



## PROFESSIONAL INDEMNITY POLICY

**Important Notice:**

Please read the terms and conditions of this Policy carefully, and if there is any error or misdescription be found herein, or if the cover is not in accordance with your wishes, please return the policy to us immediately for alteration.

**THIS IS A CLAIMS MADE POLICY.****For Non-Consumer Insurance Contracts (Insurance for purposes related to the Insured's trade, business or profession)**

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

This Policy reflects the terms and conditions of the contract of insurance as agreed between the Insured and the Company.

Whereas the Insured carrying on business under the title stated in the Schedule has made to the Company a written proposal containing particulars and statements which are to be considered as incorporated in this policy and has paid the premium stated in the Schedule for the following indemnity during the period stated in the Schedule.

### INSURING CLAUSES

The Company agrees, subject to the following limitations, terms and conditions and subject to any policy endorsements:

1. to indemnify the Insured against any Claim for civil liability which may be made against the Insured during the period of insurance stated in the Schedule and notified to the Company in accordance with Condition 2 of this policy:
  - a) for actual or alleged breach of professional duty (including breach of confidentiality) in the profession stated in the Schedule; or
  - b) for any libel, slander or defamation by reason of words written or spoken by the Insured or any employee of the Insured;
  - c) for breach of trust; or
  - d) for any actual or alleged plagiarism or infringement of copyright, trademark, or registered design or patent, provided always that such breach or infringement is unintentional,by reason of any act, error or omission committed by the Insured in the conduct of the Insured's profession as stated in the Schedule; and
2. pay the costs and expenses incurred with the written consent of the Company in the defence or settlement of any such Claim. Such payments shall form part of the Limit of Indemnity and are not additional thereto.
3. pay on behalf of the Insured all reasonable costs, charges and expenses of legal representation incurred with the written consent of the Company (consent not to be unreasonable withheld) in attending a Professional Inquiry provided that notification of such attendance would be first served upon the Insured and notified to the Company during the period of insurance.

If, during the period of insurance stated in the Schedule, the Insured shall become aware of any circumstance(s) which may subsequently give rise to a Claim under this policy and elect, during the period of insurance stated in the Schedule, to give written notice to the Company of such circumstances, then any such Claim which may subsequently be made against the Insured arising out of such circumstances will be deemed to have been made during the period of insurance stated in the Schedule.

### EXCLUSIONS

1. This policy shall not indemnify the Insured in respect of any Claim or Claims made against them:
  - (a) brought about or contributed to by the dishonest, fraudulent, criminal, malicious or deliberate act, error or omission of the Insured (and/or any company or entity which has a beneficial interest in the Insured) or their predecessors in business; or
  - (b) by any Insured or by any person or legal entity having a financial interest in the Insured or by any company in which the Insured have a controlling interest; or
  - (c) for return of fees, commissions, costs or other charges paid to the Insured or for trading debts; or
  - (d) arising directly or indirectly out of any act, error or omission committed by or on behalf of the Insured prior to the retroactive date stated in the schedule, if a date is specified as such in the Schedule.

2. This policy shall not indemnify the Insured against any Claim in respect of liability imposed upon pursuant to any contract if such liability would not have been imposed upon the Insured in respect of absence of any such contract; or for fines, penalties or exemplary damages of any description.
3. This policy shall not indemnify the Insured for any legal liability of whatsoever nature arising directly or indirectly out of any act, error or omission committed within the territorial limits of the United States of America and/or Canada, its territories or protectorates.
4. The Company shall not be liable in respect of any action for damages brought against the Insured in a court of law of the United States of America and/or Canada, its territories or protectorates, nor in respect of the enforcement of judgements, orders or awards obtained in, or pursuant to, the laws of the United States of America and/or Canada, its territories or protectorates.
5. The Company shall not be liable in respect of any Claim or Claims for which the Insured are or would be entitled to any indemnity under any other insurance required by law to be in effect or any other insurance, statutory fund or fidelity fund of any description.
6. This policy shall not indemnify the Insured in respect of any Claim or Claims made against them prior to the commencement of the period of insurance stated in the Schedule nor in respect of any claim(s) or circumstance(s) notified under any previous policy, nor in respect of any claim(s) or circumstance(s) which may give rise to a Claim or Claims which was known to the Insured at the inception date of this insurance or which is stated on the proposal form, declaration or underwriting information, being the basis of this contract. This exclusion relates to the act, error or omission from which any claim(s) or circumstance(s) known to the Insured arises, irrespective of how, or whether, that claim(s) or circumstance(s) is declared to the Company.
7. This policy does not cover loss, damage or liability directly or indirectly occasioned by or happening through or in consequence of:
  - (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority; or
  - (b) 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 the 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), 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.

This exclusion also excludes loss, damage, liability, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above. If the Company alleges that by reason of this exclusion, any loss, damage, liability, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.
8. This policy does not cover loss, damage or liability directly or indirectly occasioned by, or
  - (a) caused by or arising from or in consequence of or contributed to by nuclear weapons materials, or
  - (b) arising from or in consequence of or contributed to by ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission.
9. This policy shall not apply to and does not cover any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of asbestos in whatever form or quantity.
10. This policy shall not indemnify the Insured in respect of any Claim or Claims made against them which relate to any duty or obligation assumed by the Insured which is not assumed in the normal conduct of the Insured's profession as stated in the Schedule.
11. This policy shall not indemnify the Insured for any legal liability arising directly or indirectly from the loss or destruction of or damage to any property in the care or custody of the Insured or any resulting loss or expense, including any consequential loss. However, this exclusion shall not apply in respect of Claims for loss of Documents in the care or custody of the Insured provided that such loss was not brought about by wear and tear or other gradually operating causes. For the purpose of this exclusion, "Documents" means deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms, and documents of any nature whatsoever, written, printed or reproduced by any other method but does not include bearer bonds, coupons, bank-notes and negotiable instruments.
12. The Company shall not be liable to indemnify the Insured against any claim or claims including costs and expenses brought about by or contributed to by or consequent upon or in any way arising out of any failure of any Computer (by whomsoever owned or operated) to recognise or respond to, correctly and effectively, any particular date or period of time (continuous or otherwise). "Computer" herein shall mean any computer or other electronic data processing device, equipment or system, any hardware, software, program, instruction, data or component utilised or intended to be utilised therein or thereby, or any actual or intended function of or process performed by any of the foregoing.

#### CONTINUOUS COVER CLAUSES

1. Notwithstanding Exclusion 6, in the absence of fraudulent non-disclosure and subject to clause 2 below, where:
  - (a) a Claim is made against the Insured by reason of an act, error or omission of the Insured which occurred prior to the period of insurance stated in the Schedule; and
  - (b) the Company was the Insured's professional indemnity insurer at the time when the Insured first became aware of the circumstance which subsequently gave rise to the Claim ("Circumstances"); and
  - (c) the Company continued without interruption as the Insured's professional indemnity insurer from the time when the Insured first became aware of the Circumstances up until such time as the Claim is made against the Insured and notified to the Company,

the Company agrees to indemnify the Insured against the Claim subject to and on the terms and conditions of this policy.

2. The Company reserves the right to reduce its liability in respect of the Claim by the amount which fairly represents the extent to which the Company's interests are prejudiced as a result of the late notification.
3. Where clauses 1 and 2 apply, the Company agrees that it will not deny indemnity for the Claim as a consequence of any non-disclosure on the part of the Insured with respect to the Claim.

#### **LIMIT OF LIABILITY & EXCESS CLAUSE**

1. The liability of the Company shall not exceed in the aggregate for all Claims under this policy (including the costs and expenses incurred in the defence or settlement of the Claims) the sum stated as the Limit of Indemnity in the Schedule.  
All Claims made against the Insured shall, unless they arise from acts, errors or omissions that are different and totally unrelated, be regarded as one aggregated Claim and the Company's total liability under this policy for the aggregated Claim (including the costs and expenses incurred in the defence or settlement of the aggregated Claim) shall not exceed the Limit of Indemnity.
2. In respect of each Claim made against the Insured (including any costs and expenses incurred in its defence, settlement or inquiry) the amount of the Excess specified in the Schedule shall be borne by the Insured at their own risk and the Company shall only be liable to indemnify the Insured in excess of such amount. Should any Claim made against the Insured involve more than one act, error or omission then the Excess specified in the Schedule shall apply to each such act, error or omission separately. All causally connected or interrelated negligent acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy.
3. The Excess will apply to any costs and expenses incurred with written consent of the Company in the defence, settlement, investigation or inquiry of any Claim first, and then to amounts (if any) which are subject to indemnity under clause 1 of the Insuring Clause.

#### **DEFENCE AND SETTLEMENT CLAUSE**

1. The Company shall be entitled to take over and conduct, in the name of the Insured, the defence or settlement of any Claim.
2. The Insured shall, when instructed by the Company, pay promptly (or within the terms of any proposed settlement) any amount for which the Insured is liable pursuant to clause 2 of the Limit of Liability & Excess Clause. Any failure or refusal by the Insured to make such payment shall entitle the Company to deduct such amount from any amount(s) required to settle any Claim, judgement, order or any other payment to be made by the Company under the policy.
3. The Insured shall not be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the Insured and the Company) shall advise that such proceedings should be contested.
4. In the event that the Company elects to settle any Claim the Company may discharge its total liability under the policy by paying the then available Limit of Indemnity to the Insured.
5. In the event that the Insured wishes to continue to contest any Claim which, in the opinion of the Company should be settled, then, with the consent of the Company the Insured may so elect, provided that the Company's liability in respect of any such Claim shall not exceed the amount for which, but for such election, the Claim could have been settled, together with costs and expenses payable in accordance with this policy and incurred up to the date of such election.
6. The Company may, if it believes that any Claim will not exceed the policy Excess, instruct the Insured to conduct the defence of the Claim. In such circumstances the Company will reimburse the Insured for all reasonable defence costs in the event that any payment made to dispose of the Claim by way of damages exceeds the policy Excess.

#### **CONDITIONS**

1. The Insured shall not admit liability for or settle any Claim or incur any costs or expenses in connection therewith without the written consent of the Company.
2. The Insured will, as a condition precedent
3. to any coverage under this policy, give the Company notice in writing as soon as practical and within forty-five (45) days of any Claim whether oral or in writing and will provide all information and assistance to the Company as it may reasonably require to enable it to investigate and defend any Claim and/or to enable the Company to determine its liability under the policy. Such information and assistance will include, but not limited to, releasing or causing to be released to the Company any and all data and documents the Company may require to determine the existence or extent of the Company's obligation and asserting all rights of contribution or indemnification as against any and all other culpable persons, entities or organisations.
4. On notification of any Claim under the policy, the Company may appoint legal representatives to investigate the Claim, and/or assume, direct and control the conduct of the defence of any allegation contained in any such Claim. As a condition precedent to any coverage under this Policy, the Insured must provide all information and assistance to the legal representatives appointed by or on behalf of the Company, and waive in favour of the Company legal professional privilege which may arise between the Insured and the legal representatives appointed by or on behalf of the Company in the conduct of such investigation or defence. The Company will pay such costs of defence and all such amounts shall be considered costs pursuant to Clause 2 of the Insuring Clause. If indemnity under the policy is subsequently denied, the Company's obligation to defend such claims will cease but the Insured agrees that the legal representatives appointed by or on behalf of the Company will continue to have a positive duty to the Company alone to advise and/or represent it on all matters pertaining to the Claim including, but not limited to, the Company's liability under the policy.
5. It is a condition precedent to Insured's right to be indemnified under this policy that the Insured shall exercise reasonable skill and care and do all things reasonably practicable to avoid or diminish any liability hereunder.
6. It is a condition precedent to the Insured's right to be indemnified under this policy that the Company shall be entitled to claim indemnity or contribution at any time in the name of the Insured from any party against whom the Insured may have (or had) such rights.

7. To be valid, this policy must have a Schedule attached signed by an authorised officer of the Company.
8. The interpretation of the terms, exclusions, limitations and conditions of this policy shall be determined in accordance with the laws of Malaysia.

#### PROPOSAL COMPLETION WAIVER CLAUSE

This policy will protect the interests of innocent members of the Insured (other than in the case of single principal operations) in that the Company will not void the policy because of the failure of a person guilty of dishonesty of any description to disclose such dishonesty on the proposal form, declaration or underwriting information being the basis of this contract.

#### CANCELLATION CLAUSE

1. The Insured or the Company may cancel this policy by giving 30 days notice in writing to the other party.
2. If the policy is cancelled by the Company, the Company will arrange a refund of premium pro-rata to the unexpired period of insurance.
3. If the policy is cancelled by the Insured, the Company will allow a refund of premium for the unexpired period of insurance calculated at the customary short period scale after deduction of the Value of The Incurred Claims, if any.
4. For the purpose of this clause, "Value of The Incurred Claims" shall mean the sum of:
  - (a) all the indemnity paid by the Company (including costs and expenses incurred) in all the Claims made against the Insured and reported to the Company during the period of insurance; and
  - (b) the total reserve for indemnity maintained by the Company as of a date three months after the date of cancellation of this policy in all the Claims made against the Insured and reported to the Company during the period of insurance.

#### SPECIAL INDEMNITY CLAUSE

The Company will indemnify the Insured, pursuant to the Insuring Clauses and subject always to all other limitations, terms, conditions and endorsements of this policy, against:

1. **Affiliation and Joint Venture**  
Claims made against the Insured arising from of the Insured's participation in any joint venture or affiliation with any other entity, provided always that the act, error or omission from which the Claim arose was committed by the Insured's staff; or
2. **Consultants, Sub-Contractors and Agents**  
Claims made against the Insured arising out of any act, error or omission committed or alleged committed by a consultant, sub-contractor or agent of the Insured engaged in the performance of any professional duties of the Insured stated in the Schedule provided that the rights of recourse against such consultants, sub-contractors or agents are not waived or otherwise impaired; or
3. **Estates and Legal Representatives**  
Claims for breach of professional duty of the Insured made against the estates, heirs, legal representatives or assigns of the Insured who are deceased or against the legal representatives or assigns of the Insured who are insolvent, bankrupt or incapable of managing their own affairs by reason of mental disorder or other incapacity.

#### OPTIONAL EXTENSION CLAUSES

##### Option 1 - Dishonesty of Employees

If a limit for this Extension is specified in the Schedule, Exclusion 1(a) shall not apply in respect of Claims for damages made against the Insured arising out of or contributed to by the dishonest, fraudulent, criminal, malicious or deliberate conduct of the Insured's employees (but not including any partner, director or controlling officer). However, no indemnity will be provided to any person committing or condoning such dishonest, fraudulent, criminal, malicious or deliberate act(s).

This extension does not cover claims arising out or in connection with for loss of money, negotiable instruments, bear bonds or coupons, stamps, bank or currency notes.

The liability of the Company under this Extension shall not exceed the limit for the Extension specified in the Schedule which forms part of the Limit of Indemnity in the Schedule.

## Option 2 – Automatic Reinstatement

If this Extension is specified as "Included" in the Schedule, subject to the terms, conditions, and exclusions of this policy (except as provided under this Extension), upon notification to the Company during the period of insurance of any Claims made against the Insured, or of circumstances which may give rise to a Claim, the amount of the reduction in the aggregate Limit of Indemnity stated in the Schedule on account of any payment(s) or any Claims or loss(es) under this policy shall be reinstated without payment of additional premium, but such reinstatement amount(s) shall apply only in excess of the total aggregate indemnity available under applicable policies in excess of this insurance and only in respect of payments which are totally unrelated to the payment(s) that gave rise to such reduction.

Furthermore, the liability of the Company for loss and/or damage (pursuant to the Insuring Clause) in respect of any one Claim or series of Claims made against the Insured arising out of the same act, error or omission shall not exceed the Limit of Indemnity stated in the Schedule. The maximum amount payable under this policy (inclusive of this Extension) in respect of any one period of insurance is limited to twice the Limit of Indemnity stated in the Schedule.

### DEFINITIONS

1. "Claim" or "Claims" means:
  - (a) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter-claim or third or similar party notice issued against or served upon the Insured for compensation; or
  - (b) the receipt by the Insured of any written or verbal notice of demand for compensation made by a third party against the Insured.
2. "Excess" means the excess applicable stated in the Schedule.
3. "Insured" means:
  - (a) the company, corporation, statutory authority, association, legal entity, members of the partnership, or person(s) specified in the proposal form, declaration or underwriting information being the basis of this contract providing that such definition includes their predecessor(s) in business; and
  - (b) any person who is, or becomes, or ceases to be a principal, partner, director, controlling officer or employee of any entity specified in (a) above, but in each case solely in respect of work carried out for and on behalf of that entity.
4. "Limit of Indemnity" means the sum stated as the limit of indemnity in the Schedule.
5. "Professional Inquiry" means any disciplinary proceeding, official examination, investigation, inquiry or hearing into the professional services provided by the Insured that an Insured is legally required to attend if findings from such proceeding, investigation, inquiry or hearing could give rise to a Claim made against the Insured pursuant to Insuring Clause 1.

**THE FOLLOWING WARRANTY IS NOT APPLICABLE  
UNLESS SPECIFICALLY DECLARED THERETO IN THE SCHEDULE AND/OR BY ENDORSEMENT**

### PREMIUM WARRANTY

It is a fundamental and absolute special condition of this contract of insurance that the premium due must be paid and received by the insurer within sixty (60) days from the inception date of this Policy/Endorsement/Renewal Certificate.

If this condition is not complied with then this contract is automatically cancelled and the insurer shall be entitled to the pro rata premium for the period they have been on risk.

Where the premium payable pursuant to this warranty is received by an authorised agent of the insurer, the payment shall be deemed to be received by the insurer for the purposes of this warranty and the onus of proving that the premium payable was received by a person, including and insurance agent, who was not authorised to receive such premium shall lie on the insurer.

Subject otherwise to the terms, conditions and exclusions of this policy.

### SANCTIONS LIMITATION AND EXCLUSION CLAUSE

The Company shall not provide cover and the Company shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.