



## MEDICAL MALPRACTICE INDEMNITY POLICY FOR MEDICAL PRACTITIONERS

**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 NEGLIGENCE 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 6.2 of this Policy for actual or alleged breach of professional duty in the Provision of Medical Services by reason of any act, error or omission committed or allegedly committed by the Insured resulting in bodily injury, sickness, disease, death, mental injury, nervous shock, mental anguish and/or emotional distress to any patient of the Insured, and
  - 1.1.2 pay the costs and expenses incurred with the written consent of the Company in the defence, settlement or investigation of any such Claim, and
  - 1.1.3 pay the costs and expenses incurred with the written consent of the Company in representing the Insured in any Inquest (hereinafter called "Inquest Costs"), provided that the Insured is required to attend such Inquest in the capacity of a medical practitioner.

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 for any Claim or Inquest Costs:
- 2.1.1 arising directly or indirectly out of any act, error or omission committed by the Insured prior to the retroactive date stated in the Schedule, if a date is specified as such in the Schedule; or
  - 2.1.2 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
  - 2.1.3 arising directly or indirectly out of any act, error or omission committed by the Insured within the territorial limits of the United States of America and/or Canada, its territories or protectorates; or
  - 2.1.4 in respect of any action for damages brought against the Insured in a court of law of the United States of America and/or Canada, its territories or protectorates, nor in respect of the enforcement of judgements, orders or awards obtained in, or pursuant to, the laws of the United States of America and/or Canada, its territories or protectorates; or

- 2.1.5 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;
- 2.1.6 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.
- (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); or
- 2.1.7 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.
- However, this exclusion shall not apply to civil liability arising from radioisotopes, radium or radium compound when used away from the place where such are made or produced and when used exclusively or incidental to ordinary industrial, educational, medical or research pursuits.
- 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 Insured's profession as stated in the Schedule: or
- 2.1.9 whilst the Insured was providing Medical Services as an employee except when you were an employee of a medical practice company in which you hold shares beneficially; or
- 2.1.10 arising from a legal obligation to refund any fee charged the patient; 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, but the Company will reimburse the insured for the costs incurred by him/her in defending the proceedings in which judgement is given in his/her favour or in which he/she is acquitted; 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
- 2.1.16 which arises from the performance of cosmetic plastic surgery, hair transplants, punch grafts, flap rotations and the like (referred to as cosmesis) but it being understood that the following shall not be deemed to be cosmesis:
- 2.1.16.1 Anaesthetic x-ray or medical nursing or laboratory services provided in connection with the performance of cosmesis; or
- 2.1.16.2 Plastic surgical repair scar tissue being the result of previous surgery unrelated to cosmesis; and
- 2.1.16.3 Plastic surgery in connection with burns or other traumatic injury; or
- 2.1.17 which arises from obstetric services or the management of pregnancy after 24 weeks gestation.
- 2.2 The policy will not indemnify any person who commits or condones any dishonest, fraudulent, criminal or malicious act(s).
- 2.3 This policy will not indemnify the Insured against any Claim arising from the transmission of a contagious disease or virus which the Insured was infected with to someone else unless reasonable precaution had been taken by him/her for avoidance of such transmission.

#### CONTINUOUS COVER CLAUSE

- 3.1 Notwithstanding Exclusion 2.1.4, in the absence of fraudulent non-disclosure and subject to clause 3.2 below, where:
- 3.1.1 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
- 3.1.2 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
- 3.1.3 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 all Claims under this policy (including costs and expenses incurred in the defence or settlement of the claim and attending Inquest) the sum stated as Limit of Indemnity on 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 subject to indemnity under insuring clause 1.1.1 the amount of the Excess shall be borne by the Insured at his/her own risk and the Company will only be liable to indemnify the Insured in excess of that amount. 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.
- 4.3 The Excess will apply to amounts which are subject to indemnity under Insuring Clause 1.1.1 only.

#### **DEFENCE AND SETTLEMENT**

- 5.1 The Company will be entitled to take over and conduct, in the name of the Insured, the defence or 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 the 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 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.
- 6.2 The Insured will, as a condition precedent to any coverage under this policy, give the Company notice in writing of 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.
- 6.3 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 investigation or defence. The Company will pay such costs of defence and all such amounts shall be considered costs pursuant to Insuring Clauses 1.1.2 and 1.1.3. 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.

- 6.4 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.
- 6.5 It is a condition precedent to liability of the Company towards the Insured that the Insured and his/her Locum Doctor, whilst providing medical services or advice to patient, must hold valid license to practice as registered medical practitioner in Malaysia and are authorized to provide Medical Service by, and within the guidelines of, the respective regulatory body of the country or administrative region in which the Insured is practicing.
- 6.6 All notifications to the Company will be deemed made if notified to the Company at the address specified on the Schedule.
- 6.7 To be valid, this policy must have a Schedule attached signed by an authorised officer of the Company and its Underwriting Agent.
- 6.8 The interpretation of the terms, exclusions, limitations and conditions of this policy shall be determined in accordance with the laws of Malaysia.

#### **DEFINITIONS**

- 7.1 "Claim" or "Claims" means:
  - 7.1.1 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; or
  - 7.1.2 the receipt by the Insured of any written or verbal notice of demand for compensation made against the Insured.
- 7.2 "Documents" means deeds, wills, agreement, maps, plans, books, letters policies, certificates, forms and documents of any nature whatsoever, whether written printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instruments.
- 7.3 "Excess" means the excess applicable stated in the Schedule.
- 7.4 "Inquest" means an official investigation, inquiry (including coronial enquiry) or disciplinary proceedings but not a criminal prosecution.
- 7.5 "Insured" means the person stated in the Schedule and specified in proposal form, declaration or underwriting information being the basis of this contract.
- 7.6 "Limit of Indemnity" means the sum stated as the limit of indemnity in the Schedule.
- 7.7 "Locum Doctor" means a registered medical practitioner who, at the time of the alleged act, error or omission committed, is directly engaged in the absence of the Insured to provide Medical Services normally provided by the Insured at the premises of the Insured, and
  - 7.7.1 is not an employee of the Insured;
  - 7.7.2 performed the Insured's professional duties for no more than 3 consecutive weeks; and
  - 7.7.3 charged for and billed a patient either independently or on the Insured's behalf in accordance with a written agreement between the Insured and such locum doctor.
- 7.8 "Overseas Training" means the receipt of clinical training by the Insured in an overseas medical institution and/or participation in overseas courses and/or overseas medical work experiences for a period not more than six months anywhere in the World for the purpose of academic accreditation in the medical profession.
- 7.9 "Period of Insurance" means the period stated in the Schedule.
- 7.10 "Provision of Medical Services" and "Medical Services" means providing, or failing to provide, medical services or advice to a patient in a professional capacity by the Insured, those services or that advice being of a type that a medical practitioner similarly qualified would ordinarily provide in the profession as stated in the Schedule

#### **AUTOMATIC EXTENSIONS**

- 8.1 Estates and legal representatives  
 Subject otherwise to all the terms and conditions of this policy, coverage will extend to Claim(s) for the breach of professional duty of the Insured made against the estates, heirs, legal representatives or assigns of the Insured who is deceased or against the legal representatives or assigns of the Insured who is insolvent, bankrupt or incapable of managing his/her own affairs by reason of mental disorder or other incapacity.
- 8.2 Libel and slander  
 Subject otherwise to all the terms, conditions and endorsement of this policy, this policy is extended to indemnify the insured against Claims made against the Insured for any libel, slander or defamation by reason of words written or spoken by the Insured in the Provision of Medical Service, provided always that such act is not intentional, deliberate or reckless.

### 8.3 Nurses

Subject otherwise to all the terms, conditions and endorsements of this policy, the Company will indemnify the Insured for Claim made against the Insured arising from any act, error or omission committed by nurses employed by the Insured in providing medical services to patients of the Insured.

### 8.4 Locum Doctor

Subject otherwise to all the terms, conditions and endorsements of this policy, the Company will indemnify the Insured for Claim made against the Insured arising from any act, error or omission committed by Locums Doctor engaged by the Insured in providing Medical Services on behalf of the Insured during absence of the Insured from a medical practice.

### 8.5 Emergency First Aid (Worldwide)

Notwithstanding Exclusion 2.1.3, this policy is extended to indemnify the Insured with respect to legal liability arising from the rendering of emergency first aid assistance to a non-patient (other than relatives of the Insured who reside with him/her) anywhere in the World.

### 8.6 Defence costs in criminal proceedings

Subject otherwise to all the terms, conditions and endorsements of this policy, this policy is extended to indemnify the Insured for legal costs and expenses incurred with the written consent of the Company, in the defence in criminal proceedings in relation to the Provision of Medical Services by the Insured, which are first instituted against the Insured and reported to the Company during the Period of Insurance, in a court of laws in Malaysia, provided always that:

8.6.1 The Company should have the right to appoint legal representatives to represent the Insured in such proceedings.

8.6.2 In the event that the Insured is found guilty or pleads guilty in the criminal proceedings, the Company will not have obligation to indemnify further legal costs and expenses in the proceedings and the Insured shall within fourteen days refund all legal costs and expenses paid by the Company in the proceedings from the date the Company requests for the refund.

The maximum indemnity to be provided by the Company to an Insured under this extension is RM 100,000 which shall form part of the Limit of Indemnity.

### 8.7 Unintentional infringement of intellectual property rights

Notwithstanding Insuring Clause 1.1.1 and subject otherwise to all the terms, conditions and endorsement of this policy, this policy is extended to indemnify the insured against Claims made against the Insured for actual or alleged infringement of intellectual property rights (including copyrights, trademarks, service marks, registered design, patent and passing-off) by the Insured in the Provision of Medical Services, provided always that such breach or infringement is not intentional, deliberate or reckless.

### 8.8 Breach of confidentiality

Notwithstanding Insuring Clause 1.1.1 and subject otherwise to all the terms, conditions and endorsement of this policy, this policy is extended to indemnify the insured against Claims made against the Insured for alleged breach of confidentiality by the Insured (or by a nurse or Locum Doctor described in extension 8.3 and 8.4) in the Provision of Medical Services, provided always that such breach is not intentional, deliberate or reckless.

The maximum indemnity to be provided by the Company to an Insured under this extension is RM 100,000 which shall form part of the Limit of Indemnity specified on the individual certificate issued to each Insured.

### 8.9 Loss of Documents

Notwithstanding Insuring Clause 1.1.1 and subject to all the terms, conditions and endorsement of this policy, this policy is extended to indemnify the Insured for reasonable and direct costs to the Insured of reproducing, replacing or restoring Documents owned by a third party or containing personal information of a third party which have been destroyed, damaged, or lost (and which, after diligent search, cannot be found) at the premises of the Insured provided always that:

8.10.1 the destruction, damage or loss of Documents is first discovered by the Insured during the Period of Insurance and is notified to the Company within twenty eight days from the date of discovery;

8.10.2 a claim by the Insured under this extension must be supported by bills and/or accounts approved by a person nominated by the Company;

8.10.3 the cover this extension provides is limited to the destruction, damage or loss of Documents which were in physical custody or control of the Insured or which were in physical custody or control of any other person to whom the Insured entrusted, lodged or deposited Documents in the ordinary course of a medical practice;

8.10.4 the Company has no liability under this Extension for any amount which falls within RM 1,000; and

8.10.5 this extension will not apply to the destruction, damage or loss of Documents brought about or contributed to by fire, water, burglary or theft.

The maximum indemnity to be provided by the Company to an Insured under this extension is RM 250,000 which shall form part of the Limit of Indemnity.

8.10 Overseas training

Exclusion 2.1.3 shall not apply to Claim made against the Insured arising from any act, error or omission committed by the Insured in provision of Medical Services during Overseas Training.

8.11 Professional Employment

Notwithstanding Exclusion 2.1.8, the Company agrees to provide indemnity in respect of the Insured's liability whilst employed as medical practitioner. Coverage under this extension is intended to be of a secondary nature and will only apply if the Insured's employer fails to provide indemnity by way of insurance or otherwise to the Insured.

8.12 Automatic Reinstatement of Limit

Notwithstanding Condition 4.1, 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 and attending Inquest). 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.

#### OPTIONAL EXTENSION

9. Run-off cover after retirement

In the event the Insured retires from medical practice during the currency of this policy and he/she has been continuously insured with the Company under similar medical malpractice insurance policy for a period of not less than five consecutive years immediately prior to this policy, the Company agrees to offer a run off policy for a period of insurance within 6 years to the Insured upon expiry of this policy at a premium not more than 200% of annual premium of this policy provided that the Insured has notified to Company on or before the date he/she retires from medical practice.

It is expressly agreed that the coverage provided by the run off policy is only in respect of claims first made against the Insured and notified to the Company during the currency of the policy for alleged breach of professional duty in Provision of Medical Services by reason of any act, error or omission committed by the Insured during the period prior to the date of his/her retirement according to the record of the Company.

#### 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.

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