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QBE Specific Project Professional Indemnity Insurance POLICY

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.

“WE WOULD REMIND YOU THAT YOU MUST DISCLOSE TO US, FULLY AND FAITHFULLY, THE FACTS YOU KNOW OR OUGHT TO KNOW, OTHERWISE YOU MAY NOT RECEIVE ANY BENEFIT FROM YOUR POLICY.”

PIDSPI001-Q-1212

**QBE Specific Project
Professional Indemnity Insurance
POLICY**

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1. PREAMBLE

- 1.1 **Premium**
When **You** pay to **Us** the **Premium**, **We** will provide **You** with the cover **You** have chosen as set out in this **Policy**.
- 1.2 **Policy**
This **Policy**, the **Proposal Form**, the **Schedule** and any endorsement attached will be read as one contract and any word or expression will carry its ordinary meaning unless the word has been defined.
- 1.3 **Claims Made**
This **Policy** operates on a 'claims made and reported' basis. This means that **We** will cover **You** for **Claims** made against **You** and notified to **Us** during the **Period of Insurance**. This **Policy** does not cover **You** for:
- 1.3.1 acts, errors or omissions actually or allegedly committed before the **Retroactive Date** of the **Policy**; or
- 1.3.2 **Claims** made after the expiry of the **Period of Insurance** even though the event which leads to the **Claim** may have occurred during the **Period of Insurance**; or
- 1.3.3 **Claims** notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy; or
- 1.3.4 **Claims** made, threatened or intimated against **You** before the commencement of the **Period of Insurance**; or
- 1.3.5 facts or circumstances of which **You** first became aware before the **Period of Insurance**, and which **You** knew or ought reasonably to have known had the potential to lead to a claim under this **Policy**; or
- 1.3.6 **Claims** arising out of circumstances declared in the **Proposal Form** for the current **Period of Insurance** or any previous proposal form.

2. COVER

- 2.1 **Civil Liability**
We will pay **You** or on **Your** behalf for:
- 2.1.1 any legal liability to pay **Compensation**; and
- 2.1.2 any costs and expenses awarded against **You**;
- arising from any civil liability resulting from a **Claim** for breach of professional duty in the conduct of **Your Business** provided that the **Claim** is first made during the **Period of Insurance** and reported to **Us** during the **Period of Insurance**.
- 2.2 **Defence Costs and Expenses**
Where cover is provided by this **Policy**, **We** will also pay **You** or on **Your** behalf for any reasonable costs and expenses (including taxes and interest applying, but not loss of earnings) incurred in the defence of any **Claim** made against **You**, provided that **We** have agreed in writing to such payment. Any payment under this clause will be included in the **Limit of Indemnity**.

3. SCOPE OF COVER

This **Policy** covers **Your** civil liability, which includes liability for:

- 3.1 **Breach of Confidentiality – Claims** arising from any unintentional breach of confidentiality or misuse of information in the conduct of **Your Business**.
- 3.2 **Contractual Liability (Tort Liability) – Claims** arising from a breach of contractual obligations or a duty of care to provide professional services in the conduct of **Your Business**, but this does not extend to cover any liability assumed by **You** under any express warranty, guarantee, representation, hold harmless agreement, indemnity contract or similar agreement unless such liability would attach in the absence of any such agreement.
- 3.3 **Defamation – Claims** arising from defamation but not defamation made by **You** or at **Your** direction with the knowledge of the falsity of the statement.
- 3.4 **Infringement of Intellectual Property Rights – Claims** arising from any unintentional infringement of intellectual property rights which includes any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism.
- 3.5 **Loss of Documents – Claims** arising from the loss of **Your** or any third party's **Documents**, for which **You** are legally responsible, that have been destroyed, damaged, lost or mislaid, and after diligent search or attempts to recover them, cannot be found or recovered.
- 3.6 **Trade Practices and Related Legislation – Claims** brought under any consumer protection, competition, fair trading or any equivalent legislation.
- 3.7 **Vicarious Liability – Your** liability in respect of the work done by a third party for **You** or on **Your** behalf pursuant to a contract between **You** and the third party, however this does not extend to cover any such third party for their own liabilities.

4. AUTOMATIC EXTENSIONS

We agree to provide **You** with the following cover for nil additional premium, provided that nothing contained here will increase the **Limit of Indemnity** that **We** are providing under this **Policy**.

- 4.1 **Compensation for Court Attendance – We** will compensate **You** for **Your** legally compellable attendance at any court hearing, arbitration or formal interview as a witness of fact in connection with a **Claim** notified to **Us** provided that:
- 4.1.1 such attendance is considered by **Us** to be necessary or beneficial to reduce liability which may result in a payment under this **Policy**; and

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- 4.1.2 **We** have given **Our** written consent prior to **Your** attendance; and
- 4.1.3 no **Deductible** shall apply to this extension; and
- 4.1.4 such compensation shall be limited to RM250 for each of **You** or per **Employee** of **Yours** per day; and
- 4.1.5 the maximum amount provided by this extension shall not exceed RM10,000 in the aggregate.
- 4.2 **Intentional Acts** – **We** will cover **You** for **Claims** in relation to **Your** conduct or the conduct of **Your Employees**, contractors or consultants which would otherwise have been excluded by Exclusion 6.8 Intentional Acts (Fraudulent, Dishonest and Criminal Acts and Statutory Breaches) provided that **You** are not proven to have committed or condoned the intentional act.
- We** will not cover loss of money, including but not limited to cash, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.
- 4.3 **Official Investigation and Enquiry Costs and Expenses** – **We** will pay for any costs and expenses reasonably incurred with **Our** prior written consent in the official investigation or enquiry of any complaint or notification provided that:
- 4.3.1 any such official investigation is in relation to a breach of professional duties in the conduct of **Your Business**;
- 4.3.2 the investigation, examination or enquiry, or notice of intended investigation, examination or enquiry is commenced during the **Period of Insurance** and is notified by **You** to **Us** during the same **Period of Insurance**;
- 4.3.3 **We** shall be entitled, at **Our** discretion, to appoint legal representation to represent **You** in the investigation, examination or enquiry;
- 4.3.4 the maximum amount provided by this extension shall not exceed RM200,000 in the aggregate under this **Policy**.
- For the purpose of this extension, an official investigation includes an investigation, examination or enquiry by way of a royal commission or coronial enquiry conducted by a regulatory authority or equivalent or any disciplinary committee of any association or professional body of which **You** are a member, but does not include any investigation, examination or enquiry conducted by a parliament or equivalent body.
- 4.4 **Replacement Documents Costs** – **We** will cover **You** for costs and expenses incurred to replace **Your** or any third party's **Documents**, for which **You** are legally responsible, that have been destroyed, damaged, lost or mislaid, and after diligent search or attempts to recover them, cannot be found or recovered provided that:
- 4.4.1 such **Documents** were placed in **Your** physical custody or control in the ordinary course of **Your Business**; and
- 4.4.2 the loss was discovered during the **Period of Insurance** and **You** reported this loss to **Us** during the **Period of Insurance**; and
- 4.4.3 **We** will cover **You** for the reasonable costs of replacement incurred with **Our** prior written consent but not for any consequential loss, which includes.
- 4.4.3.1 loss of income, profits or business; and
- 4.4.3.2 loss of opportunity; and
- 4.4.3.3 damage to the goodwill and the reputation of **Your Business**;
- however arising.
- 4.4.4 **We** will not cover **You** for:
- 4.4.4.1 the theft, corruption or erasure of any data by a computer virus or **Your** former **Employee**, partner or principal; or
- 4.4.4.2 damage to **Documents** caused by gradual deterioration, wear and tear, or the actions of moths, vermin or insects.
- 4.4.5 the maximum indemnity provided by this extension shall not exceed ten (10) percent of the **Limit of Indemnity** in the aggregate under this **Policy**.
- 4.4.6 the **Deductible** applicable for this extension shall be RM1,000 for each and every claim.

5. OPTIONAL EXTENSIONS

Where **We** have listed in the **Schedule** the following optional extensions as being provided, **We** agree to provide **You** with the following cover, provided that nothing contained here will increase the **Limit of Indemnity** that **We** are providing under this **Policy**

- 5.1 **Pure Economic Loss Cover** – Notwithstanding Exclusion 6.19 'Pure Economic Loss', **We** will cover **You** against any **Claim** for pure economic loss arising from any civil liability in the performance of **Your Business**.
- 5.2 **Loss Mitigation and Rectification Costs Cover** – **We** agree to indemnify **You** against any direct costs and expenses reasonably incurred with **Our** prior written consent in respect of any action to mitigate or rectify a negligent act, error or omission that would otherwise be the subject of a **Claim** under this **Policy**, provided
- 5.2.1 **You** provide **Us** with written notice with details and the probability of an eventual **Claim** being made against **You** in the absence of **You** undertaking such mitigatory or rectification action, during the **Period of Insurance** and prior to **Your** assumption of liability; and
- 5.2.2 such costs and expenses shall not include any element of profit or loss of profit, nor any element of overheads, staff remuneration, standing idle time or management time of **Yours**; and
- 5.2.3 **We** are reasonably satisfied that such mitigation or rectification costs and expenses are necessary to prevent or reduce the amount a potential **Claim** covered under this **Policy** and that the amount of loss prevented or reduced would be greater than the cost of the work; and

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- 5.2.4 mitigatory or rectification action is undertaken prior to issuance of any practical completion or take-over certification to be issued under the contract; and
- 5.2.5 **We** have consented in writing to the payment of such costs before work is carried out where such consent is not to be unreasonably withheld.

6. EXCLUSIONS

We will not pay for:

- 6.1 **Airside and Marine Liability** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by damage or injury to aircraft, watercraft, passengers or crew.
- 6.2 **Asbestos** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by asbestos, asbestos fibres or derivatives of asbestos. However this will not apply to any **Claim** or part of any **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.
- 6.3 **Assumed Duty or Obligation** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by **Your** assumption of any liability which is outside the normal course of **Your Business**.
- 6.4 **Bribes and Illegal Payment** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by:
- 6.4.1 payments, commissions, gratuities, benefits or any other favours to or for the benefit of any full or part-time domestic or foreign governmental or armed forces officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated; or
- 6.4.2 payments, commissions, gratuities, benefits or any other favours to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, principal shareholder or owners or employees or affiliates of any customers of **Yours** or any members of their family or any entity which they are affiliated; or
- 6.4.3 political contributions, whether domestic or foreign; or
- 6.4.4 the receipt by **You** of any profit, remuneration or advantage to which **You** are not entitled.
- 6.5 **Fines and Penalties** – any fines and/ or penalties
- 6.6 **Insured vs. Insured** – any **Claim**:
- 6.6.1 by or on behalf of **You**; or
- 6.6.2 by or on behalf of any parent, **Subsidiary** or associated company of **Yours**; or
- 6.6.3 from any **Family Member**.
- 6.7 **Insolvency** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed by the insolvency, bankruptcy, receivership or liquidation of any party involved in the **Project**.
- 6.8 **Intentional Acts (Fraudulent, Dishonest and Criminal Acts and Statutory Breaches)**
- 6.8.1 any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by an actual act or omission by **You** or **Your Employees**, contractors or consultants which was fraudulent, dishonest, malicious, criminal or in reckless disregard; and
- 6.8.2 any liability arising directly or indirectly out of, in consequence of, or contributed to by any wilful breach of any statute, regulation, contract or duty by **You** or **Your Employees**, contractors or consultants.
- 6.9 **Internal Expenses and Overheads** – internal expenses, overhead expenses and all other costs and expenses which would have been incurred even if there was not any **Claim**, circumstance and/or notification.
- 6.10 **Management Liability** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by **Your** activity not undertaken as part of the provision of professional services in the conduct of **Your Business**, and where such **Claim** or inquiry costs arise in connection with **Your** functions and duties as a director and/or officer of any legal entity and/or corporation and/or incorporated body.
- 6.11 **Management Services** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by **You** or **Your** liability in respect of the work done by a third party for **You** or on **Your** behalf pursuant to a contract between **You** and the third party in relation to:
- 6.11.1 any aspect of insurance, investment, marketing, law or tax; or
- 6.11.2 the provision of or failure to provide finance; or
- 6.11.3 any estimate of construction costs, unless such estimates are compiled by professionally qualified engineers or surveyors; or
- 6.11.4 the cost of a project, or any part thereof, exceeding any financial estimate, limit or forecast.
- 6.12 **Nuclear** – any **Claim** 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.
- 6.13 **Obligation to Employees** – any **Claim**:
- 6.13.1 for bodily injury, mental injury, sickness, disease or death of any one of **Your** employees arising out of, or in the course of their employment;
- 6.13.2 for damage to, destruction of, including loss of use of, any property of **Yours** arising out of, or in the course of, **Your** employment.

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- 6.14 **Occupiers Liability** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by any liability incurred or alleged to have been incurred as a result of any occupation or ownership of real property and /or real estate by **You**.
- 6.15 **Pollution**
- 6.15.1 any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by:
- 6.15.1.1 the actual or alleged discharge, release or escape of Pollutants arising from the design or specification of equipment or structures which are critical to, and designed with the intention of, restricting the release of Pollutants into the environment; or
- 6.15.1.2 any enforcement action or proceeding in connection with the containment, clean up, removal or treatment of such Pollutants.
- 6.15.2 For the purpose of this exclusion, Pollutants shall mean:
- 6.15.2.1 any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals; or
- 6.15.2.2 any waste materials including materials recycled, reconditioned or reclaimed; or
- 6.15.2.3 any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.
- 6.16 **Prior, Pending and Known Claims or Circumstances**
- 6.16.1 any **Claim** made or intimated against **You** prior to the commencement of the **Period of Insurance**;
- 6.16.2 any fact or circumstances occurring prior to the **Period of Insurance** that **You**:
- 6.16.2.1 ought reasonably to have known could lead to a **Claim**; or
- 6.16.2.2 notified under any previous policy.
- 6.17 **Products** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by the defect in any product or good manufactured, supplied, sold, installed or assembled by **You** or on **Your** behalf.
- 6.18 **Punitive Damages** – any punitive damages and/or exemplary damages and/or aggravated damages and/or any additional damages resulting from the multiplication of compensatory damages.
- 6.19 **Pure Economic Loss** – any **Claim** for pure economic loss
- 6.20 **Refund of Fees** – refund of fees charged to a third party and the related costs and expenses.
- 6.21 **Retroactive Date** – any **Claim** arising out of **Your** activities carried out prior to the **Retroactive Date**.
- 6.22 **Terrorism** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by 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 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.
- For the avoidance of doubt, **We** shall not be liable under this **Policy** to indemnify **You** 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:
- 6.22.1 any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or
- 6.22.2 any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.
- 6.23 **Trading Debts** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by any of **Your** trading debts or trading losses, or any guarantee or undertaking given by **You** for a debt or performance of any obligation by a third party.
- 6.24 **Untested Technology** - any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by the use of prototype technology or technology that has not previously been successfully utilised on commercial basis.
- 6.25 **USA/Canada Territory and Jurisdiction** – any **Claim**:
- 6.25.1 arising from any civil liability incurred in the United States of America / Dominion of Canada or any of their territories or protectorates; or
- 6.25.2 brought in a court of the United States of America / Dominion of Canada or any of their territories or protectorates.
- 6.26 **War** – any **Claim** directly or indirectly arising out of, in consequence of, or contributed to by war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, military rising, insurrection, rebellion, revolution, military or usurped power, martial law or looting or pillaging in connection therewith, strike, lock-out, riot, civil commotion assuming the proportions of or amounting to a popular rising, mutiny, or confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public authority.

7. CONDITIONS

- 7.1 **Advanced Payment of Defence Costs Until Final Adjudication** – **We** may, at **Our** discretion, advance defence costs and expenses to **You** prior to the final disposition or until the final non-appealable adjudication of any **Claim** covered under this **Policy**. If **We** advance such defence costs and expenses to **You**, **We** retain **Our** rights to stop any such

advancement and to recover such defence costs and expenses from **You** once it has been determined that **You** were not entitled to such cover under this **Policy**.

- 7.2 **Allocation** – In the event that any **Claim** made against **You** comprises of matters which are covered under this **Policy** and matters which are not covered under this **Policy**, **We** will only pay for fair and reasonable amounts that properly reflect the amounts which relate solely to matters which are covered under this **Policy**.

If you disagree with the amount **We** propose, a mutually agreed senior counsel will be engaged as an expert to determine a fair and reasonable amount. **We** are entitled to pay for any amounts that **We** deem as appropriate until such determination.

- 7.3 **Alteration of Risk** – In the event of any material change in **Your** risk covered under this **Policy**, **You** will inform **Us** in writing as soon as practicable and **We** will be entitled to amend the terms and conditions of this **Policy** and/or charge additional premium if **We** deem that there has been an increase in risk exposure. If **You** do not accept **Our** terms, this increased risk exposure will not be covered under this **Policy**.

- 7.4 **Assignment of Interest** – No change in, or modification of, or assignment of interest under this **Policy** shall be effective except when made by written endorsement to this **Policy** and signed by an authorised employee of **Ours**.

- 7.5 **Cessation of Entities (Automatic Run-off)** – In the event that any **Named Insured** ceases to exist or operate or is consolidated with, merged into or acquired by another entity, the cover provided to such **Named Insured** will automatically be limited to cover civil liability incurred prior to the effective date on which such entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity, unless otherwise agreed in writing by **Us**.

- 7.6 **Claim Assessment Costs** – **We** will pay all costs and expenses incurred to assess **Our** liability under this **Policy**.

- 7.7 **Claims Cooperation** – **You** will provide **Us** with all information and assistance that **We** may reasonably require to investigate and/or defend any **Claim** and/or circumstance.

- 7.8 **Deductibles** – Only one **Deductible** will apply to each and every **Claim** and **You** will be responsible for the first amounts of every **Claim** up to the **Deductible** amount which applies. In the event that **We** pay for the **Deductibles** in the first instance, **You** will reimburse **Us** with the amount, up to the **Deductible** amount, within thirty (30) days of **Us** paying.

- 7.9 **Defence and Settlement of Claims** – **We** may:

7.9.1 instruct **You** to conduct the defence of the **Claim** if **We** believe that the **Claim** will not exceed the **Deductible**, in which case **You** will be responsible for **Your** own costs and expenses and any settlement up to the **Deductible** amount. In the event that any costs and expenses or payment made to dispose of the claim exceeds the **Deductible**, **We** will reimburse **You** all reasonable costs and expenses;

7.9.2 take over and conduct, in **Your** name, the defence or settlement of any **Claim** at any time, in which case **We** will then have sole control of the **Claim**.

- 7.10 **Jurisdictional Limitation** – The cover provided by this **Policy** shall apply to **Claims** brought anywhere in the world, except:

7.10.1 **Claims** made and actions instituted within the United States of America or the Dominion of Canada or any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada;

7.10.2 **Claims** and actions to which the laws of the United States of America or the Dominion of Canada apply;

7.10.3 **Claims** arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

- 7.11 **Limit of Indemnity (Inclusive of Defence Costs and Expenses)** - **Our** total liability in respect of all **Claims** or losses, including costs and expenses, during the **Period of Insurance**, will not exceed the aggregate **Limit of Indemnity**.

- 7.12 **Mediation and Arbitration** – In the event that there is a dispute in relation to the construction, interpretation and meaning of the provisions of this **Policy**, the dispute will first be referred to the Malaysian Mediation Centre, or its equivalent, and the matter to be conducted in accordance with the mediation centre's rules. **You** and **We** agree to participate in the mediation in good faith, abide by the rules and procedure of the mediation centre and be bound by any settlement and agreements reached through the mediation.

If the dispute is not resolved at mediation, the matter will be referred to Kuala Lumpur Regional Centre of Arbitration 'KLRCA' for resolution, where a sole arbitrator shall be appointed by the Chairman of KLRCA.

- 7.13 **Multiple Claims** – if more than one **Claim** arises from the same originating cause, these **Claims** shall constitute one **Claim** under this **Policy** and only one **Deductible** shall apply.

- 7.14 **Non-cancellable** – This **Policy** is not cancellable, except on the ground of non-payment of **Premium**. Any **Premium** chargeable is deemed fully earned at the date of **Policy** inception.

- 7.15 **Not to Admit, Negotiate or Repudiate** – **You** will not admit, negotiate or repudiate any **Claim**, fact and/or circumstance. **We** will not be liable for any **Claim**, fact or circumstance and/or any costs and expenses incurred without **Our** prior written consent. Provided that **You** comply with this condition, **We** shall not unreasonably withhold or delay any such consent.

- 7.16 **Notices to Us** – Notice of any **Claim** or circumstance must be given as soon as practicable and in writing to:

Claims Manager

QBE Insurance (Malaysia) Berhad

No 638, Level 6, Block B1, Leisure Commerce Square

No. 9, Jalan PJS 8/9

46150 Petaling Jaya

Selangor Darul Ehsan

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- 7.17 **Notices to You** – any written notice that **We** give to the first **Named Insured** will be deemed to have been given to all of **You** and shall be effective immediately on receipt by the first **Named Insured** of a personal delivery or electronic communication sent from **Us** or in the case of notices by post, three (3) business days after having been posted by **Us** to **Your** last address known to **Us**.
- 7.18 **Notification of Circumstances Leading to a Claim** – **You** will notify **Us** as soon as practicable in writing of any fact or circumstance which may reasonably lead to a **Claim** that **You** become aware of during the **Period of Insurance**. Any **Claim** which subsequently arises out of this fact or circumstance will be deemed to have been made during the **Period of Insurance**.
- 7.19 **Other Insurance** – If any **Claim** or circumstance notified under this **Policy** is payable under another insurance policy or equivalent, then this **Policy** will only pay after the indemnity provided by that other insurance has been exhausted or after the **Deductible** has been fully paid, whichever is the greater, unless such other policy is written to be **Your** annualised professional indemnity insurance policy and is not specifically covering this **Project**.
- 7.20 **Policy Construction and Interpretation:**
- 7.20.1 The **Proposal Form** shall form the basis of this contract.
- 7.20.2 The construction, interpretation and meaning of the provisions of this **Policy** shall be determined in accordance with the laws of the state, administrative region, territory or country in which this **Policy** is issued and any dispute relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, administrative region, territory or country.
- 7.20.3 The marginal notes and titles of paragraphs in this **Policy** are included for descriptive purposes only and do not form any part of this **Policy** for the purpose of its construction or interpretation.
- 7.20.4 Under this **Policy**, the masculine includes the feminine and the singular includes the plural and vice versa.
- 7.21 **Premium Payment Warranty** – Any premium due must be paid and received by **Us** within sixty (60) days of the inception of this **Policy**. In the event that **We** do not receive such payment, this **Policy** will be automatically void from inception.
- 7.22 **Reasonable Care to Mitigate Losses** – If **You**, either prior to or during the **Period of Insurance** become aware of a situation which could, if not rectified, lead to a **Claim** or increase the quantum of a **Claim**, **You** will use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability under this **Policy**. Unless Optional Extension 5.2 Loss Mitigation and Rectification Costs has been provided and subject to the terms of Optional Extension 5.2 Loss Mitigation and Rectification Costs, compliance with this condition shall be at **Your** own cost.
- 7.23 **Reporting of Claims** – **You** will give **Us** written notice of:
- 7.23.1 any **Claim** made against **You**; or
- 7.23.2 the receipt of notice from, or information as to any intention by any party to claim against **You**;
as soon as practicable.
- 7.24 **Severability and Non-Imputation** – If there are more than one **Named Insured** under this **Policy**, or if any one **Named Insured** is comprised of more than one party:
- 7.24.1 any failure on the part of any of the parties to:
- 7.24.1.1 comply with their duty of disclosure; or
- 7.24.1.2 comply with any term or condition in this **Policy**; or
- 7.24.2 the misrepresentation by any of the parties to **Us** before this contract of insurance was entered into; or
- 7.24.3 the commission by any of the parties of any act that would be excluded by Exclusion 6.8 Intentional Acts (Fraudulent, Dishonest and Criminal Acts and Statutory Breaches);
- will not prejudice the rights of the other parties to the cover provided under this **Policy** provided that such other parties:
- 7.24.4 are entirely innocent and had no prior knowledge of any of the failure of or commission of the acts mentioned above; and
- 7.24.5 inform **Us** as soon as practicable in writing with all relevant information and circumstances after becoming aware of the failure of or commission of the acts mentioned above.
- 7.25 **Statutory Compliance**
- If any provision in this **Policy** is inconsistent with the law of the country state or territory applying to any **Claims** made or actions instituted:
- 7.25.1 where such provision can be read in a manner to make it valid and enforceable, it shall be read to the extent to achieve that result; or
- 7.25.2 in any other case, such provision shall be deemed deleted from this **Policy** in order to make this **Policy** valid and enforceable.
- 7.26 **Subrogation of Rights** – Where **We** have paid a **Claim** under this **Policy**, **We** become entitled to all **Your** rights of recovery, and **You** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including but not limited to the execution of documents and giving of evidence necessary to enable **Us** to effectively bring suit in **Your** name.
- We** will not subrogate against any principal, partner, director or **Employee** or former **Employee** of **Yours** under this **Policy** unless that person is found to have committed an act that would otherwise have been excluded by Exclusion 6.8 Intentional Acts (Fraudulent, Dishonest and Criminal Acts and Statutory Breaches).

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- 7.27 **Territorial Limitation** – The cover provided by this **Policy** shall apply to civil liability incurred anywhere in the world, except within the United States of America or the Dominion of Canada or any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada
- 7.28 **Your Right to Contest** – In the event that **We** recommend a settlement in respect of any **Claim** and **You** do not agree that such **Claim** should be settled, **You** may elect to contest such **Claim**, provided that **Our** liability in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been settled plus the costs and expenses incurred with **Our** written consent up to the date of such election, less the **Deductible**.

8. DEFINITIONS

- 8.1 **Claim** – means:
- 8.1.1 the receipt by **You** of any written or verbal notice of demand for **Compensation** made by a third party against **You**;
- 8.1.2 any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter-claim or third or similar party notice served upon **You**.
- 8.2 **Compensation** – means monies paid or agreed to be paid by judgment, award or settlement for civil liability and/ or costs of non-monetary civil relief, including any costs awarded against **You**.
- 8.3 **Deductible** – means the amount **You** first bear in relation to each **Claim** and as specified in the **Schedule**. The **Deductible** applies to all amounts payable under this **Policy** including the cover provided under clause 2.2 Defence Costs and Expenses.
- 8.4 **Documents** – means deeds, wills, agreements, 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 instrument.
- 8.5 **Employee** – means any person employed under a contract of service or apprenticeship during or prior to commencement of the **Period of Insurance**.
- 8.6 **Family Member** – means:
- 8.6.1 any spouse, companion (who permanently resides with **you**), or domestic partner of **Yours**; or
- 8.6.2 any parent of **Yours**, or parent of **Your** spouse, partner or companion; or
- 8.6.3 any sibling or child of **Yours**.
- 8.7 **Limit of Indemnity** – means the applicable limit of liability specified in the **Schedule**.
- 8.8 **Named Insured** – means the person, persons, partnership, company, corporation or other entity specified as the insured in the **Schedule**.
- 8.9 **Named Principal** – means the persons, partnership, company, corporation or other entity specified as the principal in the **Schedule**.
- 8.10 **Period of Insurance** – means the period specified in the **Schedule**.
- 8.11 **Policy** – means this document, the **Proposal Form**, the **Schedule** and each endorsement issued by **Us** and attached or intended to be attached to it.
- 8.12 **Project** – means the project specified in the **Schedule** and described in the **Proposal Form**.
- 8.13 **Proposal Form** – means the written proposal made by **You** to **Us** containing particulars and statements which, together with any other information provided by **You** to **Us**, form the basis of this **Policy**.
- 8.14 **Retroactive Date** – means the date stated as the retroactive date in the **Schedule**
- 8.15 **Schedule** – means the schedule of insurance including any endorsement schedule given to **You** by **Us**.
- 8.16 **Subsidiary** – means:
- 8.16.1 any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the **Named Insured**;
- 8.16.2 any entity over which the **Named Insured** is in a position to exercise effective direction or control.
- 8.17 **We, Our, Us** – means QBE Insurance (Malaysia) Berhad.
- 8.18 **You, Your, Yours** – means:
- 8.18.1 the **Named Insured**;
- 8.18.2 any person who is, during the **Period of Insurance**, a principal, partner or director of the **Named Insured** but only in respect of work performed while a principal, partner or director of the **Named Insured**;
- 8.18.3 any person who is, during the **Period of Insurance**, an **Employee** of the **Named Insured** but only in respect of work performed while an **Employee** of the **Named Insured**;
- 8.18.4 any former principal, partner, director or **Employee** of the **Named Insured**, but only in respect of work performed while a principal, partner, director or **Employee** of the **Named Insured**;
- 8.18.5 the estates, heirs, legal representatives or assigns in the event of the death or incapacity of any person described in clauses 8.18.2, 8.18.3 and 8.18.4. provided that such persons observe and are subject to all the terms of this **Policy** insofar as they can apply;

8.18.6 any **Named Principal**, but only in respect of the liability of such **Named Principal** arising out of the performance by **You**, as described in clause 8.18.1, 8.18.2, 8.18.3 and 8.18.4 of any contract or agreement for the performance of work for such **Named Principal**, to the extent required by such contract or agreement, but limited in all to the extent of coverage and **Limit of Indemnity** as provided for in this **Policy**.

8.19 **Your Business** – means the business conducted by **You** under the name stated in the **Schedule**, in relation to the **Project**, and as described in the **Proposal Form**.

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:

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| 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 |
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