

# DIRECTORS AND OFFICERS LIABILITY INSURANCE

## POLICY WORDINGS

*(Note 1: Please read and check the details of this Policy carefully to ensure its accuracy and see that it meets your requirements)*

*Note 2: This is a "Claims Made" Policy, which means it covers only claims reported during the Period of Insurance*

*Note 3: The Limit of Indemnity applies to all damages and costs and expenses, including those incurred both by the Insured and the Company.)*

L&T General Insurance Company Limited (hereinafter called the "**Insurer**") and the Insured agree that

This Policy, the Schedule (including any Schedule issued in substitution) and any Clauses thereon shall be considered one document and any word or expression to which a specific meaning has been attached in any of them shall bear such meaning wherever it appears throughout the Policy.

The **Proposal** or any information supplied by the **Insured** shall be incorporated in and be the basis of the contract.

The **Insurer** will provide the insurance subject to the Terms and Conditions of this Policy, during the **Period of Insurance** shown in the Schedule and any subsequent period for which the **Insurer** has agreed to accept and the **Insured** has paid the premium.

The following shall be condition precedents to any liability of the **Insurer**

- a) The truth of the **Proposal**
- b) Observance of the terms of this Policy relating to anything to be done or complied with by the **Insured**

### **1. Insurance Cover**

The following insurance covers are afforded solely for **Claims** first made against an **Insured** during the **Period of Insurance** or (if applicable) the **Extended Reporting Period** and notified to the **Insurer** as required by the Policy.

#### **1.1. Insured Person Cover**

The **Insurer** will pay on behalf of any **Insured Person** the **Financial Loss** of such **Insured Person** in respect of any **Claim** made against such **Insured Person**, save to the extent that such **Insured Person** is indemnified by the **Company**.

#### **1.2. Company Reimbursement Cover**

The **Insurer** will pay on behalf of the **Company** the **Financial Loss** of an **Insured Person** in respect of any **Claim** made against such **Insured Person**, but only to the extent that such **Company** has indemnified such **Insured Person**.

#### **1.3. Company Cover for Securities Claims**

The **Insurer** will pay on behalf of the **Company** the **Financial Loss** of the **Company** in respect of any **Securities Claim** made against such **Company**.

#### **1.4. Outside Entity Executive Cover**

The **Insurer** will pay on behalf of the **Outside Entity Executive** the **Financial Loss** of such **Outside Entity Executive** in respect of any **Claim** made against such **Outside Entity Executive** but only excess of any indemnification provided by an **Outside Entity** and excess of any directors and officers liability insurance coverage afforded to an **Outside Entity** or its director or officers (or equivalent executive or management position in any other country).

## 2. Definitions

The bold printed terms in this Policy whether in the singular or in the plural are defined as follows:

### 2.1. Bodily Injury

**Bodily Injury** shall mean bodily injury, sickness, disease or death of any person including any consequential loss resulting therefrom, and shall include mental or emotional distress.

### 2.2. Change of Control

**Change of Control** shall mean

- any person, entity or group that:
  - (i) acquires more than 50% of the **Policyholder's** share capital;
  - (ii) acquires the majority of the voting rights in the **Policyholder**;
  - (iii) assumes the right to appoint or remove the majority of the board of directors (or equivalent position) of the **Policyholder**;
  - (iv) assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the **Policyholder**; or
  - (v) merges with the **Policyholder**, such that the **Policyholder** is not the surviving entity; or
- a trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator (or similar official or person) is appointed for the **Policyholder**.

### 2.3. Civil or Bail Bond Expense

**Civil or Bail Bond Expense** shall mean only the fee or premium (and only that which is available at reasonable commercial rates) necessary to obtain such a bond or other similar form of guarantee for the period of no more than 12 months, in respect of obligations as to a specific security or collateral placed upon the **Insured Person** by a civil or criminal court in connection with any covered **Claim**; and excluding any form of actual security or collateral for funding for the bond or other guarantee, the bond or other guarantee itself, or the equivalent to any of the same.

### 2.4. Claim

**Claim** shall mean:

- a written demand for compensation, monetary damages or non-monetary relief served or brought by a **Third Party** alleging any actual or alleged **Wrongful Act**;
- a civil proceeding, suit or counter-claim commenced by the service of a claim form or similar pleading alleging any actual or alleged **Wrongful Act**;
- a formal notice of a criminal proceeding alleging any actual or alleged **Wrongful Act**;
- a formal notice of an arbitration or mediation proceeding alleging any actual or alleged **Wrongful Act**;
- a formal administrative or regulatory proceeding (including but not limited to the Securities and Exchange Board of India or similar agency that regulates the purchase or sale or offer to purchase or sell **Securities**) commenced by the service on any **Insured** of a notice of charges or similar document against any **Insured** alleging any actual or alleged **Wrongful Act**;
- an **Investigation**:
  - (i) of an **Insured Person**, in his or her insured capacity as such, once such **Insured Person** is identified in writing by such investigating authority as a person against whom a criminal, administrative or regulatory proceeding may be commenced;
  - (ii) of an **Insured Person** in his or her insured capacity as such, after the service of a summons or court notice upon such **Insured Person** ; or

- (iii) of a **Company** by a central or state and/or statutory body that regulates the purchase or sale or offer to purchase or sell **Securities** in connection with the purchase or sale or offer to purchase or sell **Securities** issued by the **Company**; but only if and so long as such **Investigation** of the **Company** is also brought, and is continuously maintained, against a **Director or Officer**,

An **Investigation** as described in this section shall be deemed to be first made when the **Insured** is first so identified or so served;

- a written request or demand by a regulatory, administrative, governmental or similar authority to an **Insured Person** in his or her insured capacity as such, to interview or depose such **Insured Person**, or
- a written request to extend the operation of or waive any statute of limitations or contractual time-bar, in respect of a **Claim** that, if made, would be covered hereunder.

The term **Claim** shall include a **Securities Claim** and an **Employment Claim**.

## **2.5. Clean up Costs**

**Clean Up Costs** shall mean expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralising, detoxifying or assessing the effects of **Pollutants**.

## **2.6. Company**

**Company** shall mean:

- the **Policyholder**; and
- any past, present or future **Subsidiary Company** (subject to the terms and conditions of Section 5.4.1 of the Policy); and
- any charitable foundation or charitable trust solely controlled or sponsored by the **Policyholder** or any **Subsidiary Company** thereof; provided that this definition shall not include any pension or superannuation fund, trust or scheme; and
- in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting liquidator, trustee, administrator or court appointed receiver; if any.

## **2.7. Corporate Manslaughter Proceeding**

Corporate Manslaughter Proceeding shall mean a **Claim** against a Director or Officer arising out of an incident giving rise to one or more fatalities in which the **Company** is implicated or alleged to have played some part.

## **2.8. Deductible**

**Deductibles** shall mean the amount stated in the Schedule of the Policy, which the **Insured** shall have to bear, in respect of each **Claim** under the Insuring Cover “Company Reimbursement Cover” and/or “Company Cover for Securities Claims” of the Policy for **Financial Loss**.

## **2.9. Defence Costs**

**Defence Costs** are part of **Financial Loss** and shall mean reasonable and necessary fees, costs, charges and expenses (other than remuneration payable to any **Insured Persons** or **Employees** of any **Company**, cost of their time or costs or overhead of any **Company**) incurred with the prior written consent of the **Insurer**, such consent not to be unreasonably withheld or delayed, in the investigation, defence, adjustment, settlement or appeal of any **Claim** made or brought against any **Insured**.

**Defence Costs** shall also include reasonable and necessary fees, costs, charges and expenses of any accredited expert retained through defence lawyers approved in writing by the **Insurer** on behalf

of the **Insureds** to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a **Claim**.

#### **2.10. Director or Officer**

**Director or Officer** shall mean: (i) any natural person who is a past, present or future director, officer, management committee member, member of the board of managers, supervisory board member, management board member or governor of the **Company** duly elected or appointed pursuant to the laws and the by-laws (or equivalent in any other country); (ii) any natural person who is a past, present or future de facto director or officer or **Shadow Director** of the **Company**; (iii) any **Employee** of the **Company** who is the past, present or future corporate general counsel (or equivalent position) of the **Policyholder**; (iv) any **Director or Officer** defined above who is a past, present or future member of the **Company's** internal audit committee, internal compensation committee, or any other internal committee of and for the **Company**; (v) any natural person named as a prospective director in the listing particulars or prospectus for a public offering issued by any **Company**.

#### **2.11. Employee**

**Employee** shall mean a natural person while in the regular service of the **Company** in the ordinary course of the **Company's** business and whom the **Company** compensates by salary, wages and/or commissions and has the right to govern, instruct and direct in the performance of such service.

The definition of **Employee** shall not include independent contractors.

#### **2.12. Employment Claim**

**Employment Claim** shall mean a **Claim** based on and alleging an **Employment Practices Violation** (including a proceeding, investigation or charge brought by central or state and/or statutory body whose purpose is to address **Employment Practices Violations**).

#### **2.13. Employment Practices Violation**

**Employment Practices Violation** shall mean any actual or alleged: (i) wrongful or unfair dismissal, discharge or termination of employment; (ii) breach of any oral or implied employment contract or quasi-employment contract; (iii) employment related misrepresentation; (iv) violation of employment discrimination laws; (v) illegal workplace harassment (including sexual harassment); (vi) wrongful failure to promote; (vii) wrongful discipline; (viii) wrongful deprivation of a career opportunity or wrongful demotion; (ix) negligent evaluation; (x) negligent retention; (xi) employment related invasion of privacy; (xii) employment related defamation, humiliation, libel or slander; (xiii) failure to adopt workplace or employment practices policies and procedures; (xiv) illegal retaliatory treatment or victimization of **Employees** (including retaliation in violation of whistleblower statutes); (xv) employment related infliction of emotional distress in connection with a violation listed under this section and (xvi) other employment related torts committed by any **Insured Person** while acting in his or her respective capacity on behalf of the **Company** or any matter claimed against any such **Insured Person** solely by reason of his/her status as such.

#### **2.14. Extended Reporting Period**

**Extended Reporting Period** shall mean any extended reporting period or discovery period granted or provided by the **Insurer** under the policy

#### **2.15. Extradition Claim**

**Extradition Claim** means a formal request, claim, warrant for arrest or other proceedings pursuant to the provisions of any extradition act or similar legislation in any jurisdiction around the world.

#### **2.16. Extradition Costs**

**Extradition Costs** shall form part of **Financial Loss** and shall mean reasonable and necessary legal fees, costs and expenses incurred by an **Insured Person** with the prior written consent of the **Insurer** to obtain legal advice or to bring or defend proceedings including by way of judicial

review or by way of other challenge to the political executive's decision to order an **Insured Person's** extradition from any jurisdiction around the world.

#### **2.17. Financial Impairment**

**Financial Impairment** means the status of the **Company** resulting from:

- the appointment by any governmental, central or state and/or statutory, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**; or
- the **Company** becoming a debtor in possession.

#### **2.18. Financial Institution**

**Financial Institution** shall mean any bank including any merchant or investment bank, finance company, hedge fund, insurance or reinsurance company (other than a captive owned by the **Policyholder**), mortgage bank, savings and loan association, building society, credit union, stockbroker, investment trust, asset management company, fund manager or any entity established principally for the purpose of carrying on commodities, futures or foreign exchange trading or any other similar entity.

#### **2.19. Financial Loss**

**Financial Loss** shall mean:

- damages, judgements (including pre and post judgement interest awarded on a covered judgement and plaintiff's or claimant's legal fees awarded on a covered judgement) and settlements that any **Insured** becomes legally liable to pay;
- **Defence Costs** incurred;
- **Investigation Costs**;
- **Extradition Costs**;
- **Prosecution Costs**;
- **Civil or Bail Bonds Expenses**; and
- **Indemnity Costs for Shareholder Derivative Claims**.

**Financial Loss** (other than **Defence Costs**) does not include: (i) taxes; (ii) social security contributions; (iii) fines or penalties imposed by law; (iv) damages that are uninsurable under the law pursuant to which this Policy shall be construed; (v) **Clean Up Costs**; or (vi) any sum payable pursuant to a financial support direction or contribution notice issued by a pension regulator.

In the event of a **Claim** alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all the ownership interest in or assets of an entity is inadequate, **Financial Loss** with respect to such **Claim** shall not include any amount of any judgement or settlement representing the amount by which such price or consideration is effectively increased; provided, however, that this paragraph shall not apply to **Defence Costs**.

#### **2.20. Insured**

**Insured** shall mean:

- any **Insured Person**; and
- any **Company**.

#### **2.21. Insured Person**

**Insured Person(s)** shall mean any:

- **Director or Officer**;

- **Outside Entity Executive;**
- **Employee** of the **Company** who is the Risk Manager (or equivalent position) of the **Policyholder;**
- **Employee** of the **Company** while acting in a managerial or supervisory capacity for the **Company;** and
- **Employee** of the **Company**, other than a **Director or Officer**, in such capacity on behalf of the **Company** including whilst acting as a lawyer on behalf of the **Company:**
  - (i) for any **Securities Claim** or **Employment Claim;** or
  - (ii) for all other **Claims**, but with respect to (ii) only if and as long as such **Claim** is also made, and is continuously maintained, against a **Director or Officer.**

**Insured Persons** shall not include any consultant, external auditor, liquidator, administrator or receiver of the **Company.**

#### **2.22. Insurer**

**Insurer** shall mean L&T General insurance Company Ltd.

#### **2.23. Investigation**

**Investigation** shall mean a formal criminal, administrative or regulatory investigation, hearing or enquiry, commenced by any regulator, government body, government agency or official trade body.

#### **2.24. Investigation costs**

**Investigation costs** are part of **Financial Loss** and shall mean such reasonable and necessary fees, costs, charges and expenses (other than remuneration payable to any **Insured Persons** or **Employee** of any **Company**, cost of their time or costs or overheads of any **Company**):

- as are incurred with the written consent of the **Insurer**, such consent not to be unreasonably withheld or delayed, by or on behalf of an **Insured Person** directly in connection with such **Insured Person** preparing for and attending an **Investigation** as described in Extension 3.3 of this Policy; and
- in respect of which the **Company** has not indemnified and is not permitted or required to indemnify the **Insured Person** pursuant to law, contract or agreement; or
- in respect of which the **Company** is permitted or required to indemnify the **Insured Person** but such **Company** fails or refuses to indemnify the **Insured Person** due to **Financial Impairment.**

**Investigation costs** do not include any fines or penalties, or the equivalent, levied or imposed in connection with the **Investigation.**

#### **2.25. Judicial Order**

**Judicial Order** shall mean:

- an interim or interlocutory judicial order; or
- with respect to any proceeding concerning the deportation of any **Insured Person**,

provided that any judicial order against an **Insured Person** shall be in connection with a **Claim** against such **Insured Person** that is covered under this Policy.

#### **2.26. Limit of Liability**

**Limit of Liability** shall mean the amount stated in the Schedule which shall be the **Insurer's** maximum liability, in the aggregate, payable under this Policy.

## **2.27. Named Parent**

Named Parent, if stated in the Schedule, shall mean the entity designated therein

## **2.28. Non-Executive Director**

**Non-Executive Director** shall mean any natural person serving as a **Director** of the **Company** at the inception of the **Period of Insurance** who is not also an **Employee** of any **Company**. The term **Non-Executive Director** shall also include any natural person who begins serving as a **Non-Executive Director** of the **Company** during the **Period of Insurance**.

## **2.29. Outside Entity**

**Outside Entity** shall mean:

- any not-for-profit entity;
- any for-profit entity, but excluding any:
  - (i) **Company**; (ii) **Financial Institution**; (iii) other entity if its **Securities** are traded on a primary, secondary or other market in the United States of America or its territories or possessions; or (iv) other entity that had negative net assets or negative net worth at the inception date of this Policy; unless such **Financial Institution** or other entity is specifically listed as an **Outside Entity** in an endorsement attached to this Policy.

## **2.30. Outside Entity Executive**

**Outside Entity Executive** shall mean any **Director** or **Officer** or any **Employee** of the **Company** who:

- did or will serve or act; or
- during the **Period of Insurance** is serving or acting, in the capacity as a director or officer (or equivalent executive or management position in any other country) of an **Outside Entity** at the **Company's** specific direction and request.

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## **2.31. Period of Insurance**

**Period of Insurance** shall mean that period of time shown in the Schedule to this Policy.

## **2.32. Policyholder**

**Policyholder** shall mean the legal entity designated in the Schedule.

## **2.33. Pollution**

**Pollution** shall mean:

- the actual, alleged or threatened generation, transportation, discharge, emission, dispersal, release, escape, treatment, storage or disposal of **Pollutants**; or
- any governmental regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants** or any action taken in contemplation or anticipation of any such regulation, order, direction or request, or any voluntary decision to do so.

## **2.34. Pollutants**

**Pollutants** shall mean any solid, liquid, gaseous irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals, toxic mold or any thermal irritant or contaminant, ionising radiation or radioactivity from any nuclear fuel and waste (waste includes, but is not limited to, nuclear waste or materials which are intended to be or have been recycled, reconditioned or reclaimed), any air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mold, mildew and any mycotoxins,

spores, scents or by products produced or released by fungi, but not any fungi intended by the **Insured** for consumption).

### **2.35. Property Damage**

**Property Damage** shall mean any damage to or destruction of any property or loss of use of such property, and any consequential loss resulting therefrom.

### **2.36. Proposal**

**Proposal** shall mean any information and/or statements or materials requested by the **Insurer**, or supplied to the **Insurer** by or on behalf of: (i) the **Company** or (ii) any **Insured Person**, and any proposal form completed or signed by the **Policyholder** for this Policy, and the financial statements and annual reports of the **Company**.

### **2.37. Prosecution Costs**

**Prosecution Costs** shall mean reasonable and necessary fees, costs, charges and expenses (other than remuneration payable to any **Insured Persons** or **Employee** of any **Company**, costs of their time or overhead of any **Company**) incurred with the prior written consent of the **Insurer**, such consent not to be unreasonably withheld or delayed in bringing or defending proceedings in any court of competent jurisdiction in India, or to appeal to seek to obtain the discharge or revocation of a **Judicial Order**.

### **2.38. Securities**

**Securities** shall mean any bond, debenture, note, share, stock, ADR or other equity or security for debt which is issued or given by the **Company**, and will include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items.

### **2.39. Securities Claim**

**Securities Claim** shall mean a **Claim** that:

- is brought by a holder of **Securities** of a **Company**:
  - (i) in his, her or its capacity as a **Security** holder of such **Company**, with respect to his, her or its interest in **Securities** issued by the **Company**; or
  - (ii) on behalf of or in the name of a **Company** (in the form of a shareholder “derivative action” or its equivalent) against an **Insured**; or
- is brought by the Securities and Exchange Board of India or any other Governmental Agency that regulates the purchase or sale or offer to purchase or sell **Securities** and alleges that a **Company** and/or any of its **Insured Persons** violated a securities law only if and so long as such **Claim** against the **Company** is also made, and is continuously maintained, against a **Director or Officer**.

### **2.40. Shadow Director**

**Shadow Director** shall mean any natural person, who, as a consequence of being a **Director, Officer or Employee** of any **Company**, is deemed a **Shadow Director**, as defined in the Companies Act 1956 and amendments thereto.

### **2.41. Sister Company**

**Sister Company** shall mean any entity in which the **Named Parent** directly or indirectly (through another **Subsidiary Company**):

- holds more than 50% of the voting rights; or
- appoints a majority of the board of directors (or equivalent in any other country); or
- has the right, pursuant to a written agreement with other shareholders, to appoint a majority of the board of directors (or equivalent in any other country),

but only if such entity is domiciled or incorporated in India

#### **2.42. Sub-Limit of Liability**

**Sub-Limit of Liability** shall mean a limit of **Insurer's** liability under this Policy which is within and forms part of, and is not in addition to, the **Limit of Liability**.

#### **2.43. Subsidiary Company**

**Subsidiary Company** shall mean any: (1) **Sister Company**; and (2) entity in which the **Policyholder** or any **Sister Company**:

- holds directly or indirectly (through another **Subsidiary Company**) more than 50% of the voting rights; or
- appoints a majority of the board of directors (or equivalent in any other country); or
- has the right, pursuant to a written agreement with other shareholders, to appoint a majority of the board of directors (or equivalent in any other country).

but only if such entity is domiciled or incorporated in India.

#### **2.44. Third Party**

**Third Party** shall mean any person or entity other than the **Company** or an **Insured Person**.

#### **2.45. US Claim**

**US Claim** shall mean any **Claim** brought or commenced, in whole or in part: (a) within the jurisdiction of; or (b) pursuant to the laws of, the United States of America or its territories and/or possessions.

#### **2.46. US Securities Claim**

**US Securities Claim** shall mean any **Securities Claim** brought or commenced, in whole or in part: (a) within the jurisdiction of; or (b) pursuant to the laws of, the United States of America or its territories and/or possessions.

#### **2.47. Wrongful Act**

**Wrongful Act** shall mean any actual, alleged or attempted (or with respect to a shareholder derivative action, any proposed) breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, misstatement, misleading statement, libel, slander or defamation or any other wrongful acts or omissions committed or attempted by or allegedly committed or attempted by:

- any **Insured Person** whilst acting in his or her respective capacity on behalf of the **Company** or any matter claimed against such **Insured Person** solely by reason of his/her status as such;
- any **Insured Person** whilst acting in the capacity as a director or officer (or in an equivalent executive or management position in any other country) of an **Outside Entity** at the **Company's** specific direction or request, but only with respect to Cover - "Company Reimbursement Cover" and Cover Section 1.4.Outside Entity Executive Cover;
- the **Company**, but solely with respect to a **Securities Claim**.

The term Wrongful Act shall also include an **Employment Practices Violation**.

### **3. Extensions to cover**

Subject to all the terms, conditions, exclusions and limitations of this Policy, cover is extended as follows:

#### **3.1. Marital Estates, Heirs and Legal Representatives**

This Policy will cover **Financial Loss** as arises from or as a consequence of any **Claim** made against the:

- (i) lawful spouse or domestic partner of any **Insured Person**; and
- (ii) estates, heirs or legal representatives of any **Insured Person**;

arising solely out of a **Wrongful Act** by such **Insured Person** and made solely against any such person, estate or heir in his, her or its respective capacity as the spouse or domestic partner, estate, heir or legal representative, of any **Insured Person**. The cover provided by this extension to persons under (i) above is limited to **Financial Loss** arising from actions or proceedings for the enforcement of judgements or damages against an **Insured Person** which relate to the ownership of property (including marital community property) jointly held by the **Insured Person** and his or her spouse or domestic partner. All cover provided by this extension is subject to such lawful spouse or domestic partner, estates, heirs or legal representatives observing and being subject to the terms, conditions and limitations of this Policy in so far as they can apply. This extension of cover will not cover any claim arising out of any act or omission of the lawful spouse, domestic partner, estate, heir or legal representative.

#### **3.2. Excess Limit of Liability for Non-Executive Directors**

The **Insurer** will pay on behalf of any **Non-Executive Director** such **Financial Loss** as arises from or is a consequence of any **Claim** first made against him or her either jointly or severally during the **Period of Insurance** by reason of a **Wrongful Act**; provided that the coverage provided by this extension shall be specifically excess of, and shall not drop down to be primary insurance until the exhaustion of:

- the **Limit of Liability** of this Policy;
- the **Limit of liability** of all other applicable directors and officers or management liability or indemnity insurance policies written as specific excess over this Policy, or otherwise; and
- all other indemnification for **Financial Loss** available to any **Non-Executive Director**.

The **Limit of Liability** for cover under this extension shall be the **Non-Executive Director Excess Limit of Liability** indicated in the Policy Schedule, and such **Non-Executive Director Excess Limit of Liability** shall be a separate **Limit of Liability** for each individual **Non-Executive Director**. All **Non-Executive Director Excess Limits of Liability** shall be subject to the maximum **Aggregate Non-Executive Director Limit of Liability** as indicated in the Schedule which shall be for all such **Financial Loss** under this Extension, in the aggregate for all **Non-Executive Directors** together.

#### **3.3. Extradition Costs**

If any **Insured Person** receives during the **Period of Insurance** or the **Extended Reporting Period**, if applicable, an **Extradition Claim** which is part of, and results directly from, a **Claim** that is covered by this Policy, the **Insurer** will pay on behalf of such **Insured Person**, where permitted by law, **Extradition Costs**.

#### **3.4. Prosecution Costs**

The **Insurer** will pay, where permitted by law, on behalf of any **Insured Person** such **Prosecution Costs** of each **Insured Person** to bring or defend proceedings in any court of competent jurisdiction or to appeal to seek to obtain the discharge or revocation of a **Judicial Order** entered

during the **Period of Insurance** against an **Insured Person** in connection with a **Claim** against such **Insured Person** that is covered under this Policy, imposing:

- confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such **Insured Person**;
- a charge over real property or personal assets of such **Insured Person**;
- a temporary or permanent prohibition on such **Insured** from holding the office of or performing the function of a **Director or Officer** (or equivalent) of any entity;
- restriction of such **Insured Person's** liberty to a specified domestic residence or an Official Detention;
- deportation of an **Insured Person** following revocation of otherwise proper, current and valid immigration status for any reason other than such **Insured Person's** conviction of a crime.

Such **Prosecution Costs** shall constitute **Financial Loss**, and the relevant proceedings shall constitute part of the relevant connected **Claim**. It is further understood and agreed that the **Insurer's** maximum payment of **Financial Loss** under this extension shall be limited to and shall not exceed, in the aggregate for all **Insureds** (combined), the **Sub-Limit of Liability** indicated in the Policy Schedule (hereinafter "**Sub-limit of Liability**") and this **Sub-limit of Liability** shall form part of and not be in addition to the **Limit of Liability** of this Policy pursuant to the provisions below.

### **3.5. Civil or Bail Bond Expenses**

Where an **Insured Person** incurs **Civil or Bail Bond Expense**, as defined hereafter, during the **Period of Insurance** directly related to a **Claim** in respect of which they are entitled to cover under this Policy, the **Insurer** will pay on behalf of that **Insured Person** such **Civil or Bail Bond Expense** incurred.

Such **Civil or Bail Bond Expense** shall, where covered under this extension, constitute **Financial Loss**. It is further understood and agreed that the **Insurer's** maximum payment of **Financial Loss** under this extension shall be limited to and shall not exceed, in the aggregate for all **Insureds** (combined), the sum indicated in the Schedule (hereinafter "**Sub-limit of Liability**") and this **Sub-limit of Liability** shall form part of and not be in addition to the **Limit of Liability** of this Policy pursuant to the provisions of section 5.3.3. below.

### **3.6. Emergency Defence Costs**

If the **Insurer's** written consent cannot reasonably be obtained in a timely manner by the **Insureds** or the **Company** before **Defence Costs**, **Extradition Costs** or **Prosecution Costs** are incurred with respect to a **Claim**, the **Insurer** shall then have the discretion to give retroactive approval for such **Defence Costs**, **Extradition Costs** and **Prosecution Costs** with respect to such **Claim**, up to, in the aggregate for all **Insureds**, ten (10) percent of the **Limit of Liability** or the applicable **Sub-limit of Liability** indicated in the schedule, whichever is less.

### **3.7. Indemnity Costs for Shareholder Derivative Claims**

If the **Company** is ordered by a court to pay the costs of the claimants in pursuing a derivative action against **Insured Persons** (hereinafter **Indemnity Costs For Shareholder Derivative Claims**) this Policy is extended to pay such costs provided that such derivative action constitutes a **Claim** or **Securities Claim** otherwise covered under this Policy.

### **3.8. Runoff Cover for Outside Entity Executives**

In the event that an **Insured Person** ceases to act as an **Outside Entity Executive** (as defined within this Policy) of an **Outside Entity** at any time prior to or during the **Period of Insurance**, then this Policy shall continue to apply with respect to any **Claim** first made against such **Insured Person** during the **Period of Insurance** or the **Extended Reporting Period** (if applicable), but only with respect to **Wrongful Acts** committed prior to the date such person ceased to be an **Outside Entity Executive** of such **Outside Entity** and committed during the time such person

was an **Outside Entity Executive** of such **Outside Entity** and otherwise covered under the terms, conditions, exclusions and limitations of this Policy.

### **3.9. Runoff Cover for Past Subsidiaries**

In the event that a **Subsidiary Company** ceases to be a **Subsidiary Company** (as defined within this Policy) at any time prior to or during the **Period of Insurance**, then this Policy shall continue to apply with respect to any **Claim** made against such **Subsidiary Company** and any **Insured Person** thereof first brought during the **Period of Insurance** or the **Extended Reporting Period** (if applicable), but only with respect to **Wrongful Acts** committed prior to the date such entity ceased to be a **Subsidiary Company** and committed during the time such entity was a **Subsidiary Company**, and otherwise covered under the terms, conditions, exclusions and limitations of this Policy.

### **3.10. Employment Claims**

This Policy will extend to cover **Employment Claims** against **Insured Persons**.

## **4. Exclusions**

No **Wrongful Act** of an **Insured** shall be imputed to any other **Insured Persons** for the purpose of determining the applicability of the foregoing exclusions in Section 4, other than exclusions 4.2 and 4.3 of this Policy. Only those **Wrongful Acts** committed by any past, present or future Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel or Chief Legal Counsel (or equivalent) of the **Company** shall be imputed to the **Company** for the purposes of determining the cover under Insuring Clause 1.2. (Company Reimbursement Cover) and Insuring Clause "1.3. (Company Cover for Securities Claims).

The **Insurer** shall not be liable under this Policy to make any payment for **Financial Loss** (including **Defence Costs**) in connection with any **Claim** made against any **Insured**, or any **Investigation**:

### **4.1. Conduct**

alleging, arising from, based upon, attributable to or as a consequence of:

- any **Insured** having gained any profit or advantage to which he, she or it had or has no legal entitlement; or
- any intentionally dishonest or intentionally fraudulent act or omission committed by an **Insured**;

This exclusion shall not apply (and **Defence Costs** shall be advanced), unless and until it is determined by a written admission by an **Insured**, or a judgement or other final adjudication in the underlying action against an **Insured** or in a separate action or proceeding, that such **Insured** had no legal entitlement to such profit or advantage or that such **Insured** committed such intentionally dishonest act or omission or intentionally fraudulent act or omission;

### **4.2. Pending and Prior Litigation/Events**

alleging, arising from, based upon, attributable to or as a consequence of:

- any official examination, enquiry, **Investigation** or other proceedings ordered or commissioned at the behest of a legally empowered body, initiated prior to or pending at the Pending and Prior Date specified in the Policy Schedule; or
- any litigation, suit, **Claim**, arbitration, mediation or **Investigation** initiated prior to or pending at the Pending and Prior Date specified in the Policy Schedule; or litigation, suit, arbitration, mediation or **Investigation** alleging or deriving from the same or essentially the same facts as alleged in such prior or pending litigation, suit, **Claim**, arbitration, mediation or **Investigation**;

#### 4.3. **Prior Notice**

alleging, arising from, based upon, attributable to or as a consequence of any **Claim** or circumstance existing prior to the **Period of Insurance** that has been reported under any directors and officers or management liability policy, employment practices liability, employers liability or general liability policy of which this Policy is a renewal or replacement or which it may succeed in time;

#### 4.4. **Property Damages and Bodily Injury**

for **Property Damage** and/or **Bodily Injury**; provided, further, however, that the exclusion for **Bodily Injury** shall not apply to: (i) **Defence Costs** incurred by an **Insured Person** in respect of a non-**US Claim**; (ii) a **Securities Claim**; or (iii) mental or emotional distress in connection with an **Employment Claim**;

#### 4.5. **Pension Trustee**

for the infringement of or violation of any responsibilities, obligations or duties imposed by:

- provisions in India or any country or jurisdiction around the world concerning any pension, employee provident fund, profit sharing or employee benefit programmes or social compensation plans arising under any central, federal, state, provincial or local statutory or common law; or
- any statute, regulation or common law whilst acting in the capacity of trustee of any pension employee provident fund, or superannuation trust, plan or scheme; or
- the US Employee Retirement Income Security Act (ERISA) of 1974 (or any amendment thereof); except for section 510;

#### 4.6. **Insured v Insured for US Claims Only**

when such **Claim** is a **US Claim** and is brought by, or on behalf of, or at the instigation of the **Company, Named Parent**, any **Director or Officer**, any **Outside Entity** or any director or officer (or equivalent in any other country) of an **Outside Entity**; provided, however, this exclusion shall not apply to:

- a **Claim** brought or maintained by a liquidator, receiver, bankruptcy trustee or administrative receiver, (or the equivalent in any other country), either directly or derivatively on behalf of the **Company** or the **Outside Entity** without the solicitation, voluntary assistance or active participation of any **Director or Officer** or any director or officer (or equivalent in any other country) of the **Named Parent** or of the **Outside Entity**;
- a **Claim** or **Securities Claim** in the form of a derivative action brought in the name of the **Company** or the **Outside Entity** by one or more persons who are not **Directors or Officers** and who bring and maintain the **Claim** or **Securities Claim** without the solicitation, voluntary assistance or active participation of any **Director or Officer** or any director or officer (or equivalent in any other country) of the **Named Parent** or of the **Outside Entity**;
- an **Employment Claim** brought by an **Insured Person** or any director or officer (or equivalent in any other country) of the **Named Parent** or of the **Outside Entity**;
- a **Claim** brought by or at the instigation of any **Insured Persons** or any director or officer (or equivalent in any other country) of the **Named Parent** or of the **Outside Entity** if such **Claim** results from a covered **Claim** brought by any **Third Party** and the **Third Party** could have brought the **Claim** directly against an **Insured Person** or any director or officer (or equivalent in any other country) of the **Named Parent** or of the **Outside Entity** not named in the independent **Claim** (including any cross claim/**Third Party** claim for indemnity);
- a **Claim** brought by any former **Insured Person** or brought by any former director or former officer (or equivalent in any other country) of the **Named Parent** or of the **Outside Entity**;

- a **Claim** brought by an **Insured Person** or any director or officer (or equivalent in any other country) of the **Named Parent** or of the **Outside Entity** in their capacity as a “whistleblower” (as that term is defined by central, governmental, federal, state, local or foreign law) alleging a **Wrongful Act** by an **Insured Person** in connection with a protected activity categorised by any central, governmental, federal, state, local or foreign law as a “whistleblower” activity; or
- **Defence Costs** incurred by an **Insured Person**;

#### **4.7. Capacity**

alleging, arising from, based upon, attributable to or as a consequence of any actual or alleged act or omission of an **Insured Person**

- by reason of his or her status as a director, officer, trustee or manager (or similar position) or an **Employee** of an entity that is not the **Company** or an **Outside Entity** or
- whilst serving in the capacity as a director, officer, supervisory board member, management board member or trustee of any entity other than:
  - (i) a **Company** or
  - (ii) an **Outside Entity** if serving otherwise than in his or her capacity as an **Outside Entity Executive** of such **Outside Entity**;

#### **4.8. Wrongful Acts for Subsidiaries**

alleging, arising from, based upon, attributable to or as a consequence of any actual or alleged **Wrongful Act** of:

- any **Insured Person** of any **Subsidiary Company**; or
- the **Subsidiary Company**,

committed prior to such entity becoming a **Subsidiary Company** or after such entity ceases to be a **Subsidiary Company**;

#### **4.9. Professional Services**

alleging, arising out of, based upon or attributable to as a consequence of the **Company's** or any **Insured's** performance of or failure to perform professional services, or any act(s), error(s) or omission(s) relating thereto; provided that this exclusion shall not apply to any **Securities Claim**; provided that such **Securities Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** or any **Insured**;

#### **4.10. Wrongful Acts for the Company**

alleging, arising from, based upon, attributable to or as a consequence of any actual or alleged **Wrongful Act** of:

- any **Insured Person** of the **Policyholder** or its **Subsidiary Companies**; or
- the **Policyholder** or its **Subsidiary Companies**;

committed: (i) prior to the date that the **Named Parent** directly or indirectly through another **Subsidiary Company** first; or (ii) subsequent to the date that **Named Parent** directly or indirectly (through another **Subsidiary Company**) no longer:

1. held more than 50% of the voting rights of the **Policyholder**; or
2. appointed a majority of the board of directors (or equivalent in any other country) of the **Policyholder**; or
3. had the right, pursuant to a written agreement with other shareholders, to appoint a majority of the board of directors (or equivalent in any other country) of the **Policyholder**.

## **5. General conditions**

### **5.1. Defence, settlements and allocation**

#### **5.1.1. Cooperation**

With respect to any **Claim** as may potentially be covered by this Policy:

- the **Insurer** shall have the right to be provided with all such information concerning such **Claim** as the **Insurer** shall reasonably require;
- the **Insurer** shall be kept fully informed as to all matters relating to or concerning the **Investigation**, defence, settlement or appeal of any such **Claim** and shall have the right to receive copies of all relevant documentation relating thereto; and
- the **Insurer** shall have the right to associate effectively with the **Insureds** and the **Company** in the defence, investigation and the negotiation of any settlement of any **Claim**.

#### **5.1.2. Duty to defend**

It shall be the duty of the **Insured(s)** against whom a **Claim** is made to take all reasonable steps to defend such **Claim** and not to do anything to prejudice the position of the **Insurer**. The **Insurer** shall have no duty to defend any **Claim** made against any **Insured**.

#### **5.1.3. Prior written consent**

The **Insureds** agree not to settle any **Claim**, incur any **Defence Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the **Insurer's** prior written consent; provided such consent to settle any **Claim** shall not be required if the total **Financial Loss** incurred on account of such **Claim** is equal to or less than the applicable **deductibles** set forth in the Policy Schedule. The **Insurer** shall not be liable for any settlement, **Defence Costs**, assumed obligation or admission to which it has not consented.

#### **5.1.4. Defence Costs**

The **Insurer** will make payments of **Defence Costs** to the **Insureds** as and when such **Defence Costs** fall due within a reasonable time, but in all events no later than ninety (90) days after the receipt, review of full details and acceptance by the **Insurer** of such **Defence Costs**. Any payments of **Defence Costs** to any **Insureds** that have been made by the **Insurer** shall be repaid to the **Insurer** by the person or entity to whom or on whose behalf such payments have been made in the event that any such person or entity shall not be entitled under this Policy to the payment of such **Financial Loss**.

As a condition precedent to the **Insurer's** obligation to make any payment of **Financial Loss**, the **Insureds** shall not admit or assume any liability, enter into any settlement agreement, consent to any judgement, or incur any **Defence Costs** without the prior written consent of the **Insurer**. Such consent not to be unreasonably withheld or delayed. Only those settlements, consent judgements, **Defence Costs** that have been consented to by the **Insurer** shall be recoverable as **Financial Loss** under the terms of this Policy.

In the event that a determination as to the amount (if any) of **Defence Costs** to be advanced under this Policy cannot be agreed to between the **Insureds** and the **Insurer**, then the **Insurer** shall advance **Defence Costs** (excess of any applicable **Deductible** amount) which the **Insurer** states to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this Policy and applicable law.

In addition and notwithstanding any of the foregoing paragraphs in this section., if all **Insured** defendants are able to dispose of all **Claims** which are subject to one **Deductible** (inclusive of all **Defence Costs**) for an amount not exceeding the applicable **Deductible**, then the **Insurer's** consent shall not be required for such disposition.

### 5.1.5. Advancement of Costs

At the written request of an **Insured** and subject to the deductibles set forth in the Policy Schedule, the **Insurer** shall advance **Defence Costs** which the **Insureds** have incurred in connection with **Claims** made against them, prior to the final disposition of such **Claims**, provided always that to the extent it is established that any such **Defence Costs** are not covered under this Policy, the **Company** or the **Insured**, severally according to their respective interests, agree to repay to the **Insurer** such non-covered **Defence Costs**.

**Insurer** shall not unreasonably withhold or delay any consent referenced in this section (Defence).

### 5.1.6. Allocation

In the event that any **Claim** involves both loss and/or costs or expenses (including **Defence Costs**) covered under this Policy and loss and/or costs or expenses (including defence costs) which are not covered, the **Insurer** and the **Insureds** agree to use their best endeavours to determine a fair and proper allocation of such loss and/or costs or expenses (including defence costs).

In the event that a **Claim** involves persons or entities who are covered under this Policy and persons or entities who are not, the **Insurer** and **Insureds** agree to use their best endeavours to determine a fair and proper allocation of loss and/or costs or expenses (including defence costs) as between such persons or entities having regard to their relative liability exposures.

In the event that a **Claim** involves **Insureds** and/or matters covered by this Policy in respect of which or to whom different exclusions, sub-limits and/or deductibles apply, the **Insurer** and the **Insureds** agree to use their best endeavours to determine a fair and proper allocation having regard to the application of such exclusions, sub-limits and/or deductibles with a view to determining the aggregate amount payable by the **Insurer** to the **Insured** (or any of them) by way of **Financial Loss** in respect of such **Claim**.

### 5.1.7. Order of Payment

In the event of **Financial Loss** arising from a **Claim** for which payment is due under the provisions of this Policy, then the **Insurer** shall in all events:

- first, pay **Financial Loss** for which coverage is provided under Cover Clause 1.1. ( Insured Person Cover) or Cover Clause 1.4 (Outside Entity Cover) of this Policy; then
- only after payment of **Financial Loss** has been made pursuant to the paragraph above, with respect to whatever remaining amount of the **Limit of Liability** is available after such payment, pay such other **Financial Loss** for which coverage is provided under the remaining covers under this Policy.

The bankruptcy or insolvency of any **Company** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Financial Loss** under this Policy pursuant to this section.

## 5.2. Reporting and Notice

### 5.2.1. General

The **Policyholder** shall, as a condition precedent to any liability of the **Insurer** under this Policy, give written notice to the **Insurer** of any **Claim** made against an **Insured** as soon as is reasonably practicable after the **Company's** Risk Manager, Company Secretary, General Counsel, Chief Legal Counsel or equivalent position first becomes aware of such **Claim** or the written requirement to attend such **Investigation**, but in all events no later than forty-five (45) days after the expiry of the **Period of Insurance** or the **Extended Reporting Period** (if applicable).

### 5.2.2. Notification of Circumstances

If during the **Period of Insurance** or the **Extended Reporting Period** a **Company** or an **Insured** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and shall give written notice to the **Insurer** of those circumstances (such notice to comprise the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved), then a **Claim** which is subsequently made against such **Insured** and reported to the **Insurer** which alleges, arises out of, or is based upon or attributable to such circumstances, or alleges any **Wrongful Act** which is the same as or related to any **Wrongful Act** anticipated in those reported circumstances, shall be considered made at the time such notice of those circumstances was received by the **Insurer**.

### **5.2.3. Content of a notice**

Written notice shall include but not be limited to a description of the **Claim** or **Investigation**, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which the **Company** or **Insured Persons**, as the case may be, first became aware of the **Claim** or **Investigation**.

### **5.2.4. Manner of notice**

Written notice hereunder shall be given in writing to the **Insurer** named in the Policy Schedule at the address indicated in the Policy Schedule, and be effective from the date of receipt by the **Insurer** at the above address.

## **5.3. Limit of Liability**

### **5.3.1. Maximum Liability**

The **Limit of Liability** as stated in the Policy Schedule shall be the **Insurer's** maximum liability, in the aggregate, payable under this Policy for all: (i) covered **Financial Loss** (including **Defence Costs**) arising from all **Claims** made against all **Insureds** under this Policy during the **Period of Insurance** and all **Extended Reporting Periods** (if applicable); (ii) **Investigation Costs**; and (iii) insofar as not encompassed within (i) and (ii), all sums payable by the **Insurer** under any of the Extensions 3.1 and 3.3 to 3.10. The **Limit of Liability** shall apply over and above the applicable **Deductible**.

The Limit of Liability for any Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability for the Period of Insurance.

Further, a **Claim** which is made subsequent to the **Period of Insurance** or any **Extended Reporting Period** (if applicable) which, pursuant to Paragraph 5.22 (Notification of Circumstances) is considered made during the **Period of Insurance** or any **Extended Reporting Period** (if applicable) shall also be part of the same one **Aggregate Limit of Liability** stated in the Policy Schedule.

### **5.3.2. Deductible**

Separate **Deductibles (as applicable)** are set out in the Policy Schedule for **Financial Loss** payments made under Insuring Cover 1.2 (Company Reimbursement Cover) and/or Insuring Cover 1.3 (Company Cover for securities Claim) which arise out of each of the **Claims** under each of (i) to (iv) below:

- (i) **US Securities Claim:**
- (ii) **Securities Claim** (other than a **US Securities Claim**):
- (iii) any **US Claim** (other than a **US Securities Claim**)
- (iv) any other **Claim** (other than a **US Claim** or a **Securities Claim**):

The **Insurer** shall be liable only for the amount of **Financial Loss** that exceeds the applicable **Deductible** as specified in the Schedule. The **Deductible** is not part of the **Insurer's** liability for **Financial Loss**. The **Deductible** is to be borne by the **Company** and shall remain uninsured.

A single **Deductible** shall apply to all **Financial Loss** arising from any **Claim** or series of **Claims** arising from one **Wrongful Act** or from a series of **Wrongful Acts** which are connected causally with another or which is by any means inter-related or inter-connected.

If the **Company** is legally permitted, required, entitled or not prohibited to indemnify any **Insured Person** for **Financial Loss** pursuant to law, contract or agreement, but fails to do so for any reason, then, solely for the purposes of the application of the **Deductibles**, any payment by the **Insurer** of such **Financial Loss** under this Policy shall be considered paid under Insuring Cover 1.2 (Company Reimbursement Cover) and the applicable **Deductible** shall apply to such **Financial Loss**.

Notwithstanding the previous paragraph, if the **Company** is legally permitted, required, entitled or not prohibited to indemnify the **Insured Persons** but fails to do so for any reason, the **Insurer** will pay such **Financial Loss** to or on behalf of the **Insured Persons**, without prior deduction of any **Deductible**. In such event, the **Insurer** shall be entitled to obtain reimbursement from the **Company** for all payments made by the **Insurer** that would not have been made had the indemnity in respect of the **Deductible** been provided by the **Company**, unless the **Company** fails to indemnify the **Insured Persons** due to **Financial Impairment**.

#### 5.3.3. **Sub-Limits and Excess**

The **Sub-Limit of Liability** as stated in the Schedule shall be the **Insurer's** maximum liability, in the aggregate, payable under this Policy for all **Prosecution Costs** covered under the Policy. The **Sub-Limit of Liability** as stated in the schedule shall be the **Insurer's** maximum liability, in the aggregate, payable under this Policy for all **Civil or Bail Bond Expenses** covered under the Policy. All **Sub-Limits of Liability** stated in the schedule shall be part of and not in addition to the **Limit of Liability** of this Policy.

The **Limit of Liability** shall not include the **Non-Executive Director Excess Limit of Liability** set out in Extension 3.2.

#### 5.3.4. **Defence Costs**

**Defence Costs** are not payable by the **Insurer** in addition to the **Limit of Liability**. **Defence Costs** are part of **Financial Loss** and as such are subject to the **Limit of Liability** for **Financial Loss**.

#### 5.3.5. **Claims series**

Where more than one **Claim** arises from one **Wrongful Act** or from a series of **Wrongful Acts** which are connected causally with another or which is by any means inter-related or inter-connected or in the case of one or more **Investigations** (whether linked to a **Claim** or otherwise) which has or have a common or related cause or source, they shall be deemed to be a single **Claim** or a single **Investigation** notwithstanding the number of **Claims** or **Investigations** that have been made or commenced (a "**Claims/Investigation Series**") and such single **Claim** or such single **Investigation** shall (irrespective of the period of insurance in which it in fact arises) be attributed solely to the **Period of Insurance** or the **Extended Reporting Period** (if applicable) during which the first **Claim** of such **Claims Series** was first made or the first **Investigation** of such **Investigation Series** was first commenced.

#### 5.4. **Changes in Exposure**

##### 5.4.1. **Acquisition or Creation of Subsidiary Companies during the period of Insurance**

- (a) Except as stated in sections (b) and (c) of 5.4.1, the Definition of **Company** shall also include any entity whether created or acquired, that becomes a **Subsidiary Company** during the **Period of Insurance** of this Policy.
- (b) Any such newly acquired **Subsidiary Company**

- (i) whose total consolidated assets are greater than twenty-five (25) percent of the total consolidated assets of the **Policyholder** (determined as of the date of the acquisition); or
- (ii) whose securities are publicly traded in the United States; or
- (iii) that is a **Financial Institution**;

shall not be included within the definition of **Company** or **Insured**; provided, however, solely with regard to a newly acquired **Subsidiary Company** described in sections B (i) or B (ii) of 5.4.1. of this Policy shall provide coverage for a period of ninety (90) days from the date such entity first became a **Subsidiary Company** or until the expiry date of the **Period of Insurance**, (which ever period expires first) provided that the **Policyholder** shall report such **Subsidiary Company** to the **Insurer**, in writing, at renewal of this Policy.

- (c) With regard to such Subsidiary Company described in sections (b) of 5.4.1, the Insurer may, at its sole discretion, extend coverage to such **Subsidiary Company** and any **Insured Person** thereof, (for a **Subsidiary Company** described in sections b(i) or b(ii) of 5.4.1 beyond such ninety (90) day automatic coverage period), if, within the ninety (90) day period after such entity was acquired the **Policyholder** shall: (i) notify the **Insurer** in writing of the acquisition of such entity; (ii) provide the **Insurer** with full underwriting information as the **Insurer** may require; and (iii) agree to any additional premium and/or amendment of the provisions of this Policy required by the **Insurer** relating to such **Subsidiary Company**. Further, coverage as shall be afforded to any such **Subsidiary Company** and any **Insured Person** thereof shall be conditional upon the **Policyholder** paying, when due, any additional premium required by the **Insurer** for such **Subsidiary Company**.

#### **5.4.2. Change in Control**

If during the **Period of Insurance** the **Policyholder** undergoes a **Change of Control** then the cover provided by this Policy shall only apply in respect of **Wrongful Acts** occurring prior to the effective date of such **Change of Control**. The **Policyholder** shall give written notice to the **Insurer** of such **Change of Control** as soon as reasonably practicable. Notwithstanding the effect on cover caused by such a **Change of Control** there shall be no entitlement to cancellation of this Policy by any party hereto and the entire original premium for this Policy shall be deemed to have been fully earned as of the date of the **Change of Control**.

#### **5.4.3. Public Offering**

If during the **Period of Insurance** the **Policyholder** or any **Subsidiary Company** plans or undergoes a public offering of its **Securities**, it shall inform the **Insurer** as soon as practicable and the **Insurer** shall not be liable to make any payment of **Financial Loss** arising from any **Claim** or **Securities Claim** associated with, relating to or arising from such offering or any related registration or reporting requirements, unless and until the **Company** agrees with the **Insurer** to any amendments to this Policy and makes payment of any additional premium required, at latest within sixty (60) days following the public announcement of such offering, after which cover shall apply retroactively for the full **Period of Insurance**. The payment of any additional premium (including insurance premium tax) shall be a condition precedent to any liability of the **Insurer**.

#### **5.4.4. Cessation of Subsidiary Companies**

If before or during the **Period of Insurance** an organization ceases to be a **Subsidiary Company**, coverage with respect to such **Subsidiary Company** and its **Insured Persons** shall continue until termination of this Policy but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted prior to the date such organization ceases to be a **Subsidiary Company**.

## 5.5. Representations and Severability

In granting cover under this Policy the **Insurer** has relied upon the **Proposal** which forms the basis of this contract of insurance and shall be considered as incorporated in and constituting part of this Policy. In respect of the declarations, statements and financial information of the **Proposal**:

- no statement in the **Proposal**, made by any **Insured** or knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the **Proposal**) possessed by any **Insureds** shall be imputed to any other **Insured Persons** for the purpose of determining the availability of cover under this Policy;
- the statements in the **Proposal** made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the **Proposal**), possessed by an **Insured Person** shall be imputed to the **Company** for the purposes of determining the availability of cover under Insuring Cover 1.2 (Company Reimbursement Cover) in relation to the **Financial Loss** of that **Insured Person**; and
- only the statements in the **Proposal** made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the **Proposal**), possessed by any past, present or future Chief Executive Officer and/or Chief Financial Officer (or equivalent executive or management position) of the **Company** shall be imputed to the **Company** for the purposes of determining the availability of cover under Insuring Cover 1.3 (Company cover for Securities Claims) in respect of **Financial Loss** of any **Subsidiary Company**
- The **Insurer** further agrees that it shall not seek to rescind or avoid this Policy, or any severable part of this Policy, with respect to cover under insuring covers 1.1 (Insured Person Cover) or Insuring Cover 1.4 (Outside Entity Executive Cover) for any **Insured Person** who did not make any wrongful statement or did not have knowledge of any wrongful statement or misrepresentation or non-disclosure with regard to the **Proposal**.

The **Insurer** further agrees that it shall not seek to rescind or avoid this Policy, or any severable part of this Policy, where the **Insurer's** remedy of rescission or avoidance arises solely as a result of innocent or negligent non-disclosure or innocent or negligent misrepresentation by an **Insured**.

## 5.6. Arbitration

If any dispute or difference shall arise as to the quantum to be paid under this Policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this Policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this Policy that the award by such arbitrator/ arbitrators of the amount of the loss or damage shall be first obtained.

It is also hereby expressly agreed and declared that if the **Insurer** shall disclaim liability to the Insured for any claim hereunder and such claim shall not within 12 calendar months from the date of such disclaimer have been made the subject matter of a suit in a Court of Law, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

**5.7. Alteration and Assignment**

No change in, modification of, or assignment of interest and rights under this Policy shall be effective under any circumstances except when made by a written endorsement to this Policy which is signed by an authorized representative of the **Insurer**.

**5.8. Cancellation Provision**

The **Insurer** may cancel this Policy by giving thirty (30) days' notice in writing of such cancellation to the **Insured's** last known address and in such an event the **Insurer** will return a pro-rata portion of the premium (subject to a minimum retention of twenty-five (25) per cent of the annual premium) for the unexpired part of the Policy.

The Policy may also be cancelled by the **Insured** by giving thirty (30) days' notice in writing to the **Insurer**, in which event the **Insurer** will retain premium at short-period scale provided there is no **Claim** or Circumstance reported under the Policy during the **Period of Insurance**.

In case of any **Claim** or Circumstance under the Policy no refund of premium shall be allowed.

**5.9. Subrogation**

Upon any payment of or towards any **Claim** the **Insurer** shall be entitled to assume conduct of all rights of recovery available to any **Insured Persons** or the **Company** and all reasonable assistance shall be rendered to the **Insurer** in the prosecution of such rights by such **Insured Persons** or the **Company**, including, but not limited to, trying to recover from the **Company** any **Deductible** paid by the **Insurer** pursuant to Section 6 of this Policy. The **Insured** shall execute all papers reasonably required and shall take all reasonable action that may be necessary to secure any and all subrogation rights of the **Insurer** including but not limited to an action against the **Company** for non-payment of indemnity to the **Insureds** by the **Company**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured Person** under this Policy unless it is determined by a written admission, a final judgment or other adjudication in the underlying action or in a separate action or proceeding that such **Insured Person** had obtained an illegal profit or advantage or committed an intentionally dishonest act or omission or intentionally fraudulent act or omission.

**5.10. Other Insurances**

If at the time of any **Claim** there is or but for the existence of this Policy there would be other insurances covering the same liability, the indemnity provided by this Policy will not apply except in respect of any amount beyond that which would have been payable under such other insurance had this Policy not been effected.

**5.11. Disclaimer**

If the **Insurer** disclaims liability to the **Insured** for any **Claim** hereunder and such **Claim** is not a subject matter of a suit in a court of law within 12 calendar months from the date of disclaimer then the **Claim** shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable.

**5.12. More than one Named Insured**

The first named **Insured** shall act on behalf of self/itself and all other persons or legal entities named as the **Insured** for all purposes of this Policy. If the first named **Insured** ceases to be covered under this Policy the next named **Insured** shall thereafter be regarded as the "first named **Insured**".