

## *Free Translation*

### **MACAO SPECIAL ADMINISTRATIVE REGION**

#### **Executive Order n.º 46/2017**

#### **Uniform Policy for Compulsory Professional Liability Insurance for Healthcare Providers**

Under the power conferred by Article 50 paragraph 4 of the Basic Law of the Macao Special Administrative Region and in accordance with Article 36 paragraph 2 of Law No. 5/2016 (Legal Regime of Medical Error), the Chief Executive determines the publication of the present executive order.

##### **Article 1**

##### Uniform Policy

To approve the Uniform Policy of Compulsory Professional Liability Insurance for Healthcare Providers as set out in the Annex to this executive order.

##### **Article 2**

##### Effective date

The present executive order comes into force on 26 February 2017.

16 February 2017.

To be published.

The Chief Executive, Chui Sai On

## **Annex**

### **UNIFORM POLICY FOR COMPULSORY PROFESSIONAL LIABILITY INSURANCE FOR HEALTHCARE PROVIDERS**

[... (name of the insurance company)], hereinafter referred to as the Company, and [... (name of the policyholder)], hereinafter referred to as the Policyholder, hereby enter into an insurance contract which shall be governed by the terms and conditions of this Policy, the declarations contained in the proposal shall serve as the basis of this Policy and shall form an integral part thereof. The conditions of this Policy shall not prejudice the rights of the Company and Insured to establish voluntary conditions under the professional liability insurance for healthcare providers.

#### **Article 1**

##### **Definitions**

In this Policy, unless the context otherwise requires:

- 1) «Company» shall mean the entity, legally authorized to transact professional liability insurance for healthcare providers;
- 2) «Policyholder» shall mean the person or entity entering into a contract with the Company and who is responsible for the payment of premiums;
- 3) «Insured» shall mean healthcare providers licensed by the Health Bureau to practice the profession;
- 4) «Claim» shall mean acts which will give rise to indemnification by the Policy;
- 5) «Excess» shall mean the amount specified in the Policy Schedule, which in the event of a claim, shall be borne by the Policyholder or the Insured; however, in no case shall such amount be applicable to the victim or his/her successor;
- 6) «Medical practice» shall mean any act performed by legally qualified public or private healthcare providers for the purpose of preventing, diagnosing, treating or rehabilitating any individual or group;
- 7) «Victim» shall mean a person who suffers damages as a result of the act performed by the healthcare provider
- 8) «Retroactive date» shall mean the date specified in the Policy Schedule, and is the date on or after which losses may be covered under this Policy.

## **Article 2**

### Object of the policy

The purpose of this policy is to provide coverage for the professional liability of the Insured in the course of his / her business as a healthcare provider.

## **Article 3**

### Scope of insurance

1. The insurance will indemnify the Insured in respect of:

1) loss resulting from any claim or claims made against the healthcare providers, resulting exclusively from violation of medical and health regulations, guidelines, professional code of ethics, professional knowledge or normal conduct of healthcare services provisions, from acts or omissions resulting in bodily injury or mental injury of any patient;

2) claim arising from the rendering of emergency first aid assistance to people whose life or physical condition is in serious danger;

3) the litigation fees, attorney's fees and other emerging expenses associated with the claim incurred with the written consent of the Company.

2. For the purpose of the preceding paragraph, should the Policyholder or Insured initially become aware of any claims or suspected claims, he/she shall give initial written notice to the Company of such claims during the Period of Insurance, provided that such claims or suspected claims occur during the period from the Retroactive Date until the expiry date shown on the Policy Schedule.

## **Article 4**

### Territorial limits

This policy shall only apply to claims occurring in the Macao Special Administrative Region (MSAR).

## Article 5

### Exclusions

The insurance shall not cover the liability:

- 1) For loss or damage resulting from intentional acts or omissions;
- 2) For loss or damage arising from services rendered by healthcare provider while under the influence of alcohol, intoxicants or drugs ;
- 3) For loss or damage arising in any way out of the unlawful sale, supply, use or application of a prohibited substance;
- 4) For fines or penalties of a criminal, disciplinary or any other nature;
- 5) Any claim made against the healthcare provider by any person who are:
  - (1) Partners, shareholders, members of administrative bodies or legal representatives of the healthcare establishment in which the healthcare provider renders services;
  - (2) Spouse, ascendants, descendants or adoptees of the healthcare provider, as well as any other relatives up to the third degree of consanguinity , or those that cohabit with or depend on the healthcare provider for their livelihood or related up to the third degree of consanguinity;
- 6) Arising out of any legal liability of whatsoever nature directly or indirectly caused by or contributed to, by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 7) For loss or damage due to acts of war, civil war, invasion, hostilities, rebellion, insurrection, usurped military force or attempted usurped force, terrorism, sabotage and labour disturbances such as assaults, strikes, tumults and “*lock-outs*”;
- 8) For loss or damage resulting from any type of clinical trial;
- 9) Arising out of any loss directly or indirectly caused by, or in consequence of seepage, pollution of air, water or soil or contamination of any kind;
- 10) Relating to claims which result from private agreement or contract, where such claims exceed the legal liability of the healthcare provider covered by the insurance contract;
- 11) For loss or damage resulting from act committed outside the Macao Special Administrative Region or liability for damages brought against the healthcare provider in a court of law outside the Macao Special Administrative Region.

## **Article 6**

### Sum insured

The limit of indemnity per claim and in aggregate during the period of insurance is specified in the Policy Schedule. This limit may not be lower than the statutory minimum sum insured.

## **Article 7**

### Duration of contract

1. The insurance contract is concluded for a period of one year.

2. The insurance contract shall come into effect from zero hours of the day immediately following the day on which the Company accepts the proposal, except where, by mutual agreement of the parties involved, another date is agreed upon, which in no case can be earlier than the date of receipt of the proposal.

3. The contract shall cease to be effective at 24:00 hours of the last day of the period of insurance.

4. The effectiveness of the insurance contract shall depend on the qualification of the Insured to practice as healthcare provider.

## **Article 8**

### Termination of contract

1. At any time, the Policyholder may terminate the insurance contract by means of a registered letter or by other means of written communication by giving a minimum notice of 30 days prior to the date on which the termination is to become effective.

2. If the Policy is terminated by the Policyholder, the Company will refund premium according to the short period scale. .

3. If the Policy is terminated by the Company, the Policyholder shall be entitled to a refund of premium pro-rata to the unexpired period of insurance,

4. In the event of termination where the Company has paid claim(s) or maintained any claim(s) reserve during the period of insurance, the calculation of the refund of premium stated under the provisions of the preceding two paragraphs shall be limited to the net sum insured after deducting the indemnities paid or reserved.

### **Article 9**

#### Nullity of contract

1. This contract shall be considered null and void if the Policyholder or the Insured is proved to have failed to disclose material facts or made misrepresentations about the risks that would have influenced the existence or the conditions of the contract.

2. If the said non-disclosure or misrepresentation of preceding paragraph is intentional, the Company shall be entitled to the refund of indemnity paid and for any premiums due.

3. Where there are several insured persons, the provisions of the preceding paragraphs shall not be applicable to those who have not committed the act of non-disclosure or misrepresentation.

### **Article 10**

#### Alteration to Risk

The Policyholder or the Insured shall notify the Company of any alteration of material facts within 8 days, by means of a registered letter or by other means of written communication.

## **Article 11**

### Payment of Indemnity

Unless otherwise expressly stated in the Policy Schedule, the Company shall pay the indemnity in Macao Pataca and in Macao Special Administrative Region.

## **Article 12**

### Excess

1. The amount of excess for each and every claim is specified in the Policy Schedule.
2. The Company shall pay the full indemnity due without prejudice to its right to recover from the Insured the applicable excess.

## **Article 13**

### Insufficient sum insured

1. In the event that there is more than one victim as a result of the same claim and the corresponding total amount claimed exceeds the total sum insured, the liability of the Company in respect of each of the victims shall be proportionately reduced, so that the amount of indemnity paid equals the limit of indemnity.
2. If, as a result of payment of indemnity by the Company, the remaining sum insured be less than the statutory minimum sum insured, the Policyholder and the Company may reinstate the sum insured to the statutory minimum sum insured by paying additional premium as set out in the Tariff of Premiums and Conditions for Compulsory Professional Liability Insurance for Healthcare Providers.

#### **Article 14**

##### Coexistence of contracts

If there is more than one insurance contract covering the same risk on the day of the occurrence of the claim, in view of the total liability covered by the respective contracts, each insurer shall pay the indemnity in proportion to the liability for which it is responsible, without prejudice to the victim or his/her successors' entitlement to request for the full indemnity payment from any one of the insurers.

#### **Article 15**

##### Payment of Premium

The premium shall be paid at the latest by the policy effective date.

#### **Article 16**

##### Change of contract or premium

Where there is no alteration of risk, any change to the contract or to the premium shall only be made effective at the renewal of the contract, by means of a registered letter or by other means of written communication at least 30 days before the policy renewal date.

#### **Article 17**

##### Obligations of the Company

1. If the Policyholder or the Insured has notified the Company of a claim or the victim or his/her successor has filed a claim, the Company shall carry out investigations and loss adjustment immediately in order to determine the occurrence of the claim, the liability of the Insured and the amount of indemnity.

2. The indemnity shall be paid within 45 days after the investigations and loss adjustments referred to in the preceding paragraph have been concluded.



3. If the Company fails to execute its obligations referred to in the preceding paragraph, for unjustified reasons or due to its own fault, the Company shall be responsible for the delay and be liable to pay overdue interest on the corresponding amount of indemnity at the applicable legal rate of interest.

### **Article 18**

#### Obligations of the Insured

1. In case of a claim, the Insured is obliged to:

1) give written notice to the Company within 8 days, after the occurrence date of the claim or being aware of the claim;

2) take all reasonable measures to avoid the claim or diminish the consequences of the claim;

3) confer all necessary powers to the Company to take over the conduct of the civil or criminal proceedings in respect of the civil liability of the Insured,.

4) cooperate actively with the Company, including providing witnesses, all documents and other related proofs and information.

2. The Insured shall not:

1) advance any indemnity claimed, make offers, make commitments or assume any obligation in relation to any claim without the written consent of the Company;

2) give advice or assistance on indemnity claimed, on behalf of the Company, without the Company's written consent;

3) perform any act that may lead to an unfavorable judgment against the Insured and the Company.

### **Article 19**

#### Communications and notifications between the parties

Any communications or notifications between the parties shall be considered valid and fully effective, if they are made by means of a registered letter or by other means of

written communication to the latest address of the Policyholder or the Insured; in the case of a Company with head office overseas, to the address of its branch in the MSAR.

**Article 20**  
Subrogation

Upon settlement of the claim, the Company shall be entitled to the right of subrogation, up to the amount of indemnity paid, only against the third party responsible for the losses, while the Insured shall be obliged to refrain from any acts which might prejudice the Company's execution of subrogation rights or otherwise.

**Article 21**  
Applicable Legislation

This policy is governed only by Macao SAR legislation.

**Article 22**  
Jurisdiction

The courts of the Macao Special Administrative Region have jurisdiction to resolve any disputes arising from this policy.

*\*The English version is for reference only . In case of doubt, the Chinese and Portuguese version shall prevail .*

COMPULSORY PROFESSIONAL LIABILITY INSURANCE FOR HEALTHCARE PROVIDERS		POLICY SCHEDULE		POLICY N° _____	
Policyholder			Insured		
Name			Professional qualification and license number registered with the Health Bureau		
Address			Name		
			Address		
Policy effective date		Period of Insurance	Policy expiry date		Retroactive date
Limit of Indemnity		Excess		Total Premium	
Per Claim	Per Year				
(Special Terms)					
<p>Issued in Macao, on (INSURANCE COMPANY)</p> <p>_____</p> <p>Seal and signature</p>					

