

GEGM PROFESSIONAL INDEMNITY INSURANCE FOR PHARMACISTS

OUR AGREEMENT

In consideration of prior payment of the premium set out in the **schedule** and subject to the terms and conditions of this Policy, **we** agree with **you** to provide insurance as set out in this Policy.

In issuing this Policy, **we** have relied on the information contained in the **proposal** submitted by **you** which shall form part of this Policy. **You** must tell **us** immediately if any of this information is incorrect or of it changes. If **you** fail to do so, **you** may lose **your** right to indemnity under this Policy.

1. INSURING CLAUSE

Subject to the terms and conditions of this Policy, **We** will pay up to the limit of indemnity stated in the **Schedule** :

- 1.1 all sums which **You** shall become legally liable to pay as **Damages** for **Bodily injury** to **Your** patient caused by **Malpractice**, and
- 1.2 **Defence costs**

PROVIDED ALWAYS THAT

- (a) such **Malpractice** is committed or allegedly committed by **You** on or after the **Retroactive Date** and within the Territorial Limits set out in the **Schedule**, and
- (b) such **Malpractice** results in a **Claim** first made against **You** during the **Period of Insurance**.

2. EXCLUSIONS

We will NOT indemnify You under this Policy for :

- 2.1 any **Claim** arising from the following activities :-
 - a) the performance of cosmetic surgery where the primary purpose is the alteration of the external appearance of a patient for non-therapeutic reasons,
 - b) the practice of alternative medicine or traditional medicine,
 - c) the use of drugs for weight reduction except if it is used solely for therapeutic reasons;
- 2.2 any **Claim** arising out of any circumstances which reasonably may be expected to be known to You to give rise to a **Claim** prior to the inception date of this Policy;
- 2.3 any **Claim** arising out of the **Provision of professional services** in a public hospital;
- 2.4 any **Claim** arising out of **Your** practice when **You** were not registered, were prohibited from practicing or when **You** acted outside of, or did not comply with, the terms or condition placed on **Your** registration;
- 2.5 any **Claim** arising out of or in connection with any contractual liability warranty or guarantee except if **You** would have been otherwise liable in the absence of the contractual liability, warranty or guarantee;
- 2.6 any **Claim** arising out of the manufacture of any goods, or products, or the construction, alteration, repair, servicing, treating of any good or products sold, supplied or distributed by **You**. However this exclusion does not apply to medicines dispensed by **You** to **Your** patient for treatment or medication, provided always that such medicines are not manufactured by **You**.
- 2.7 any **Claim** arising directly or indirectly based upon, attributable or in consequence of **Your** liability as an employer;
- 2.8 any **Claim** directly or indirectly caused by contributed to by :
 - (a) any act in violation of any law or statute or regulation; or
 - (b) any dishonesty, fraudulent or criminal act or omission; or
 - (c) the performance of **Professional services** whilst under the influence of intoxicants or narcotics.
- 2.9 any **Claim** directly or indirectly caused by, or contributed to by, arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 2.10 any **Claim** arising from war, invasion, acts of foreign enemies, hostilities, (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by, under the order of, any government or public or local authority;

- 2.11 any **Claim** arising directly or indirectly from any actual, alleged or threatened discharge, dispersal release, seepage or escape of pollutants, or any loss, cost or expense arising out of any direction or request, whether governmental or otherwise, that **You** evaluate, test for, monitor, clean up, remove, control, contain, treat, detoxify or neutralize pollutants. The term "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. The term 'waste' as used in this definition includes materials which are to be or are being disposed of, recycled, reconditioned or reclaimed.
- 2.12 any **Claim** arising directly or indirectly from any act of terrorism. For this purpose 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 organization(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.

If **We** allege that by reason of this exclusion, any **Claim** is not covered by this insurance the burden of proving that such **Claim** is covered shall be upon **You**.

3. DUE OBSERVANCE

- 3.1 **You** must notify **Us** in writing as soon as possible of :
- (a) any **Claim** against **You** for **Malpractice**, or
 - (b) **You** becoming aware of any circumstance that might reasonably be expected to give rise to any **Claim** against **You** for **Malpractice**.
- 3.2 **You** shall at all times
- (a) maintain accurate descriptive records of all **Professional services** and equipment used in procedures which shall be available for inspection and use by **Us** or **Our** duly appointed representatives insofar as they pertain to any **Claim** hereunder, and
 - (b) retain the records referred to in 3.2(a) above for a period of at least seven (7) years from the date of treatment and, in the case of the patient being a minor, for a period of at least seven (7) years after that minor would attain majority, and
 - (c) give **Us** or **Our** duly appointed representatives such information, assistance signed statements or depositions as may be required in the investigation, defence, reduction, settlement, of any **Claim**, and
 - (d) assist the defence of any **Claim** without charge to **Us**.
- 3.3 You agree that :
- (a) You will not disclose the terms of this Policy unless required by law, and
 - (b) **You** will not admit liability, agree to any arrangement, offer, promise, or payment, incur any cost or expense without **our** written consent, and
 - (c) **We** shall have the right but not the duty to take control of the defence of any **Claim** or to sue in **Your** name for **Our** benefit any **Claim** for indemnity or damage or otherwise against any third party and shall have full discretion in the conduct of any negotiations or proceedings on the settlement of any **Claims** but **We** will not admit liability for or settle any **Claim** against **You** without **Your** prior consent.
 - (d) However, if **You** refuse to consent to any settlement recommended by **Us** or **Our** legal representative and elect to contest or continue any legal proceedings then **our** liability shall not exceed the amount for which the **Claim** could have been so settled plus the cost and expenses incurred with **Our** consent up to the date of such refusal, and **You** further agree to indemnify **Us** for the amount of any judgment, award, settlement, costs and expenses which **We** are found obligated to pay after the date of such refusal.
 - (e) In the event that a dispute arises between **You** and **Us** regarding whether or not to contest any **Claim**, neither **You** nor **Us** shall be required to contest any claim unless a Senior Counsel or equivalent (to be mutually agreed by **You** and **Us**) shall advise that the claim should be contested. The cost of the Senior Counsel shall be borne by **Us**.
- 3.4 **We** have a right under the Policy to take over all of **Your** rights of recovery with respect to a **Claim** and to pursue actions against third parties in your name even if a **Claim** has not actually been paid. If **You** surrender any right or settle any **Claim** for contribution, indemnity or recovery without **Our** prior written consent, then **We** may be entitled to reduce **Our** liability under the Policy.
- 3.5 If there is any other valid and collectible insurance (which includes any other form of indemnity which may or may not be in the form of an Insurance contract) available to you against liability indemnified under this Policy, this Policy shall (unless such other insurance

is specifically issued as an insurance in excess of the indemnity afforded by this Policy) be excess of and shall not contribute with such other insurance regardless of:

- (a) when such other insurance incepts or terminates; or
- (b) which insurance company provides such other insurance, or
- (c) the basis on which other insurance applies or is triggered.

Nothing in this Policy shall be construed to make this Policy subject to any of the terms of other insurance.

3.6 This Policy shall only indemnify **You** against liability in accordance with the laws of Malaysia and in respect of judgments, awards, payments or settlements made only within Malaysia. This Policy shall in no circumstances, apply to any judgment or award obtained elsewhere nor to any proceedings in Malaysia for the enforcement of judgment or award obtained elsewhere whether by way of reciprocal agreements or otherwise. It is agreed that the premium for this Policy has been calculated accordingly and no consideration has been paid in respect of liabilities arising under any other law or the jurisdiction of any other court.

3.7 **You** may cancel this Policy at any time by notifying **Us** in writing and **We** will refund the premium of the unexpired **Period of insurance**.

We may cancel this Insurance by giving thirty (30) calendar days notice and **We** will refund the premium of the unexpired **Period of insurance** calculated on a pro-rated basis.

Notice of cancellation by either party must be in writing and served by registered mail, telex or facsimile transmission, or to be hand delivered.

Any notice sent by registered mail shall be deemed to have been served seven (7) calendar days after despatch and any notice sent by telex or facsimile shall be deemed to have been served at the time of despatch.

3.8 All differences arising out of this Policy shall be referred to the decision of an Arbitrator to be appointed in writing. The arbitration shall be conducted at the Regional Centre of Arbitration Kuala Lumpur (RCAKL). The rules of the RCAKL shall apply except with respect to the selection of the arbitration panel which shall consist of one arbitrator appointed by **You**, one arbitrator appointed by **Us**, and a third independent arbitrator appointed by the first two arbitrators. If the first two arbitrators fail to agree on the third arbitrator within thirty (30) days following the appointment of the second arbitrator, the third arbitrator shall be appointed by the Chairman of the RCAKL. The making of an Award shall be a condition precedent to any right of action against **Us**. Each party shall bear the cost of their appointed arbitrator and the cost of the third independent arbitrator shall be borne by the party against whom the award is made.

4. AUTOMATIC EXTENSIONS

4.1 Disciplinary Proceedings/Enquiries

Subject to all the terms conditions exclusions and provisions of this Policy, **We** extend to cover **You** for reasonable and necessary legal costs incurred with **Our** prior consent for **Your** representation at any Disciplinary Enquiry held by the Malaysian Medical Council of which notice has been first served upon **You** during the **Period of insurance** provided always that :-

- (a) **You** are not aware of such enquiry or any circumstances leading to such enquiry prior to the inception of this Policy, and
- (b) any act or omission leading to such enquiry was not committed or allegedly committed by **You** prior to the **Retroactive date**.

The indemnity afforded under this extension forms part of and is not in addition to the limit of indemnity available under this Policy.

4.2 Good Samaritan Acts

Subject to all the terms conditions exclusions and provisions of this Policy, **We** extend the coverage afforded under this Policy for **Your Good Samaritan Acts** provided always that the **Good Samaritan Act** was performed on or after the **Retroactive date**.

The coverage afforded under this extension forms part of and is not in addition to the limit of indemnity available under this Policy.

4.3 Loss of Documents

Subject to all the terms conditions exclusions and provisions of this Policy, **We** extend to extend cover to any **Damages** resulting from a **Claim** for the loss of, Damage to or destruction of **Documents** for which **You** are legally responsible in the **Provision of professional services** and which cannot be found after diligent search, provided that:

- (a) the **Damages** recoverable under this Extension 4.3 is only limited to the reasonable and necessary costs, charges and expenses in replacing or restoring the **Documents**; and
- (b) the loss of, Damage to or destruction of such **Documents** was first discovered by **You** during the **Period of insurance**; and
- (c) the **Claim** for such costs, charges and expenses is supported by satisfactory proof of loss (including bills and accounts) which shall be subject to approval (which shall not be unreasonably withheld) by a competent person nominated by **Us** with **Your** approval; and
- (d) this Extension 4.3 shall not provide coverage for any costs, charges or expenses directly or indirectly relating to any **Documents** which have been destroyed, Damaged or lost as a result of fading, mould, vermin, pest infestation, wear, tear or the gradually operating causes.

Our total liability under this Extension 4.3 shall not exceed the sub-limit specified in Item 6 (c) of the **Schedule**.

The cover provided by this Extension 4.3 applies regardless of the **Retroactive date**.

The excess does not apply to this Extension 4.3.

4.4 Emergency Defence costs

Notwithstanding Due Observance 3.3, **We** agree, in the event it is not possible for **You** to obtain **Our** written consent prior to the incurring of **Defence costs**, to give retrospective consent as long as **Our** consent is sought within 30 days of the first of such **Defence costs**.

Our total liability under this Extension 4.4 in respect of **Defence costs** incurred for each **Claim** incurred for each Inquiry shall not exceed the sub-limit specified in item 6 (d) of the **Schedule**.

The cover provided by this Extension 4.4 applies regardless of the **Retroactive date**.

The excess does not apply to this Extension 4.4

4.5 One Automatic Reinstatement

It is agreed that the amount of the reduction in the aggregate indemnity on account of any **Claim** or loss or expenses paid or payable under this Policy shall be automatically reinstated but such reinstatement sums shall apply only in excess of the total of aggregate indemnity limits effective under policies applicable in excess of this insurance, and only in respect of **Claims** or losses which are totally unrelated to the **Claims** or circumstances that give rise to such reduction.

Therefore the liability of the Company for loss or **Damages** or law costs charges and expenses in respect of any one **Claim** or series of **Claims** made against **You** or loss or series of losses arising out of or attributable to the same originating cause.

Shall not exceed the Limit of Liability stated in the **Schedule** and the maximum amount payable hereunder in respect of any one **Period of insurance** is limited to twice such Limit of Liability.

4.6 Defamation

We agree to extend cover to any **Damages** resulting from a **Claim** for unintentional defamation by **You** in the **Provision of professional services**.

We shall not be liable to make any payment under this Policy for any **Claim** directly or indirectly caused by, arising out of or in any way connected with intentional defamation.

4.7 Public Relations Expenses

We will pay for any costs and expenses reasonably incurred with **Us** prior written consent when **You** engage the services of a public relations consultant for the sole purpose of protecting **Your** reputation that has been brought to question as a direct result of a **Claim** covered under this Policy, provided that:

- a) **You** notify **Us** within thirty (30) days of first being aware of **Your** reputation being brought into question and provide **Us** with full written details outlining the circumstances surrounding the event;
- b) The Company maximum liability for all such public relations expenses shall not exceed RM250,000 for any one **Claim** and in the aggregate under this Policy.

5. OPTIONAL EXTENSIONS

5.1 Run-Off Cover

In the event that **you** have permanently ceased or retired from practice as a General Medical Practitioner, this Policy shall automatically be terminated on the date of **your** permanent cessation of practice or retirement.

However upon termination of this Policy **you** shall be entitled to an extension of coverage granted by this Policy for a period of up-to 72 months but only for any negligent act or omission committed or allegedly committed by **you** in the provision of **Professional Services** prior to **your** permanent cessation of practice or retirement and on or after the **Retroactive date**. (hereinafter referred to as Extended Reporting Period)

Provided always that : -

- (a) notice of such cessation or retirement is given to us and we have endorsed the same on to the Policy;
- (b) the Extended Reporting Period shall come to an end as the date that **you** resume practice as a **General Medical Practitioner**;
- (c) the extended reporting period does not extend the **Period of insurance** or change the scope of cover provided by the Policy or increase the limit of indemnity;
- (d) **your** permanent cessation of practice or retirement is not due to the revocation of **your** authority to practice or prohibition by law.

6. DEFINITIONS

Unless otherwise expressly stated, the following words or phrases in bold face used throughout the Professional Indemnity Section of this Policy shall, for the purpose of this Policy, have the special meanings indicated in this Definition Section of this Policy.

- 6.1 **Bodily injury** means any bodily injury, mental injury, mental anguish, shock, sickness, disease and death.
- 6.2 **Claim** means any written demand made, civil suit commenced or arbitration proceedings instituted against **you** for damages;
- 6.3 **Claimant's costs** means legal costs, disbursements and related expenses **you** have to pay to the person making the **claim** against **you**.
- 6.4 **Damages** excludes fines, penalties, punitive damages, exemplary damages or any non-compensatory award of any kind but includes claimant's legal costs and expenses and interest payable by law on any judgment or award.
- 6.5 **Defence costs** means legal costs, disbursements and related expenses reasonably and necessarily incurred with our consent in the investigation, adjustment, defence and/or settlement of any **claim** or potential **claim** notified to us and accepted by us under the terms of this Policy.
- 6.6 **Document** means documents of any nature legally owned by any person (other than another Insured), except money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any other form of negotiable instrument.
- 6.7 **Good Samaritan Act** means providing, or failing to provide:
- (i) the examination, diagnosis, treatment (including prescribing of drugs or therapy) or care of an individual patient; and/or
 - (ii) written or oral advice on or concerning the examination, condition, diagnosis, treatment (including prescribing of drugs or therapy) or care of an individual patient,
- in each case in a clinical or medical emergency, accident or disaster when **you** are not present in **your** professional capacity but as a bystander;
- 6.8 **Malpractice** means actual or alleged negligent act or omission in connection with the **provision of professional services** in the professional capacity of General **Medical Practitioner**
- 6.9 **Period of insurance** means the period stated as such in the **schedule**.

- 6.10 **Professional services** means the services customarily rendered by a Registered Pharmacist
- 6.11 **Provision of professional services** and **providing Professional services** means providing, or failing to provide **Professional services**;
- 6.12 **Proposal** means all documents comprising **your** application for or renewal of this Policy including any pre-renewal questionnaire.
- 6.13 **Retroactive date** means the date specified in the schedule as the **Retroactive date**.
- 6.14 **Schedule** means the current schedule to this Policy.
- 6.15 **We, our, us, the Company** means Great Eastern General Insurance (Malaysia) Berhad (Co. No. 198301007025 (102249-P)) being the insurer named in the schedule.
- 6.16 **You** and **your** means:
- (i) the individual named in the **schedule** as the **insured**; and
 - (ii) the executor or administrator of the **insured's** estate