

## **"IN AND OUT" INDEMNITY – 1/2005 VERSION**

Whereas the Assured as herein defined has submitted a written proposal, containing particulars and statements which it is hereby agreed are the basis of this contract and are to be considered as incorporated herein, and has paid or agreed to pay the premium stated in the Schedule, the Insurer **Harel Insurance Company LTD** (hereinafter: "The Insurer") hereby agrees, to the extent and in the manner hereinafter provided, to indemnify the Assured:

### **PART 1**

#### **ERRORS & OMISSIONS**

The Insurer undertakes to indemnify the Assured for any sum or sums the Assured may become legally liable to pay to third parties, including, claimants' costs and expenses, for any claim or claims first made against the Assured during the Period of Insurance up to an amount not exceeding the sums stated in the Schedule, for or as a result of:

- (I) Breach of professional duty, negligent act, error or omission, in the course of the Assured acting, as stock brokers and/or investment consultants and/or portfolio or fund managers and/or underwriters;
- (II) Breach of the Security Act 5728 ~1968;
- (III) Physical loss, destruction, theft or damage to securities, including. wrongful abstraction or removal or where the securities have been lost, mislaid or accidentally destroyed;
- (IV) Libel and slander in respect of:  
printed, and hand-written matter, oral utterances - made or alleged to have been made by the Assured, any partner, director or Employee of the Assured;

- (V) Inadvertent breach of confidential information, or the unauthorised use or infringement of systems or designs of others.
- (VI) For Breach of Investment Counselling and Portfolio Management Law 5755-1995.

### **Exclusions to Part 1**

**The Insurer shall not be liable to indemnify the Assured, under this part of the Policy against any Claim or Claims:**

- (a) Arising out of any event occurring prior to the retroactive date (if any) specified in the Schedule.
- (b) For bodily injury, sickness, disease or death sustained by any person, or any physical damage or destruction of property other than securities or cash.
- (c) Arising out of any dishonest, fraudulent, criminal or malicious act or omission of any director or partner of the Assured.
- (d) For fines, punitive, penalties or exemplary damages.
- (e) Arising out of the insolvency or bankruptcy of the Assured.
- (f) Arising out of financial and/or investment advice or on representations advice or forecasts given by the Assured or by any director, officer partner or employee on their behalf in respect of investment which fails to perform in accordance with the same, unless negligence, error or omission can be proved.
- (g) Arising out of any transactions carried out for or on behalf of any partner director, associate member or employee of the Assured, as well as institutions or companies where the Assured has a controlling interest.

- (h) Arising from any liability assumed by the Assured under any express warranty, agreement or guarantee, unless such liability would have attached to the Assured notwithstanding such express warranty, agreement or guarantee.
- (I) For libel or slander made by any partner or employee of the Assured against the Assured or against any other partner or employee.
- (j) Arising out of the intentional failure of the Assured to comply with the provisions of any statute, including any regulations made thereunder, or with any laws, regulations or requirements laid down by any regulatory or supervisory body or agency, whether governmental or otherwise.
- (k) For any loss to any person or body sustained solely in consequence of any direction by any regulatory or supervisory body, whether governmental or otherwise.
- (L) Arising out of contango business.
- (m) For loss in respect of nostro and/or portfolios of employees.
- (n) For losses arising from the General Exclusions.

## **Special Conditions to Part 1**

### **1. Loss Prevention Expenses**

The Insurer shall indemnify the Assured for direct loss suffered by them as the result of action taken by the Assured in preventing a claim that would, if made, have been covered under paragraphs I, II, III and IV above, provided that:

- a) The circumstances shall upon discovery be immediately reported to the Insurer.
- b) Any corrective action shall be with the prior approval of the Insurer, such approval not to be unreasonably withheld.
- c) That the liability of the Insurer hereunder shall not exceed that which would otherwise have arisen under paragraphs I, II, III, IV.
- d) That the burden of proving that liability would otherwise have existed shall rest upon the Assured.

### **2. Definition of Claim**

The expression "Claim" shall mean:

- (a) Any written notification by a third party containing a demand for indemnity or an intention to hold the Assured responsible for any damage.
- (b) A claim is deemed to have been made at the moment of receipt by the Assured of the written notification as mentioned above.
- (c) Any written notification given to the Insurer by the Assured of circumstance which are reasonably expected to give rise to a claim in the future against the Assured; if such claim will be actually made later on, that claim shall be regarded as a claim made against the Assured during the Period of Insurance.
- (d) several claims arising out of the same cause , irrespective of the actual time such claims are made shall be regarded:
  - as having been made at the time the first claim was made.
  - as one and the same claim.

3. **Extended Reporting Period (2 options)**

Should the policy be cancelled or not renewed the Assured will have the option to purchase an extended reporting period, by paying. Within 30 days of the date the policy is cancelled or not renewed, a premium as set below of the last annual premium. If the premium for such extended reporting period is actually paid, then claims reported in writing to Insurer within as set below from the moment such cancellation or non-renewal took effect shall be covered, provided that the event giving rise to a claim was committed after the retroactive date stated in the Schedule (if any) and prior to the expiry of the period of validity of the cover, which has been cancelled or not renewed. The extended reporting period will only be granted subject to the provision that the Assured has not effected another insurance.

**Option 1**

Premium- 300%

ERP- 84 months

**Option 2**

Premium- 200%

ERP- 36 months

## PART II

### INFIDELITY OF EMPLOYEES

The Insurer hereby agrees to indemnify the Assured for direct financial loss including loss of money, securities or other property of third parties sustained by the Assured and discovered during the insurance period as stated in the Schedule, through any act or acts of fraud and/or dishonesty committed by any Employee of the Assured working alone or in collusion with others, whenever or wherever the same was or may have been committed, to an amount not exceeding the sum in all, as set out in the said Schedule.

It is hereby further agreed that with regard to loans, including. Transactions in the nature of a loan or other extensions of credit, this part will cover only those dishonest or fraudulent acts committed by an employee with the manifest intent to cause the Assured to sustain a loss or to obtain a personal financial gain, other than salary, fees, commissions and other emoluments.

### EXCLUSIONS TO PART II

**The Insurer shall not be liable to indemnify the Assured, under this part of the policy, against any claim or claims:**

- (a) Arising out of any event occurring prior to the retroactive date ( if any ) specified in the Schedule.
- (b) For losses not discovered during the Period of Insurance, but with the understanding. that in the event of termination or non-renewal the Assured shall have the period of 12 months following the date of termination or expiration of this Policy in which to discover and report to the Insurer losses occurring between the retroactive date ( if any ) and the date of such termination or expiration.

- (c) For losses arising from fraud or dishonesty committed by any director of the Assured , other than directors included in the payroll of the Assured, however this exclusion shall not apply in respect of losses arising from an act committed by an Employee of the Assured in collusion with a non salaried director.
- (d) For losses arising from the General Exclusions.

## **SPECIAL CONDITIONS TO PART II**

### 1. **Notification**

Upon the discovery of any act or acts of fraud or dishonesty by any Employee, or circumstances of which the Assured shall become aware that might give rise to a claim under this Policy, the Assured shall give written notice thereof as soon as practical to the Insurer and thereupon the Insurer shall be relieved of all liability in respect of any subsequent acts of such employee, but indemnification for such loss shall not reduce the Insurer's liability for other employees losses under this policy whenever sustained, subject however to the limit of liability as stated in the Schedule.

In the event of discovery by the Assured of any act of fraud or dishonesty giving rise to a claim under this Policy as aforesaid, the Assured shall give all necessary information and assistance to enable the Insurer to sue for and obtain reimbursement, by the defaulting Employee or by his Estate of any money paid or payable by the Insurer hereunder.

### 2. **Discovery**

This part applies to loss discovered by the Assured during the Policy Period. Discovery occurs when the Assured becomes aware of facts which cause him to assume that a loss covered by this Policy has been or will be incurred.

### 3. **Calculation of Indemnity**

The indemnity afforded to the Assured hereby in respect of each loss, shall be calculated:

- (a) By estimating the value of the securities as at the average market price on the day following discovery of the circumstances giving, rise to the loss (Saturdays and Holidays being omitted).

- (b) To include, where immediate replacements are necessary, as in the case of certificates of deposit and the like, the cost of borrowing money in order to obtain such replacement.
- (c) The nominal amount of any cash or monetary loss sustained in N.I.S. shall be adjusted by the change in the General Price Index as published by the Central Bureau of Statistics (hereinafter the "Index") between the Index prevailing, on the date when the loss incurred and the Index prevailing upon the date of discovery of the loss. This basis shall apply only to the extent that a quantifiable loss can be established to have been sustained to the satisfaction of the Insurer, at a given point in time during one or more of the above mentioned periods.
- (d) The value of securities and/or the adjusted cash or monetary loss shall be converted to US \$ according to the Representative Rate of Exchange prevailing upon the date of discovery of the loss.

The intent of the Assured and the Insurer being that the valuation of any loss under this part of the Policy shall represent, insofar ascertained, the actual direct financial loss sustained by the Assured.

#### 4. **Definition of Loss**

"Loss" shall mean:

Each claim or loss or series of claims or losses arising from or attributable to one source or original cause for this purpose, any claim or loss or series of claims or losses arising from collusion between two or more persons shall be deemed to be one loss.

## **DEFINITIONS IN RESPECT OF PART I & II**

For the purposes of this policy wherever the following terms are used they shall be construed as follows: -

"The Assured" shall mean:

- a) The person or persons or partnership, firm or company named in the Schedule including shareholders and their predecessors in business.
- b) Any partner/principal of the Assured including any other persons who may at any time during the Policy Period become a partner/principal
- c) Any Employee as defined herein.
- d) The estates and/or the legal representatives of any of the persons, partnership or company noted under a), b) or c) above in the event of their death, incapacity, insolvency or bankruptcy.

"Securities" shall mean:

Stock, Shares, Scrip, Transfers, Certificates, Debentures, Bonds, Coupons, Warrants, Bills of Exchange, Promissory Notes, Certificates of Deposit, Title Deeds, Bearer Instruments, or other documents of value and any other documents of a negotiable nature.

"Cash" shall mean:

Bank Notes, Gold, Silver and other Coins of every description and Cheques.

"Employees" shall mean:

- (a) All those persons employed by the Assured and/or under a contract of service with the Assured, including Partners and Executive or non-executive Directors, Consultants and temporary Employees employed by the Assured or employment agencies of any class whatsoever or the individual members of Investment Committees while acting their capacity as the independent review committee of the Assured's Provident and Mutual Funds.

- (b) All former employees, former partners, former executives or non-executive directors, former consultants and former temporary employees employed by the Assured or employment agencies.
- (c) All associates and former associates.
- (d) All guest students pursuing studies or duties at the Assured's premises.

## **SPECIAL CONDITIONS IN RESPECT OF PART I AND PART II**

### **1. Limits of liability**

The total liability of the Insurer for any one claim or loss, and in the aggregate in respect of the period of insurance, including claimants' costs and expenses, shall not exceed the amount for any one occurrence/ aggregate stated in the schedule.

### **2. Premium Calculation**

The deposit premium shall be calculated by multiplying. the estimated gross annual income by the agreed rate.

Within 90 days of the expire of the insurance period, the Assured shall give to the Insurer, a written declaration, confirmed by the Assured 's accountant, as to the actual gross annual income in respect of the insurance period. The final premium due will be calculated by multiplying the agreed rate by the actual gross income; should there be any difference between the deposit premium and the final premium, then the difference will be paid by one party (the Assured or the Insurer) to the other, within 21 days.

### **3. Costs and Expenses**

The Insurer also agree to pay all costs and expenses incurred in the defence or settlement of any such claim, provided that, such in addition costs and expenses are up to an amount not exceeding 10% of the total aggregate limit of indemnity, it being expressly agreed that this amount represents "reasonable legal costs" for the purpose of Article 66 of the Insurance Contract Law, 5741-1981.

### **4. Premiums Payment**

All premiums payable under this part shall be paid to the Insurer in N.I.S. at the representative rate of Exchange prevailing on the date of payment.

## 5. **Merger, Amalgamation, Take-over**

If the business of the assured shall be merged and amalgamated with some other concern or if the business of some other concern shall be consolidated with the business of the Assured or if the business of the Assured shall become a party to a take-over, then the cover provided under this policy is amended to apply only to an event committed prior to the effective date of the said merger, amalgamation or take over. **There shall be no cover whatsoever to the other concern or business as mentioned above unless the insurer has agreed in writing prior to the said effective date and subject to any terms and conditions as agreed by the insurer.**

## 6. **Jurisdiction**

This policy shall indemnify on the basis of the exclusive jurisdiction and legislation applicable in Israel.

## 7. **No claims bonus**

After three consecutive years that this policy is placed with the same Insurer, the Assured will be entitled to a no claim bonus of 10% of the premium paid for the first underwriting year, under the condition that there have been no paid and/or outstanding claims in respect of that year.

**PART III**  
**COMPUTER FRAUD EXTENSION**

**IMPORTANT NOTICE:**

**It is expressly understood and agreed that coverage according to this part shall be in force and valid only if completed and signed Proposal Form has been submitted to the Insurer and the Insurer has agreed and confirmed in writing to the Assured that this part is valid and in force.**

This policy is extended to include:

Third party loss directly caused by **Computer Fraud** committed by any person except an employee.

Additional Definitions:

**Computer Fraud** means the fraudulent input, modification or destruction of computer programs; or the fraudulent input, modification or destruction of electronic data within the **Assured's Computer Systems**; or the fraudulent transmission or modification of a communication transmitted through an **Electronic Communication System**; or the fraudulent transmission of a voice initiated funds transfer instruction directly to the **Assured** over the telephone by an unauthorized person.

**Computer System** means a computer suitable for multi-use applications that is capable of directing hardware, software and data resources according to computer programs formulated and introduced to the computer's operating system by the user including private branch exchange, voice mail processor, automated call attendant or telephone routing. All input, output, processing, storage and communication facilities including related communication or open systems networks which are physically connected to such a device, as well as the device's off-line media libraries, are deemed to be part of said computer said.

**Electronic Communication System** means electronic communication operations by Fedwire, Clearing House Interbank Payment System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Clearing House Automated Payment System (CHAPS), the funds transfer system of preauthorised recurring debits and credits of an Automated Clearing House Association which is a member of the National Automated Clearing House Association and similar automated communication systems.

**Electronic Data** means facts or information converted to a form usable in a **Computer System** which is stored on **Electronic Data Processing Media** for use by computer programs.

**Electronic Data Processing Media** means tapes, discs, or other bulk media, whether magnetic or optical, on which **Electronic Data** are recorded.

### Conditions and Provisions affecting Loss Settlement

#### Electronic Data Processing Media

In the case of loss, or damage to, **Electronic Data Processing Media** used by the **Assured** in its business, Insurers shall be liable under this Section only if such items are actually reproduced by other **Electronic Data Processing Media** of the same kind or quality and then for not more than the cost of the blank media plus the cost of labor for the actual transcription or copying of data which shall have been furnished by the **Assured** in order to reproduce such **Electronic Data Processing Media**, subject, of course, to the applicable Limit of Liability.

#### Electronic Data

In the case of loss of **Electronic Data** Insurers shall be liable under this Policy only if such data is actually reproduced by other **Electronic Data** of the same kind and quality and then for not more than the cost of labour for the actual transcription or copying of data which shall have been furnished by the Assured in order to reproduce such **Electronic Data** subject, of course, to the applicable Limit of Indemnity. However, if such **Electronic Data** cannot be reproduced and said **Electronic Data** represents **Securities**, or financial instruments having a value including **Evidences of Debt** then this loss will be valued as indicated in the Securities and Other Property paragraphs of this policy.

### **Specific Additional Exclusions to this Extension**

1. Loss caused by an identifiable employee of the **Assured** or by a person in collusion with any employee of the **Assured**.
2. Loss of potential income, including but not limited to interest and dividends.
3. Indirect or Consequential Loss of any nature.
4. Liability assumed by the **Assured** by agreement under any contract unless such liability would have attached to the **Assured** even in the absence of such agreement.
5. Loss resulting directly or indirectly from the accessing of any confidential information including but not limited to trade secret information, computer programs or customer information.
6. Loss resulting directly or indirectly from forged, altered or fraudulent negotiable instruments, securities, documents or written instruments.
7. Loss of negotiable instruments, securities, documents or written instrument
8. Loss resulting from mechanical failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, **Electronic Data Processing Media** failure or breakdown or any malfunction or error in programming or errors or omissions in processing.
9. Any claims arising from any internet operations or activities.

**The Insurer's liability under this part shall be limited to the limits of indemnity as mentioned in the schedule but in no event shall exceed \$ 1,000,000 any one occurrence and in the aggregate.**

## GENERAL EXCLUSIONS

**The Insurer will not be liable for claims or losses made in respect of:**

- (1) Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), acts of sabotage and terror, civil war, rebellion, revolution, insurrection, 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.

For the purpose of this exclusion – “terror” shall mean the use of force for political purpose, including the use of violence intended to put the public or any part of the public in fear by a person or persons acting on behalf of or in connection with any organization whatsoever.

- (2) Ionizing, radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- (3) Notwithstanding anything, contained herein to the contrary it is hereby understood that there shall be no liability of the Insurer in respect of any claim or loss:-
  - a) arising out of any circumstances or occurrence which has been notified to an Insurer. on any other form of Insurance effected prior to this Policy.
  - b) arising out of any circumstance or occurrence known to the Assured to give rise to a claim, prior to the inception hereof and not disclosed to the Insurer.
- (4) In respect of which the Assured is entitled to indemnity under any other policy effected by the Assured, however, this exclusion does not apply if the Assured is not actually indemnified by such other insurance.

## **GENERAL CONDITIONS OF THE POLICY**

This policy, the Schedule and any other document attached hereto, shall be construed as one contract, any word or expression to which a particular meaning has been attached shall be considered as having the same particular meaning where soever appearing.

1) **Extension of the Insurance Period**

Any extension of the Period of Insurance under the policy shall be subject to the Insurer's written agreement which shall be given expressly in respect thereof.

2) **Applicability of Law**

This policy is subject to the law of the state of Israel expressly including the Contract Insurance Law 5741 - 1981, as applicable except as amended herein, to the benefit of the Assured, and is subject to the exclusive jurisdiction of the courts of Israel.

3) **Cancellation**

- a) This policy may be cancelled by written notice by the Insurer not less than 90 days thereafter such cancellation shall be effective. The policy earned premiums shall be computed and the Assured shall be entitled to a Pro-Rata return premium in respect of the unexplored period.
- b) This policy may be cancelled by written notice by the Assured and not less than 30 days thereafter such cancellation shall be effective. The Assured shall be entitled to a return of premium calculated as customary for short period.

4) **Notification**

Upon the Assured becoming aware of any claim against him or any circumstances which may subsequently give rise to a claim, the Assured shall as soon as practicable notify the Insurer thereof.

The Assured shall deliver to the Insurer, as soon as possible after having been required to do so, such information and documents acquired for ascertaining the Insurer's liability, and if they are not in his possession, the Assured shall assist the Insurer to the best of his ability in obtaining them

5) **Fraudulent Claim**

If any claim under this Policy shall be in any respect fraudulent or if any fraudulent means or devices are used by the Assured or anyone acting, on the Assured's behalf to obtain any benefit under this Policy all benefits thereunder shall be forfeited.

6) **Subrogation Clause**

If any payment is made under this policy in respect of a claim, the Insurer shall be subrogated to all the Accord's rights of recovering relation hereto, however the Insurer shall not be entitled to exercise his rights in a way prejudicial to the right of the Assured.

The Insurer agrees to waive all rights of subrogation against the Issuer's subsidiaries or affiliated corporations or companies, or any other company or corporation associated with the Assured through ownership or management. The Insurer further agrees to waive his rights towards any person being in the assured's service or being a member of its board, and towards any person or party that the Assured agreed to release from liability or waive rights of subrogation against, prior to the loss or damage.

7) **Other Insurances**

In the event of loss or damage the Assured shall notify the Insurer of any other insurance made by the Assured or on his behalf, covering the same interest and property.

8) **No Admission Assistance And Co -Operation**

The Assured shall not make any payment, assume any obligation, make any admission or offer to settle any claim for which indemnity is or may be sought under this policy, without the prior consent of the Insurer, who will be entitled at his own expense and at any time, to take over and conduct, in the Assured's name, the defence or settlement of any claim against the Assured notified under this Policy.

The Assured shall cooperate with the Insurer, and upon request shall attend hearings and trials and shall assist in effecting settlements, and in the conduct of suits.

9) **Material Change**

Should there be any material change in the circumstances or nature of the risks which are the basis of contract, including inter alia loss of the Assured's licence and/or bankruptcy of the Assured, the Assured shall give notice as soon as possible, after he becomes aware of such material change.

10) **Notices**

Any notice to the Assured or to the Insurer shall be given in writing, to the last known address.