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# QBE PROFESSIONAL INDEMNITY Insurance EXCESS OF LOSS POLICY

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**QBE INSURANCE (MALAYSIA) BERHAD** welcomes you as a Policyholder and we take this opportunity to recommend that you thoroughly examine this Document which sets out the limitations and benefits of the insurance. Please store it in a safe place. Should you have any query, please contact your Registered Agent/Broker or our QBE office, especially if the insurance is not completely in accordance with your intentions.

Where you have applied for this Insurance wholly for purposes related to your trade, business or profession, you had a duty to disclose any matter that you know to be relevant to our decision in accepting the risks and determining the rates and terms to be applied and any matter a reasonable person in the circumstances could be expected to know to be relevant otherwise it may result in avoidance of your contract of insurance, refusal or reduction of your claim(s), change of terms or termination of your contract of insurance.

You also have a duty to tell us immediately if at any time after your contract of insurance has been entered into, varied or renewed with us any of the information given in the Proposal Form (or when you applied for this insurance) is inaccurate or has changed.



**QBE PROFESSIONAL INDEMNITY Insurance  
EXCESS OF LOSS  
POLICY**

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## A. THE COVER

### Preamble

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

This Policy reflects the terms and conditions of the contract of insurance as agreed between you and us.

## SECTION 1 - INSURING CLAUSES

### 1.1 Insuring Clause: Follow Form

Except as specifically set forth in the terms, conditions and endorsements of this **Policy**, **QBE** agrees to indemnify the **Insured** in accordance with the terms, conditions, exclusions, extensions and endorsements of the primary policy with which this **Policy** shall run concurrently. However, such indemnity shall apply only after the **Primary and/or Underlying Policy or Policies** limit of indemnity amounts have been exhausted.

## B. EXCLUSIONS

### Preamble

**QBE** shall not be liable under this **Policy** to indemnify the **Insured** in respect of any claim against the **Insured**:

#### 1. Primary Cover Exclusions

which is excluded from the primary policy

#### 2. Pending or Prior

- (a) first made, threatened or intimated before the commencement of the **Period of Insurance**;
- (b) directly or indirectly arising out of, in consequence of, or contributed to by any fact or circumstance:
  - (i) of which written notice has been given, or ought reasonably to have been given, under any previous policy and/or the **Primary and/or Underlying Policy or Policies**; or
  - (ii) of which the **Insured** first became aware prior to the **Period of Insurance**, and which the **Insured** knew or ought reasonably to have known had the potential to give rise to a **Claim** under this **Policy** and/or the **Primary and/or Underlying Policy or Policies**.

#### 3. Absolute Asbestos

directly or indirectly arising out of, in consequence of, or contributed to by asbestos, asbestos fibres or derivatives of asbestos.

However this exclusion shall not apply to any claim or part of a claim for financial loss arising out of a breach of professional duty where the cause of the breach does not relate to any asbestos exposure.

#### 4. Fines and Penalties

for punitive, aggravated, multiple or exemplary damages and/or damages under companies and/or securities legislation or its equivalent, or any amount which is uninsurable by law.

#### 5. Nuclear

directly or indirectly arising out of, 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 any nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### 6. Terrorism

directly or indirectly arising out of, in consequence of, or contributed to by any **Act of Terrorism**.

For the avoidance of doubt, **QBE** shall not be liable under this **Policy** to indemnify in respect of any loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with:

- (a) any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.
- (b) any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

#### 7. War

directly or indirectly arising out of, in consequence of, or contributed to by 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 of or damage to property by or under the order of any government or public local authority.



## C. CONDITIONS

### 1. Follow Form

This **Policy** is subject to the same policy terms, conditions, exclusions, extensions and endorsements that are contained in the Primary Policy EXCEPT as with regards to the limit of indemnity, the operation of condition C13 Reporting and Notice, the **Premium** or as otherwise stated herein.

### 2. Amendments to Primary Cover

No amendment to the **Primary and/or Underlying Policy or Policies**, including the limits of indemnity, during the **Period of Insurance** shall be effective in modifying the terms and conditions of this **Policy** unless or until otherwise agreed in writing by **QBE**.

### 3. Appeal or Review

In the event that the **Insured** and the **Primary and/or Underlying Insurer or Insurers** elect not to appeal against or seek review of any decision or judgement against the **Insured** which exceeds the limit of indemnity of the **Primary and/or Underlying Policy or Policies**, **QBE** shall be entitled to take over and conduct an appeal or review in the name of the **Insured**, provided that:

- (a) the costs and expenses of the appeal or review shall be borne by **QBE** and shall not be taken into account in the calculation of the proportion of other costs and expenses for which **QBE** are liable under this **Policy**; and
- (b) **QBE's** liability under this **Policy** is still limited to the **Limit of Indemnity**, even if the result of the appeal or review is that the judgement against the **Insured** exceeds the **Limit of Indemnity**.

### 4. Cancellation

- (a) The **Insured** may cancel this **Policy** at any time by notifying **QBE** in writing and **QBE** will provide a refund of **Premium** for the unexpired **Period of Insurance** with the short-period rate.
- (b) **QBE** may cancel this **Policy** by giving thirty (30) days notice in writing to the **Insured** at the **Insured's** last known address and **QBE** will provide a pro-rata refund of **Premium** for the unexpired **Period of Insurance**.

### 5. Defence and Settlement

- (a) The **Insured** shall not settle any claim or admit any liability with respect to any claim which may exceed the limit of indemnity of the **Primary and/or Underlying Policy or Policies** without **QBE's** written consent, such consent not to be unreasonably withheld. **QBE** shall not be liable for any settlement to which it has not consented. **QBE** shall not, however, refuse to consent to any settlement proposed by the **Insured** unless a Legal Counsel (to be mutually agreed upon by the **Insured** and **QBE**) shall advise that the settlement proposed is inappropriate in all the circumstances.
- (b) Notwithstanding anything to the contrary in the conditions incorporated into this **Policy**, **QBE** shall not be entitled to take over or conduct any proceedings arising out of or relating to any claim under this **Policy** unless:
  - (i) the **Primary and/or Underlying Insurer or Insurers** have admitted liability to indemnify the **Insured** for the full amount of the limit of indemnity of the **Primary and/or Underlying Policy or Policies**; or
  - (ii) such **Primary and/or Underlying Insurer or Insurers** consent to **QBE** taking over or conducting the proceedings.

### 6. Insured's Obligation to Consult

In the event that any claim appears likely to exceed 50% of the total limit of indemnity (for each and every claim and/or in the aggregate) of the **Primary and/or Underlying Policy or Policies**, the **Insured** shall keep **QBE** fully informed of all significant developments and shall consult **QBE** in relation to any significant step proposed to be taken in the defence or settlement of the claim.

### 7. Insured's Right to Contest

In the event that **QBE** recommends settlement in respect of any claim and the **Insured** does not agree that such claim should be settled, then the **Insured** may elect to contest such claim. PROVIDED ALWAYS THAT **QBE's** total liability in connection with such claim shall not exceed the amount for which the claim could have been so settled plus the costs and expenses incurred with **QBE's** written consent up to the date of such election.

### 8. Legal Costs Contribution

In the event of a claim being admitted to which **QBE** may be liable to contribute, no legal costs shall be incurred on their behalf without their consent being first obtained and if **QBE** shall consent they shall only contribute the proportion that their share of the claim as finally settled bears to the total amount payable.

If, however, a settlement of the claim be practical prior to the claim proceeding to determination by a court of law whether by compromise or otherwise for an amount not exceeding the limit of indemnity of the **Primary and/or Underlying Policy or Policies** no legal costs shall be payable by **QBE**.

### 9. Legal Counsel Clause

- (a) **QBE** shall not require the **Insured** to contest any claim unless a Legal Counsel shall advise that such claim should be contested.
- (b) In formulating such advice, Legal Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely costs and expenses and the prospects of the **Insured** successfully defending the claim.



**10. Limit of Indemnity**

**QBE's** total liability under this **Policy** for all claims shall not exceed the aggregate **Limit of Indemnity**.

**11. Maintenance of Underlying Policy or Policies/Drop-Down Provisions**

The **Insured** agrees that the **Primary and/or Underlying Policy or Policies** shall be maintained in full effect during the **Period of Insurance** except for any reduction in the aggregate limit solely by payment of claims made during the **Period of Insurance**.

The failure of the **Insured** to comply with the foregoing shall not invalidate this **Policy** but in the event of such failure, **QBE** shall only be liable to the same extent as if the **Insured** had complied with this condition.

In the event of the exhaustion of any aggregate limit whether partial or total of the **Primary and/or Underlying Policy or Policies** by reason of payment of claims thereunder this **Policy** shall:

- (a) in the event of partial exhaustion pay in excess of the reduced **Primary and/or Underlying Policy or Policies**;
- (b) in the event of total exhaustion continue in force as the **Primary and/or Underlying Policy or Policies** on the same policy conditions, exclusions, extensions and endorsements of the primary policy EXCEPT as otherwise stated herein.

**12. Policy Construction and Interpretation**

- (a) The construction, interpretation and meaning of the provisions of this **Policy** shall be determined in accordance with the law of the state, territory or country in which this **Policy** is issued, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country.
- (b) The marginal notes and titles of paragraphs in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or interpretation.
- (c) Under this **Policy**, the masculine includes the feminine, and the singular includes the plural and vice versa.

**13. Reporting and Notice**

The **Insured** shall as a condition precedent to their right to be indemnified under this **Policy** shall give written notice to **QBE** of the following:

- (a) any claim made against the **Insured**;
- (b) the receipt of notice from any person of an intention to make a claim against the **Insured**;
- (c) any circumstances of which the **Insured** shall become aware during the **Period of Insurance** which is likely to give rise to a claim against the **Insured**;

irrespective of the **Insured's** views as to the validity of the claim.

Any subsequent claim or claims arising out of the circumstances first notified to **QBE** (whether such circumstances are notified as part of an actual claim made against the **Insured** or any intimation thereof or otherwise) during the **Period of Insurance** shall be deemed to have been made during the same **Period of Insurance** in which such notice was given irrespective as to whether such subsequent claim or claims are made after the expiry of this **Policy**.

**14. Subrogation**

In the event of any payment under this **Policy**, **QBE** shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery, and the **Insured** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable **QBE** effectively to bring suit in the name of the **Insured**.

**15. Premium Warranty**

It is fundamental and absolute special condition of this **Policy** that the **Premium** due must be paid to and received by **QBE** within sixty (60) days of the inception date of this **Policy/endorsement/renewal** certificate. If this condition is not complied with, this **Policy** is automatically cancelled and **QBE** shall be entitled to pro rata premium for the period **QBE** have been on risk.

Where the **Premium** payable pursuant to this condition is received by an authorized agent of **QBE**, the payment shall be deemed to be received by **QBE** for the purposes of this condition and the onus of proving that the **Premium** payable was received by a person, including an insurance agent, who was not authorize to receive such **Premium** shall lie on **QBE**.

**D. DEFINITIONS**

1. "**Act of Terrorism**" shall mean an act, including but not limited to the use of force or violence and/or 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) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.
2. "**Insured**" shall mean the entity specified as the **Insured** in the **Schedule** and shall incorporate the definition of the "Insured" applying in the **Primary and/or Underlying Policy or Policies**.
3. "**Limit of Indemnity**" shall mean the limit of **QBE's** total liability under this **Policy** as specified in the **Schedule**.
4. "**Period of Insurance**" shall mean the period specified in the **Schedule**.



5. **“Policy”** shall mean:
  - (a) the **Schedule**, terms, conditions, definitions and exclusions contained herein;
  - (b) any endorsement attaching to and forming part of this **Policy** either at inception or during the **Period of Insurance**;
  - (c) the **Proposal**.
6. **“Premium”** shall mean the **Premium** specified in the **Schedule** or in any endorsement to the **Schedule**.
7. **“Primary and/or Underlying Policy or Policies”** shall mean the primary and other subsequent layer professional indemnity policy or policies effected in connection with the placement of the **Insured**'s professional indemnity insurance program and which are intended to provide indemnity to the **Insured** in respect of any one claim before any indemnity which may be available to the **Insured** under this **Policy**.
8. **“Primary and/or Underlying Insurer or Insurers”** shall mean the insurers to the **Primary and/or Underlying Policy or Policies** effected in connection with the placement of the **Insured**'s professional indemnity insurance program.
9. **“Proposal”** shall mean the written **Proposal** made by the **Insured** to **QBE** containing particulars and statements which, together with other information relating to the **Insured** are the basis of this **Policy** and are considered as incorporated herein.
10. **“QBE”** shall mean QBE Insurance (Malaysia) Berhad.
11. **“Schedule”** shall mean the **Schedule** to this **Policy**.

**IMPORTANT NOTICE:**

The following are channels available for complaints on insurance related matters. You can contact our Complaint Unit for assistance at 03-7861 8400 or the following authorised bodies:

1. FINANCIAL MEDIATION BUREAU (FMB)  
LEVEL 25, DATARAN KEWANGAN DARUL  
TAKAFUL  
NO. 4, JALAN SULTAN SULAIMAN  
50000 KUALA LUMPUR  
TEL : 03-2272 2811  
FAX : 03-2274 5752
2. LAMAN INFORMASI NASIHAT DAN KHIDMAT (LINK)  
BANK NEGARA MALAYSIA  
P.O BOX 10922  
50929 KUALA LUMPUR  
TEL: 1-300-88-5465 (LINK)  
FAX: 03-2174 1515