



## **THE NEW INDIA ASSURANCE COMPANY LTD.**

( Wholly owned by the Govt. of India )

### **DIRECTORS & OFFICERS LIABILITY INSURANCE**

#### **CLAIMS MADE POLICY WORDING**

In consideration of the premium, WE agree to provide the cover set out in this POLICY to each INSURED:

##### **Section 1: INSURING CLAUSES**

###### **1.1 Directors' & Officers' Cover**

WE agree to pay on behalf of each INSURED PERSON, LOSS which an INSURED ENTITY is not permitted or required to pay them by way of indemnity and which results from a CLAIM first made against the INSURED PERSON and reported to US during the INSURANCE PERIOD alleging a WRONGFUL ACT.

WE agree to pay on behalf of each INSURED ENTITY, any amount it is permitted or required to pay

an INSURED PERSON by way of indemnity for LOSS which results from a CLAIM first made against the INSURED PERSON and reported to US during the INSURANCE PERIOD alleging a WRONGFUL

ACT.

###### **1.2 Employment Liability (including entity) Cover**

WE agree to pay on behalf of each INSURED, LOSS which results from a CLAIM first made against them and reported to US during the INSURANCE PERIOD alleging an EMPLOYMENT PRACTICE BREACH.

The total amount WE agree to pay under this Insuring Clause 1.2 for all LOSS which results from all CLAIMs made against all entities falling within the definition of INSURED ENTITY shall not exceed the amount stated in Item 4 of the schedule to this POLICY.

###### **1.3 Securities (including entity) Cover**



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WE agree to pay on behalf of each INSURED, LOSS which results from a CLAIM first made against that INSURED and reported to US during the INSURANCE PERIOD alleging a WRONGFUL ACT involving the purchase or sale, or offer to purchase or sell, SECURITIES.

### **Section 2: AUTOMATIC EXTENSIONS**

The automatic extensions are subject to the Insuring Clauses and all other terms and conditions of this POLICY.

#### **2.1 Advance Payment of Defence Costs**

WE agree that, where we have not decided whether an INSURED is entitled to the cover set out in this POLICY, we will still advance DEFENCE COSTS on behalf of that INSURED within 30 days of being invoiced for them by defence counsel.

DEFENCE COSTS advanced on behalf of an INSURED who is not entitled to the cover set out in this POLICY must be repaid to US.

#### **2.2 Emergency Costs Coverage**

WE agree to pay up to 10% (ten percent) of the INDEMNITY LIMIT in DEFENCE COSTS incurred in an emergency without OUR prior written agreement, provided WE are then asked to give OUR written agreement within 30 days of those DEFENCE COSTS first being incurred. This amount shall be in accordance to the sub-limits stated in the schedule.

#### **2.3 Investigation Costs**

WE agree that DEFENCE COSTS shall include INVESTIGATION COSTS.

The total amount WE agree to pay under this Extension 2.3 for all INVESTIGATION COSTS payable on behalf of all INSUREDs shall not exceed the amount stated in Item 4 of the schedule to this POLICY.

#### **2.4 Public Relations Expenses**

WE agree that DEFENCE COSTS shall include PUBLIC RELATIONS EXPENSES.



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The total amount WE agree to pay under this Extension 2.4 for all PUBLIC RELATIONS EXPENSES payable on behalf of all INSUREDs shall not exceed the sub-limit stated in the schedule.

### **2.5 Extradition Costs**

WE agree that DEFENCE COSTS shall include EXTRADITION COSTS.

### **2.6 Bail Bond and Civil Bond Expenses**

WE agree that DEFENCE COSTS shall include BAIL BOND AND CIVIL BOND EXPENSES. The total amount WE agree to pay under this Extension 2.6 for all BAIL BOND AND CIVIL BOND EXPENSES payable on behalf of all INSUREDs shall not exceed 10% (ten percent) of the INDEMNITY LIMIT or \_\_\_\_\_ whichever is lower.

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### **2.7 Pollution Defence Costs**

Where a CLAIM made against an INSURED PERSON arises from a WRONGFUL ACT or EMPLOYMENT PRACTICE BREACH actually or allegedly committed in connection with the discharge, dispersal, release or escape of POLLUTANTS, WE agree that Exclusion 4.7 (Pollution) shall not apply

to:

(a) DEFENCE COSTS; or

(b) LOSS, but only where the CLAIM is a derivative action brought in the name of an INSURED ENTITY by someone who is not an INSURED PERSON.

The total amount WE agree to pay under part (a) of this Extension 2.7 for all DEFENCE COSTS payable on behalf of all INSUREDs shall not exceed \_\_\_\_\_ as stated in the policy schedule.

### **2.8 Occupational Health and Safety Defence Costs**



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Where a CLAIM made against an INSURED PERSON arises from an actual or alleged breach of any occupational or workplace health and safety legislation, WE agree that the Bodily Injury/Property Damage Exclusion 4.8 shall not apply to DEFENCE COSTS.

### **2.9 Outside Directorship Cover**

We agree to pay on behalf of each OUTSIDE DIRECTOR, LOSS which results from a CLAIM first made against them and reported to US during the INSURANCE PERIOD alleging a WRONGFUL ACT. Cover under this Extension 2.9 is excess of any other insurance or indemnity available to the OUTSIDE DIRECTOR. If any other insurance available to the OUTSIDE DIRECTOR is provided by US, the INDEMNITY LIMIT shall be reduced by the indemnity limit stated in the schedule of that other insurance.

### **2.10 Additional Excess Limit For Independent/ Non-Executive Directors**

Where conditions (a) to (b) of this Extension 2.10 have been satisfied, WE agree to pay on behalf of each Independent /Non-Executive Director, LOSS which an INSURED ENTITY is not permitted or required to pay them by way of indemnity and which results from a CLAIM first made against that INSURED PERSON and reported to US during the INSURANCE PERIOD.

The conditions referred to above are as follows:

(a) the INDEMNITY LIMIT has been exhausted; and

(b) any other available insurance or source of indemnity available to an INSURED PERSON has been exhausted.

The total amount, in addition to the INDEMNITY LIMIT, WE agree to pay under this Extension for all CLAIMS for all Independent/ Non-Executive director shall not exceed \_\_\_\_\_ as stated in the schedule.

### **2.11 New Subsidiary Cover**

Where conditions (a) to (d) of this Extension 2.11 are satisfied, WE agree that the definition of INSURED ENTITY shall include a SUBSIDIARY created or acquired during the INSURANCE PERIOD,



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but only in relation to a WRONGFUL ACT or EMPLOYMENT PRACTICE BREACH actually or allegedly committed after the date that SUBSIDIARY was created or acquired.

The conditions referred to above are that a SUBSIDIARY:

(a) has total gross assets outside of the United States of America or Canada or their territories or possessions which are less than 15% (fifteen percent) of the total gross assets of the INSURED ENTITY;

(b) has total gross assets within the United States of America or Canada or their territories or possessions which are less than 15% (fifteen percent) of the total gross assets of the INSURED ENTITY;

(c) is incorporated outside of the United States of America or Canada or their territories or possessions; and

(d) does not undertake activities which attract one or more of the provisions of the Securities Act of 1933 (USA), the Securities Exchange Act of 1934 (USA), any rules or regulations of the Securities and Exchange Commission (USA), or any federal, country, state, or territory rules or regulations or local or provisional statute in the United States of America or any of its territories or possessions relating to securities, or the equivalent in Canada and any of its territories or possessions.

If any of the conditions listed above cannot be satisfied then OUR prior written agreement by way of endorsement to this POLICY will be required before the cover available under this Extension 2.11 will apply.

### **2.12 Former Subsidiary Cover**

WE agree to extend the cover available under this POLICY to any entity that ceases to be a SUBSIDIARY either before or during the INSURANCE PERIOD, but only in relation to a WRONGFUL ACT or EMPLOYMENT PRACTICE BREACH actually or allegedly committed whilst the entity was a SUBSIDIARY.

### **2.13 Heirs, Estates and Legal Representatives**



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WE agree to extend the cover available under this POLICY to the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent INSURED PERSON, but only in relation to a WRONGFUL ACT or EMPLOYMENT PRACTICE BREACH actually or allegedly committed by such INSURED PERSON.

### 2.14 Bi-lateral Discovery Period

Where the INSURANCE PERIOD has ended and this POLICY has not been renewed, replaced with similar cover or cancelled, the INSURED may give US written notice within one of the applicable DISCOVERY PERIODS set out in this Extension 2.14, of any CLAIM first made against the INSURED before or during the DISCOVERY PERIOD alleging the occurrence of a WRONGFUL ACT or EMPLOYMENT PRACTICE BREACH prior to the end of the INSURANCE PERIOD. The INSURED is entitled to a DISCOVERY PERIOD of:

- (a) 90 days, granted automatically with no additional premium payable; or
- (b) 12 months, if the INSURED asks for such period in writing within 15 days of the end of the INSURANCE PERIOD and pays, within a further 15 days, a further premium of 100% (hundred percent) of the annual premium WE charged for the INSURANCE PERIOD; or
- (c) 72 months, if a TRANSACTION takes place and the INSURED asks for such **period** in writing within 30 days of the end of the INSURANCE PERIOD and accepts any terms and conditions, including an additional premium, WE may reasonably impose.

Any DISCOVERY PERIOD purchased under this Extension cannot be cancelled and any additional premium paid for the DISCOVERY PERIOD is not refundable.

### 2.15 Retired Directors and Officers

WE agree to extend the cover available under this POLICY to any INSURED PERSON who retires before:

- (a) a TRANSACTION; or
- (b) the insolvency, liquidation, receivership, bankruptcy or administration of the INSURED; or
- (c) the end of the INSURANCE PERIOD





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but only in relation to a CLAIM first made against them within 84 months of the end of the INSURANCE PERIOD which alleges they committed a WRONGFUL ACT or EMPLOYMENT PRACTICE BREACH before they retired.

The cover this Extension provides will be automatically withdrawn if:

- (i) this POLICY is renewed, cancelled or replaced with similar cover; or
- (ii) a DISCOVERY PERIOD is purchased by the INSURED under Extension 2.14 (Bi-lateral Discovery Period).

### **2.16 Crisis Management Expenses**

We shall reimburse the COMPANY for the CRISIS LOSS which the COMPANY incurs by reason of a CRISIS EVENT which first occurs and is notified to US during the INSURANCE PERIOD.

The total amount WE agree to pay under this Extension 2.16 for all CRISIS LOSS payable on behalf of all INSUREDs shall not exceed \_\_\_\_\_ and is part of, and not in addition to the INDEMNITY LIMIT.

### **2.17 Tax Liability Extension**

If cover opted for ,we agree to extend cover to include an INSURED PERSON's LOSS arising from their personal liability for unpaid taxes where the COMPANY has become insolvent except to the extent that such liability arises from the wilful intent of the INSURED PERSON to breach any statutory duty governing the payment of taxes.

The total amount WE agree to pay under this Extension 2.17 shall not exceed \_\_\_\_\_ and is part of, and not in addition to, the INDEMNITY LIMIT

### **2.18 Continuous Cover**

Where the INSURED:

- (a) first knew, or ought reasonably to have known, on or after the CONTINUITY DATE of any CLAIM or circumstance that could give rise to a CLAIM; and



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(b) did not give notice of that CLAIM or circumstance under any previous insurance providing directors' and officers' liability cover on or after the CONTINUITY DATE as shown on the Schedule; and

(c) gives notice of that CLAIM or circumstance to US during the INSURANCE PERIOD

WE agree not to apply Exclusion 4.1(a) or (c), provided that:

(i) the INSURED's failure to give earlier notice of such CLAIM or circumstance to US cannot, in our view, be explained by fraud; and

(ii) WE may, in our absolute discretion, apply to such CLAIM or circumstance, any of the terms and conditions of the insurance providing directors' and officers' liability cover in existence when the INSURED first knew, or ought reasonably to have known, of it, or the terms and conditions of this POLICY; and

(iii) the INSURED has maintained, without interruption, a directors and officers liability insurance policy issued by US and WE were the directors and officers liability insurer when the INSURED first became aware of such CLAIM or circumstance For the Purposes of this extension, CONTINUITY DATE means the date stated in Item 12 of the schedule.

### **2.19 Prosecution Costs**

We agree that DEFENCE COSTS shall include the PROSECUTION COSTS

The total amount WE agree to pay under this Extension for all CLAIMS for all INSURED PERSONS shall not exceed 10% (ten percent) of the INDEMNITY LIMIT in the aggregate, and is part of an not in addition to the INDEMNITY LIMIT.

### **2.20 Fines and Penalties Extension**

If opted for, we agree that the definition of LOSS is extended to include any civil fines and civil penalties awarded against an INSURED PERSON imposed by law, provided that WE are not legally prohibited from paying the civil fines and/or civil penalties under the law applicable to this POLICY.





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The total amount WE agree to pay under this Extension for all CLAIMS for all INSURED PERSONS shall not exceed 10% (ten percent) or \_\_\_\_\_ whichever is lower of the INDEMNITY LIMIT in the aggregate, and is part of an not in addition to the INDEMNITY LIMIT.

### Section 3: DEFINITIONS

In this POLICY:

3.1 BAIL BOND AND CIVIL BOND EXPENSES means the reasonable premium (but not collateral) for a bond or other financial instrument to guarantee an INSURED PERSON's contingent obligation for bail required by a court hearing a CLAIM for any actual or alleged WRONGFUL ACT.

3.2 CLAIM means:

- (a) a civil proceeding brought by a third party for recovery of compensation or damages; or
- (b) any suit, proceeding or written demand for monetary damages or other relief; or
- (c) a request for extradition; or
- (d) a criminal proceeding against an INSURED PERSON; or
- (e) a formal regulatory or formal administrative proceeding against an INSURED PERSON alleging an EMPLOYMENT PRACTICE BREACH or WRONGFUL ACT; or
- (f) an INVESTIGATION of an INSURED PERSON.

3.3 CRISIS EVENT means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the COMPANY, the event has the potential to cause an imminent decrease of greater than 30% of the total consolidated annual revenues of the COMPANY if left unmanaged:

- (a) the sudden, unexpected death or disability of any Executive;
- (b) loss of a major customer, contract or credit facility;



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- (c) EMPLOYEE workplace violence;
- (d) the first apparent unauthorized intrusion into any COMPANY'S computer facilities;
- (e) a recall or boycott of any product;
- (f) a man-made disaster;
- (g) any criminal or fraud investigation.

CRISIS EVENT does not include an event that affects a COMPANY'S industry in general.

3.4 CRISIS LOSS means the reasonable and necessary fees, costs and expenses paid by the COMPANY for external crisis management services provided in response to a CRISIS EVENT within the first thirty (30) days after the event

3.5 DEDUCTIBLE means the amounts specified in Item 5 of the schedule to this POLICY which shall apply to payments of LOSS under the Insuring Clauses to which they relate and shall be borne by the INSURED ENTITY at its own risk.

3.6 DEFENCE COSTS means that part of LOSS made up of reasonable fees, costs and expenses (including but not limited to lawyers' fees) incurred with OUR prior written agreement in investigating or defending a CLAIM or a circumstance which could give rise to a CLAIM, but does not include any type of regular or overtime wages, salaries or fees.

DISCOVERY PERIOD means the period immediately after the end of the INSURANCE PERIOD during which WE may be given written notice of a CLAIM alleging the occurrence of a WRONGFUL ACT or EMPLOYMENT PRACTICE BREACH during the INSURANCE PERIOD.

3.9 EMPLOYEE means any natural person who, before or during the INSURANCE PERIOD, is employed under a contract of service by an INSURED ENTITY and who is paid a salary, wage and/or commission by that INSURED ENTITY.

3.10 EMPLOYMENT PRACTICE BREACH means any employment-related wrongful dismissal, wrongful termination or wrongful discharge of employment (either actual or constructive, including breach of an implied term of a contract) misrepresentation, wrongful



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failure to employ or promote, failure to grant tenure, discrimination, harassment, retaliation (including lockouts), humiliation, defamation, invasion of

privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with a reference) by an INSURED or an OUTSIDE ENTITY involving an EMPLOYEE or prospective employee of the INSURED ENTITY or an employee of an OUTSIDE ENTITY.

3.11 EMPLOYMENT-RELATED BENEFITS includes but is not limited to:

(a) non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;

(b) stock, shares, stock options, share options or any entitlement or right under any employee plan of any description;

(c) participation in any stock, share option or share option plan, or participation in any employee plan of any description;

(d) severance or redundancy payments or entitlements;

(e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;

(f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);

(g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event (h) any amount the INSURED ENTITY pays or is ordered to pay pursuant to any determination or settlement in respect of an allegedly unfair contract, notwithstanding that it acted in accordance with the terms of the employment contract.

3.12 EXTRADITION COSTS means any reasonable fees, costs and expenses (except remuneration of any INSURED, cost of their time or the overheads of any INSURED ENTITY



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or OUTSIDE ENTITY) incurred with OUR prior written agreement (which will not be unreasonably withheld or delayed) by or on behalf of an INSURED PERSON in connection with their extradition.

3.13 INDEMNITY LIMIT means the amount specified in Item 4 of the schedule to this POLICY or, where the INDEMNITY LIMIT has been exhausted, the amount available solely for the benefit of INSURED PERSONS as provided by Extension 2.10.

3.14 INSURANCE PERIOD means the period stated in Item 3 of the schedule to this POLICY.

3.15 INSURED means each INSURED PERSON, the INSURED ENTITY or both.

3.16 INSURED ENTITY means:

- (a) the entity or entities listed in Item 2 of the schedule to this POLICY; and
- (b) any SUBSIDIARY existing at the beginning of the INSURANCE PERIOD.

3.17 INSURED PERSON means any natural person who, either (a) before the INSURANCE PERIOD, was,

or (b) during the INSURANCE PERIOD, is or becomes:

- (i) an executive director or officer of the INSURED ENTITY; or
- (ii) a NON-EXECUTIVE DIRECTOR of the INSURED ENTITY; or
- (iii) a shadow director of the INSURED ENTITY, as defined in S.2(1) of the Companies Ordinance (Cap. 32); or
- (iv) an OUTSIDE DIRECTOR; or
- (v) a trustee of a pension, retirement or provident benefit fund established for the benefit of the employees of the INSURED ENTITY; or



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(vi) a lawful spouse or partner of an INSURED PERSON where recovery is sought solely because joint property is held or owned by or on behalf of the spouse or partner. The spouse or partner is not insured under this POLICY in his or her own right; or

(vii) an EMPLOYEE who carries out a managerial or supervisory function for the INSURED ENTITY; or

(viii) an EMPLOYEE who is joined as a party to any CLAIM against any person defined in (i) to (vii) above.

INSURED PERSON does not include an external auditor of the INSURED ENTITY or any corporate trustee.

3.18 INVESTIGATION means any official investigation, examination or inquiry in relation to the affairs of the INSURED ENTITY at which the attendance of an INSURED PERSON is first required or requested in writing during the INSURANCE PERIOD or DISCOVERY PERIOD.

3.19 INVESTIGATION COSTS means any reasonable fees, costs and expenses (except remuneration of any INSURED, cost of their time or the overheads of any INSURED ENTITY or OUTSIDE ENTITY) incurred with OUR prior written agreement (which will not be unreasonably withheld or delayed) by or on behalf of an INSURED PERSON in preparing for, attending or producing documents to an INVESTIGATION.

3.20 LOSS means the total amount an INSURED becomes legally obliged to pay by way of damages, compensation or a settlement arising from a CLAIM and includes DEFENCE COSTS. It is further agreed that LOSS shall also include punitive, aggravated, and exemplary or multiple damages unless WE are legally prohibited from paying such damages, or payment of such damages is deemed to be uninsurable.

LOSS does not include:

- (a) taxes or government duties;
- (b) fees, commissions or any EMPLOYMENT-RELATED BENEFITS paid or payable;
- (c) fines and/or penalties, other than those covered under Extension 2.21.;
- (d) any amount WE are legally prohibited from paying, or is uninsurable;



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(e) fees, costs or expenses of any kind associated with (a) to (d).

3.21 NON EXECUTIVE DIRECTOR OR INDEPENDENT DIRECTOR means a natural person who serves as a non-executive or independent director of an INSURED ENTITY.

3.22 OUTSIDE ENTITY means any entity:

(a) which is not a SUBSIDIARY; and

(b) in which an INSURED ENTITY owns or controls, directly or indirectly, in any combination, before or during the INSURANCE PERIOD, up to 50% (fifty percent) of the outstanding securities or voting rights representing the present right to vote for election of directors; and

(c) which is not incorporated in the United States of America or Canada or their territories or possessions; and

(d) whose activities do not attract one or more of the provisions of the Securities Act of 1933 (USA), the Securities Exchange Act of 1934 (USA), any rules or regulations of the Securities and Exchange Commission (USA), or any federal, country, state, or territory rules or regulations or local or provisional statute in the United States of America or any of its territories or possessions relating to securities, or the equivalent in Canada and any of its territories or possessions unless WE have agreed to waive (c) or (d) above and the entity is named in an endorsement to this POLICY.

It is further agreed that OUTSIDE ENTITY shall also include any Not for Profit Organisation and any other entity which has been listed by endorsement to this POLICY.

3.23 OUTSIDE DIRECTOR means an INSURED PERSON who serves as a director, officer, trustee or equivalent position in any OUTSIDE ENTITY at the specific request of an INSURED ENTITY.

3.24 POLICY means this policy wording, the schedule to this POLICY, the PROPOSAL and any endorsement attaching to and forming part of this POLICY.

3.25 POLLUTANTS means any substance, solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals





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and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.

3.26 PROPOSAL means the INSURED's written proposal form in respect of this insurance, together with any attachments.

3.27 PROSECUTION COSTS means to obtain the discharge or revocation of:

(i) a temporary or permanent disqualification of such INSURED PERSON from managing a corporation during the INSURANCE PERIOD; or

(ii) a judicial order entered during the INSURANCE PERIOD imposing:

a. confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such INSURED PERSON;

b. a charge over real property or personal assets of such INSURED PERSON;

c. restriction of such INSURED PERSON'S liberty to a specified domestic residence; or

d. deportation of an INSURED PERSON following revocation of otherwise current and valid immigration status for any reason other than such INSURED PERSON'S conviction of a crime.

3.28 PUBLIC RELATIONS EXPENSES means any reasonable fees, costs and expenses of a public relations consultant incurred with OUR prior written consent (which shall not be unreasonably delayed or withheld) by or on behalf of an INSURED PERSON to mitigate any adverse effect on the reputation of that INSURED PERSON by disseminating findings which exonerate them from fault, liability or blame in

connection with a CLAIM that is covered under this POLICY, provided such findings are made by a court with jurisdiction to dispose of such CLAIM (including the outcome of any appeal in relation to such CLAIM).

3.29 RETIRED INSURED PERSON means any INSURED PERSON (other than one disqualified from holding office as a company director) who has voluntarily ceased to act in the capacity of an INSURED PERSON during the INSURANCE PERIOD



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3.30 SECURITIES means any certificate of interest or participation in, receipt for, warrant, or other right to subscribe to or purchase, voting trust certificate relating to, certificate of deposit for, or other interest relating to any note, stock, bond, debenture, evidence of indebtedness, share, equity, debt security or similar instrument of the INSURED ENTITY.

3.31 SUBSIDIARY means any entity:

(a) in which an INSURED ENTITY owns or controls, directly or indirectly, in any combination, more than 50% (fifty percent) of the outstanding securities or voting rights representing the present right to vote for election of directors; or

(b) any entity which is deemed to be a subsidiary of an INSURED ENTITY by virtue of any applicable legislation or law.

3.32 TRANSACTION means any one of the following events occurring during the INSURANCE PERIOD:

(a) the INSURED ENTITY consolidates with or merges into or sells all or more than 30% (thirty percent) of its assets to any other person or entity or group of persons and/or entities acting in concert; or

(b) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 30% (thirty percent) of the rights to vote at general meetings of the INSURED ENTITY or control the appointment of directors who are able to exercise a majority of votes at board meetings of the INSURED ENTITY.

3.33 WE/US/OUR means THE NEW INDIA ASSURANCE CO LTD , the Underwriters named in the schedule to this POLICY

3.34 WRONGFUL ACT shall mean any actual or alleged breach of duty, breach of trust, neglect, error, omission, libel or slander, misstatement, misleading statement, or other act committed or attempted by an INSURED PERSON, individually or otherwise, solely in their capacity as a director or officer in the course of his or her duties to the INSURED ENTITY or OUTSIDE ENTITY.

### **Section 4: EXCLUSIONS**



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WE will not provide any cover under this POLICY for:

### **4.1 Prior Knowledge**

(a) any CLAIM arising from or in connection with any fact or circumstance that an INSURED knew or ought reasonably to have known before the INSURANCE PERIOD could give rise to a CLAIM;

(b) any CLAIM that was first made, threatened or intimated against an INSURED before the INSURANCE PERIOD;

(c) any CLAIM arising from or in connection with any fact or circumstance which could give rise to a CLAIM of which notice has been given, or reasonably should have been given, under any previous insurance, no matter how expressed.

### **4.2 Breach of Professional Duty**

Any CLAIM based upon, directly or indirectly attributable to, or in consequence of, the provision of any professional services and/or advice, or the failure to provide professional services or advice.

### **4.3 Insured vs. Insured**

Any LOSS arising out of, based upon or attributable to, a CLAIM brought within the policy or under any laws thereof, by or on behalf of any INSURED, provided however that this exclusion shall not apply to:

(a) DEFENCE COSTS;

(b) Any CLAIM made by an INSURED PERSON alleging an EMPLOYMENT PRACTICE BREACH against an INSURED PERSON;

(c) any CLAIM made by a RETIRED INSURED PERSON;

(d) any CLAIM brought or maintained by any INSURED for contribution or indemnity, if the CLAIM directly results from another CLAIM otherwise covered under this POLICY;



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(e) any CLAIM brought or maintained by any external administrator to the INSURED ENTITY (including but not limited to a liquidator, receiver, administrator or other external administrator);

(f) any CLAIM against an INSURED which is a derivative action brought in the name of an INSURED ENTITY by someone who is not an INSURED PERSON.

### **4.4 Securities**

Any CLAIM directly or indirectly arising from, or attributable to:

(a) the offering to the public during the INSURANCE PERIOD of any SECURITIES for subscription or purchase;

(b) the invitation to the public during the INSURANCE PERIOD to subscribe for or purchase any SECURITIES;

(c) any document prepared in relation to (a) or (b) above.

Provided however that this Exclusion 4.4 shall not apply where the total value of an offering is equal to or less than 15% of the total issued and outstanding share capital of the INSURED ENTITY as at the date of any such offering or invitation.

### **4.5 Trustee Liability**

Any CLAIM arising from any position held by an INSURED PERSON as trustee or administrator of any superannuation, pension, health and welfare, or other employee benefit plan or trust, established or maintained for the purpose of providing pensions, annuities or any other amount payable to a beneficiary by the trustee or administrator under the rules governing the plan or trust, to employees who are not employees of either the INSURED ENTITY or an OUTSIDE ENTITY.

### **4.6 Bodily Injury / Property Damage**

Any CLAIM for bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused or damage to or destruction of any tangible property, including loss of use thereof. This Exclusion 4.6 shall not apply to any CLAIM for



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mental anguish or emotional distress or disturbance which allegedly results from an EMPLOYMENT PRACTICE BREACH.

### **4.7 Pollution and Nuclear Risk**

Any CLAIM directly or indirectly arising from, or attributable to:

(a) the actual, alleged or threatened discharge, dispersal, release or escape of POLLUTANTS into or upon land, the atmosphere or any water course or body of water, whether such discharge, dispersal, release or escape is intentional or accidental; or

(b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise POLLUTANTS.

### **4.8 Radioactivity and Nuclear Risk**

Any CLAIM directly or indirectly arising from, attributable to, or in connection with:

(a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising from, or any consequential loss; or

(b) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from:

(i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

(ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### **4.9 War/Terrorism**

Any CLAIM of whatsoever nature directly or indirectly caused by, resulting from, or in connection with, any of the following, regardless of any cause or event contributing concurrently or in any other sequence:



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(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

(b) any act of terrorism; or

(c) any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

For the purposes 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.

### **4.10 Fraudulent, Dishonest and Wilful Conduct**

Any CLAIM directly or indirectly arising from, or attributable to:

(a) any criminal or dishonest or fraudulent act or omission; or

(b) any act or omission committed with the knowledge that it was in breach of any statute, contract, duty or other legal obligation; or

(c) the gain of any personal profit, remuneration or advantage to which an INSURED PERSON or the INSURED ENTITY were not legally entitled including, but not limited to, profits made from the purchase or sale of SECURITIES.

This Exclusion 4.10 shall only apply if the act, omission or profit is established as a fact by a court, tribunal or by any other means of adjudication or by admission by the INSURED PERSON.

### **4.11 Major Share Holder (15%)**

Any CLAIM brought by, on behalf or for the benefit of, any major shareholder owning or controlling, directly or indirectly, more than or equal to 15% (fifteen percent) of the voting share capital of the INSURED ENTITY or OUTSIDE ENTITY at the time of a WRONGFUL ACT or EMPLOYMENT PRACTICE BREACH.





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### 4.12 ERISA

Any CLAIM directly or indirectly arising from, or attributable to any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act, 1974 (USA) or amendments thereto.

### Section 5: CLAIMS CONDITIONS

#### 5.1 Notification

(a) The INSURED shall, as a condition precedent to its right to be indemnified under this POLICY, give US written notice of any CLAIM or circumstance which could give rise to a CLAIM as soon as practicable and, in any event, during the INSURANCE PERIOD or any applicable

#### DISCOVERY PERIOD.

Once the INSURANCE PERIOD has ended written notice of any CLAIM or circumstance which could give rise to a CLAIM must be given within 60 days of the end of the INSURANCE PERIOD or if a DISCOVERY PERIOD applies, expiry of the DISCOVERY PERIOD.

(b) Notice of any CLAIM or circumstance which could give rise to a CLAIM shall be delivered to:

THE NEW INDIA ASSURANCE CO LTD , at the policy issuing office .

### **General Conditions:**

#### 5.1: Duty to co-operate

(a) The INSURED shall, at its own cost and as a condition precedent to its right to indemnity under this POLICY, provide US with all information, assistance and cooperation WE and/or any lawyers and investigators and others WE appoint may require in relation to any matter notified to US.



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(b) The INSURED shall, at its own cost, do everything reasonably practicable to minimise LOSS.

### 5.2 Allocation

(a) WE agree that, if a CLAIM gives rise to LOSS which is covered and not covered under this POLICY, WE will negotiate in good faith with the INSURED to agree a basis for allocation, taking into consideration factors such as (but not limited to):

(i) the extent to which the CLAIM is directed to matters which are covered and matters which are not covered;

(ii) the relative legal and financial exposure of an INSURED compared to that of a person or persons who is, or are, not covered by this POLICY; and

(iii) the benefit to an INSURED of any settlement, compared to that of a person or persons who is, or are, not covered by this POLICY.

### 5.3 ARBITRATION

(a) Any and all disputes or differences which may arise under allocation or otherwise, out of, in connection with or in relation to this *Policy*, or to its existence, validity or termination, or to the determination of the amount or any amounts payable under this *Policy*, shall be referred to a sole arbitrator to be appointed by the parties to the dispute within 30 days of any party giving notice of arbitration to the other(s).

(b) In the event that the parties are unable to agree upon the identity of a sole arbitrator, the disputes or differences shall be referred to the decision of three arbitrators of whom one shall be appointed in writing by each of the parties within a period of 30 days after the failure to appoint a sole arbitrator and the third (who shall serve as Chairman) shall be appointed by the nominated arbitrators. In case either party shall refuse or fail to appoint an arbitrator within the aforesaid 30 days after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint a sole arbitrator who shall thereafter be empowered to conduct the arbitration and determine the disputes or differences referred to him as if he had been appointed a sole arbitrator with the consent of both parties.

(c) The parties shall share the expenses of the arbitrator or arbitral tribunal equally and such expenses, along with the reasonable costs of the parties in the arbitration, shall be awarded by the arbitrator or



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arbitral tribunal in favour of the successful party in the arbitration or, where no party can be said to have been wholly successful, to the party who has substantially succeeded.

(d) The place of arbitration shall be India, the language of the arbitration shall be English, the law applicable to and in the arbitration shall be Indian law and the arbitration process will be in accordance with the provisions of the Arbitration & Conciliation Act 1996, as amended from time to time.

(e) It is a condition precedent to any right of action or suit upon this *Policy* that the award by such arbitrator or arbitrators shall be first obtained.

(f) In the event that these arbitration provisions shall be held to be invalid then all such disputes shall be referred to the exclusive jurisdiction of the Indian courts.

### 5.4 Defence and Settlement

(a) Each INSURED has the right and duty to defend and contest any CLAIM, but WE have the right (which WE will exercise reasonably) to object to an INSURED's choice of lawyer to represent them in respect of that CLAIM and WE shall have the right to effectively associate with an INSURED in the defence and/or negotiation of settlement of any CLAIM that WE think is reasonably likely to exceed the DEDUCTIBLE.

(b) Any INSURED who admits or assumes liability, enters into any settlement agreement, or agrees to a judgment being entered against them without our prior written agreement (which shall not be unreasonably withheld or delayed) shall automatically forfeit their entitlement to an indemnity under this POLICY.

(c) If WE cannot agree with an INSURED whether a CLAIM should be contested, a decision as to whether the CLAIM should be contested (taking into account likely DEFENCE COSTS, the prospects of the CLAIM succeeding and the likely amount of the CLAIM) shall be made by a Senior Counsel, whose appointment shall be mutually agreed upon and whose decision shall be final. The cost of obtaining Senior Counsel's decision shall be part of DEFENCE COSTS.

(d) If Senior Counsel decides that a CLAIM should not be contested and the INSURED decides to contest the CLAIM, OUR liability for LOSS which results from that CLAIM shall be capped at the amount for which WE think the CLAIM could have been settled and OUR liability for DEFENCE COSTS will end on the date the CLAIM could have been settled.

### 5.5 Order of Payment



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If the balance of the INDEMNITY LIMIT is insufficient to pay LOSS, WE shall pay LOSS on behalf of an INSURED PERSON before paying LOSS on behalf of any other INSURED.

### **Section 6: OTHER GENERAL CONDITIONS**

#### **6.1 Indemnity Limit**

- (a) All payments of LOSS erode the INDEMNITY LIMIT.
- (b) Costs and expenses WE incur deciding whether an INSURED is entitled to the cover set out in this POLICY do not erode the INDEMNITY LIMIT.
- (c) WE have the right to pay LOSS as it becomes due under this POLICY without regard to the potential for other future payment obligations under this POLICY.
- (d) Each amount stated in this POLICY either in Item 4 of the schedule, or as a percentage of the INDEMNITY LIMIT, or as a fixed amount in the Automatic Extensions to this POLICY, is part of, and not in addition to, the INDEMNITY LIMIT.
- (e) OUR total liability under this POLICY for LOSS which results from any one CLAIM shall not exceed the INDEMNITY LIMIT.
- (f) OUR total liability for LOSS under this POLICY shall not exceed the INDEMNITY LIMIT.

#### **6.2 Aggregation-Claim Series**

Any CLAIM or series of CLAIMS arising out of, attributable to, or in any way connected with a single WRONGFUL ACT or single EMPLOYMENT PRACTICE BREACH (alleged or otherwise) shall be considered a single CLAIM under this POLICY.

#### **6.3. Presumption of Indemnification**

If an INSURED ENTITY is permitted or required to pay an INSURED PERSON by way of indemnity for LOSS which results from a CLAIM but, for whatever reason, fails or refuses to do so, WE will pay that LOSS on behalf of the INSURED ENTITY and collect the DEDUCTIBLE from the INSURED ENTITY.

#### **6.4 Subrogation**



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(a) Where WE have paid LOSS under this POLICY WE will become entitled to any rights the INSURED has against any party in relation to the payment.

(b) The INSURED must, at its own cost, provide US with all information, assistance and cooperation WE and/or any lawyers and investigators and others WE appoint may require in relation to the exercise of OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence.

### **6.5 Alteration to Risk**

(a) If a TRANSACTION takes place during the INSURANCE PERIOD, the cover set out in this POLICY will apply only to a WRONGFUL ACT or EMPLOYMENT PRACTICE BREACH actually or allegedly committed prior to the effective date of the TRANSACTION.

(b) The INSURED shall give US written notice of the TRANSACTION as soon as practicable but, in any event, no later than 30 days after the effective date of the TRANSACTION.

### **6.6 Assignment**

Neither this POLICY nor the rights it creates may be assigned without OUR prior written agreement by way of endorsement to this POLICY.

### **6.7 Cancellation**

a) In the event of fraud, misrepresentation ,non-co-operation or non payment of premium by the Insured , WE have the right to cancel this POLICY at any time by giving US written notice to that effect. Upon cancellation at a customary short period scale on the unexpired period shall be refunded.

b) INSURED has the right to cancel this insurance, only in the event of no claims /notifications. WE will refund that part of the premium which relates to the unexpired part of the INSURANCE PERIOD.

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### **6.8 Confidentiality**



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Neither the INSURED nor any agent of the INSURED may disclose to any third party:

- (a) the existence of this POLICY; or
- (b) the nature of the cover set out in this POLICY; or
- (c) the INDEMNITY LIMIT; or
- (d) the amount of premium paid.

However, the INSURED may disclose the above matters to the extent that:

- (i) the INSURED is required to do so by the law; or
- (ii) WE consent to the disclosure in writing.

### **6.9 Governing Law**

This POLICY is to be interpreted in accordance with the laws of the Indian Law and Indian Courts.

### **6.10 Deductible**

- (a) WE will only be liable under this POLICY for that part of LOSS which exceeds an applicable DEDUCTIBLE.
- (b) Unless otherwise stated in the schedule to this POLICY, the INSURED shall be liable for DEFENCE COSTS up to the amount of any applicable DEDUCTIBLE.
- (c) Costs and expenses WE incur deciding whether an INSURED is entitled to the cover set out in this POLICY are not DEFENCE COSTS and will be met by US.
- (d) Each CLAIM covered by this POLICY shall attract only one DEDUCTIBLE (if one applies).

### **6.11 Severability and Non-Imputation**

When considering an INSURED's duty of disclosure before entering into this POLICY or the application of Exclusion 4.10 (Fraudulent, Dishonest and Wilful Conduct), WE will not attribute





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or impute facts relating to, or knowledge possessed by, any INSURED PERSON to any other INSURED PERSON.

### **6.12 Titles**

Titles used in this POLICY are descriptive and used for convenience only. They do not lend meaning to this POLICY. Words and expressions in the singular include the plural and vice versa.

### **6.13 Interpretation**

Person includes individuals , partnerships, bodies corporate and associations.

If any part of this POLICY is found to be invalid or unenforceable, the remainder of this POLICY shall remain in full force and effect. All the documents making up this POLICY shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.

### **Section 7: AUTHORITY**

This is to certify that in accordance with the authorisation granted under Contract to the undersigned by the Underwriters as named in the schedule to this POLICY:

In consideration of the premium paid the Underwriters are hereby bound, severally and not jointly, to insure in accordance with the terms and conditions contained herein or endorsed hereon.

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