and the onus of proving that the premium payable was received by a person, including an insurance agent, who was not authorised to receive such premium shall lie on the insurer.

Subject otherwise to the terms, conditions and exclusions of this policy.

SANCTION CLAUSE

Notwithstanding anything contained herein to the contrary, the Company shall not be deemed to provide any cover and shall not be liable to pay for any claim or to provide any benefits hereunder to the extent that the provision of such cover or payment of such claim or provision of such benefits would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws and/or regulations of the European Union, United Kingdom or United States of America and/or any other applicable national economic or trade sanctions, laws and/or regulations.

If the Company alleges that by reason of this Clause, any loss, damage, liability, benefit, cost or expense is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.