

TECHNOLOGY INDUSTRY – ERRORS & OMISSIONS POLICY

UIN No.- IRDAN190P0080100001

Notice: This insurance Policy is a claim's made Policy- it only covers "loss" that arises within the Policy Period; and which is reported during such Period and/or any extended Period if provided by this Policy or schedule. The terms used in the Policy have a special meaning as setout in the Policy.

Please read the Policy carefully to fully understand the coverage/indemnity provided.

I. OPERATIVE CLAUSE:

WHEREAS the **Insured** named in the attached schedule carrying on business as described in the said schedule has applied to **THE NEW INDIA ASSURANCE COMPANY LIMITED** hereinafter called "**the Company**" for indemnity hereinafter contained; the **Insured** has made a written proposal and declaration which is the basis of this contract, deemed to be incorporated herein. The **Insured** has paid premium as consideration for and/or on account of such indemnity provided by **the Company** as contained in this contract.

(1) Insuring Agreement

The Company will indemnify the **Insured** against those sums, subject to the terms of this **Policy**, that the **Insured** becomes legally obligated to pay as compensation for "loss" incurred in the provision of Information Technology services from the insured's negligent acts, errors or omissions.

As a condition precedent to liability:

1. The negligent act / errors & omissions must be solely in the insured's performance of I.T. services for others for a fee.
2. The negligent act / errors & omissions must take place on or after the Retroactive Date and before the end of the policy period.
3. Claim for such negligent act / errors & omissions must be first made against the insured during the policy period; and
4. Notified to 'The Company' during the 'Notification Period'- as set out in the duties of the insured.
5. This insurance shall apply to contracts entered into after the retroactive rate.

II DEFENCE

The **Company** shall have the right but in no case the obligation, to take over and conduct in the name of the **Insured** the defence of any claim and will have full discretion in the conduct of any proceedings and in the settlement of any claim, and having taken over the defence of any claim may relinquish the same at any time, to the **Insured**. All amounts expended by the **Company** in the defence settlement or payment of any claim will reduce the limits of indemnity specified in the schedule of the **Policy**.

The **Insured** shall assist and co-operate with the **Company**, in the investigation and defence of all claims and conduct of legal proceedings arising there from, as the **Company** and / or its legal advisers and consultants may require. The choice of counsel is to be agreed by the **Insured** and the **Company**, but failing agreement, the **Company** alone shall be entitled to nominate the counsel of their choice.

In the event the **Company** does not defend the **Insured** it will pay the **Insured** all costs, fees and expenses incurred with the **Company**'s prior consent in the investigation; defence; or settlement of any claim made against the **Insured** and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any claim made. The **Company** shall only pay for the cost of investigation, defence and settlement of a claim under the abovementioned provision if such underlying claims are covered claims and subject to indemnity under this **Policy**. All such amounts expended by the **Company** in the defence settlement or investigation of any claim will reduce the limits of indemnity specified in the schedule of the **Policy**.

In the event that the **Company**, in its sole discretion, chooses to exercise its right pursuant to this condition, no action taken by the **Company** in the exercise of such right will serve to modify or expand in any manner, the **Company**'s obligations as under this **Policy**.

III EXTENDED REPORTING PERIOD

If the Company cancels or does not renew this policy, the insured has the right for a period of 30 days following the effective date of cancellation to report to the Company any claim made against the insured during such 30 days period- However, that claim must be for losses, negligent acts, errors or omissions, that occur after the retroactive date and before the end of the policy period.

IV LIMITS OF LIABILITY

The limits of indemnity as stated in the schedule indicates the maximum aggregate amount 'The Company' will be liable to pay regardless of the number of persons covered by the policy and /or the number of claimants or claims made.

The limit stated is the aggregate limit for all claims first made and reported to 'The Company' during the policy period.

V. DEFINITIONS

- 1) **"An Act of Terrorism"** means an act including but not limited to the use of force or violence and / or threat thereof of any person or groups(s) or government(s), committed for political, religious ideological or similar purpose including the intention to influence any government and / or to put the public, or any section of the public in fear.
- 2) **"Aircraft"** means any vessel, craft or thing made or intended to fly or move in or through atmosphere or space.
- 3) **"Bodily Injury"** means bodily harm, sickness or disease including death, resulting there from.
- 4) **"Business"** means the business specified in the Schedule including the provision of canteens, social, sports welfare and childcare organization for the benefit of the Insured's Employees, first aid, fire and ambulance services and the maintenance of the Insured's premises.
- 5) **"Claim"** means:
 - i. the receipt by the Insured of any written or verbal notice of demand for compensation made by a third party against the Insured; or
 - ii. any written statement of claim, summons, application or other originating from legal or arbitral process, cross-claim, count-claim or third or similar party notice served upon the Insured; or
 - iii. a demand for monetary compensation, a legal proceeding in a court securing monetary damages and includes an arbitration proceeding
- 6) **"Company"** means "THE NEW INDIA ASSURANCE COMPANY LIMITED".
- 7) **"Damages"** means any amount that the insured shall be legally liable to pay in respect of judgments rendered against the insured, provided that such damages shall not arise from any guarantee, penalty clause, taxes, fines or any matters which may be deemed uninsurable under the law.

Damages shall not include sums that the insured is legally liable to pay by way of restitution following a total or partial failure of consideration on the part of the insured in relation to the performance or non-performance of services, and shall not include penalties, or non pecuniary relief or any amount for which the insured is not financially liable or which is without legal recourse to the insured.

- 8) “**Deductible**” means the amount of deductible as specified in the schedule.
- 9) “**Defense Expenses**” means all expenses incurred by the Company in any claim defended by the Company or incurred by the insured with the Company’s prior written consent - as well as all reasonable costs levied against the insured in any such claim which does not exceed the Company’s limit of liability.
- 10) “**Employee**” means any person engaged under a contract of service or apprenticeship with the Insured, but does not include any person employed under such a contract who is excluded for the definition of ‘worker’ under any workers’ compensation legislation.
- 11) **Information Technology** means any Computer Software manufactured, produced, sold, installed, repaired, serviced, treated, supplied, distributed, licensed or shared by the Insured and any service provided by the insured in relation to be in connection with computer software.
- 12) **Insured** means the individual, partnership, corporation, joint venture or other entity named in Item 1 of the Schedule and any subsidiary, director, officer or employee thereof while acting solely within the scope of his or duties as such.
- 13) “**Licensee**” means any party who enters into a license agreement with the insured.
- 14) “**Limit of Indemnity**” means the applicable Limit of Indemnity specified in the Schedule.
- 15) “**Loss**” means monetary sums payable pursuant to judgments, awards and/or settlements negotiated by or on behalf of the Company arising out of a wrongful act provided, plus defense expenses, however, that loss shall not include fines, penalties, punitive or exemplary damages, nor pecuniary relief, taxes or any amount for which an insured is not financially liable, or which is without legal recourse to an insured, or any matter which may be deemed uninsurable under Indian Law.
- 16) “**Notification Period**” means the period commencing on the start of the Period of insurance and ending NINETY (90) days after its expiry.

- 17) **“Policy”** means
- i. The schedule, insuring clause(s), definitions, exclusions, conditions, and other terms contained herein; and
 - ii. Any endorsement attaching to and forming part of the policy either at inception or during the policy period; and
 - iii. The proposal.

- 18) **“Policy Period/Period of Insurance”** means the period; commencing on the effective date and hour as shown in the Policy Schedule, and terminating at midnight on the expiry date also shown in the Policy Schedule.

***Note:- The aforesaid period, shall when specifically indicated in the policy and/or schedule, also mean to include any period after the retroactive date and before the termination and/or expiry date as shown in the policy schedule.**

Explanation: Any covered occurrence, loss, liability and/or claim that arises after such retroactive date and before the effective date of the policy would have to be reported before; the expiry date as shown on the policy and/or the termination of the policy and/or during any extended reporting period - if provided for in the policy and schedule.

- 19) **“Pollutants”** means any solid, liquid, gaseous, or thermal irritant or contaminant, including: smoke, vapour, soot, fumes, acids, chemicals, asbestos, asbestos containing materials, lead, lead containing materials and waste. “Waste” includes material to be recycled reconditioned or reclaimed as well as medical waste.
- 20) **“Premium”** means the premium specified in the schedule or in any endorsement to the Schedule.
- 21) **“Property Damage”** means (1) physical injury to, or destruction of tangible property including the loss of it, or (2) loss of the use of tangible property which has not been physically injured or destroyed.
- 22) **“Proposal”** means the application for insurance completed by insured and any ancillary information and documentation supplied by the insured in connection with this insurance.
- 23) **“Schedule”** means the schedule to the policy.
- 24) **“Subsidiary”** means any corporation of which the entity named in Item 1 of the schedule owns more than 50% of the issued and outstanding voting stock either directly or indirectly through one or more of its subsidiaries,

Subsidiary includes any corporation which becomes a Subsidiary during the policy period provided that within 30 days of its becoming a subsidiary:

- i. The Company is provided full particulars of the new subsidiary and
- ii. Subject to review and acceptance by the Company, any additional premium or amendment of the provisions of this policy required by the Company relating to such new subsidiary is agreed to and
- iii. Any additional premium required by the Company is paid when due.

This policy does not cover any claim against a subsidiary or any partner, director, officer or employee thereof for any wrongful act when the entity named in the declarations did not own more than 50% of the issued and outstanding voting stock of such subsidiary, either directly or indirectly through one or more of its subsidiaries.

- 25) **“Watercraft”** means any vessel, craft or thing made or intended to float on, or in, or travel on or through water.
- 26) **“Wrongful Act”** means any actual or alleged negligent act, error or omission in the performance of computer services for others for a fee.
- 27) **“Unauthorized Access / Use”** means a third party’s access / use to the computer system of insured without authorization or exceeding authorization.
- 28) **“Retroactive date”** is the date indicated as retroactive date in the schedule

VI. EXCLUSIONS

The **Company** shall not be liable for any loss, liability and/or claims, under this **Policy**, arising from:

1. the insured’s dishonest, fraudulent, criminal, reckless, or malicious act, error or omission;
2. Any claim:
 - a. first made, threatened or intimated against the Insured prior to the Period of Insurance; or
 - b. directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:

- i. of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
 - ii. of which the Insured first became aware prior to the Period of Insurance and/or which the Insured knew or ought reasonably to have known that had or has the potential to effect the policy.
3. Any bodily injury or property damage incurred, during the provision of I. T. Services, that the insured becomes legally obligated to pay;
4. delay in performance or failure to perform any contract unless such claim is arising out of wrongful act, error of omission.
5. the actual or alleged intentional non-performance or default of any of the insured's contractual obligations.
6. (a) false arrest, detention or imprisonment; (b) libel, slander or defamation of character; (c) assault or battery; (d) wrongful entry or eviction; or (e) invasion of any right of privacy.
7. the gaining in fact of any improper personal profit or advantage; to which the insured is not legally entitled; related to any disputes or differences regarding the insured's fees, charges, commissions or for the return of money paid to insured.
8. any guarantee of, or the exceeding of, cost estimates.
9. any liability that the insured assumed under any contract or agreement, by way of guarantee, warranty, penalty clause, and/or any other obligation deemed uninsurable under law.
10. any costs and expenses incurred by the insured to comply with any warranties, guarantees, representations or promises made in respect of the insured's services, software or electronic products. This includes, but is not limited to the insured's costs of repair or replacement of defective material, workmanship or products error correction, system modification, product recall, withdrawal or inspection, delivery time, completion time, financial savings or of any property of which such products or work form a part.
11. electrical failure, including any electrical power interruption, surge, brownout or blackout.
12. the failure to prevent unauthorized access to or use of any electronic data processing system or program.
13. any infringement of patent, copyright, trademark, service mark or other intellectual property right.

14. any violation of any securities, anti-trust, restraint of trade, unfair trade practices;
15. the performance of or failure to perform professional services for any person or organization:
- a. which is or was owned, managed, operated or controlled by the insured directly or indirectly; or
 - b. which does or did own, manage, operate or control the insured directly or indirectly; or
 - c. which is or was affiliated with the insured through common majority ownership or control; or
 - d. in which the insured is or was a director, officer, partner or principal stockholder;
16. (a) any notice, claim or legal proceeding which is known or pending prior to the policy period; and / or
- (b) any fact or circumstance of which written notice has been given by the insured, or ought reasonably to have been given, under any previous policy (whether issued by the Company or not) or of which the insured first became aware prior to the policy period and which the insured knew or ought reasonably to have known.
17. (a) “loss” arising out of the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "**pollutants**";
- At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any **Insured**; or, at or from any premises, site or location which is or was at any time used by or for any **Insured**; or contactor or subcontractor working directly or indirectly on the **Insured**'s behalf and/or any other such person(s) on behalf of the **Insured**, for the handling, storage, disposal, processing or treatment of waste - which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any **Insured**; or any person or organization for whom the **Insured** is legally responsible;
- (b) Any request, demand or order that the **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, “pollutants”; or

from a claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of the “pollutants”.

18. unlawful discrimination on any basis whatsoever.

19. injury or damage to:

- a) the insured’s employee or an independent contractor working for the insured; or
- b) the spouse or relative of such employee or independent contractor, as a consequence of injury or damage to the employee or independent contractor.

This exclusion applies:

- i) whether the insured is liable as an employer or in any other capacity; and
- ii) to any obligation of the insured to share damages with or repay someone else who must pay damages because of the above mentioned injuries or damages.

20. Any loss or liability to any person employed and/or under a contract of employment and/or apprenticeship and/or internship with the **Insured** in the course of his association in any of the aforesaid capacities with the **Insured**.

21. any form of relief other than the payment of money damages.

22. the bankruptcy or insolvency of the insured;

23. Claims arising out of:

- a. the ownership, maintenance, operation or use by or on behalf of the Insured of
 - i. any Aircraft; or
 - ii. any Watercraft exceeding 10 meters in length; or
- b. the Insured’s Information Technology Software used, for and or with and/or applied to, Aircraft component parts used in maintaining an aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery; or Computer Equipment which to the knowledge of the insured, is incorporated in an Aircraft.

24. Directly or indirectly based upon, attributable to, or in consequence of any trading debts incurred by the Insured and/or any guarantee given by the insured for a debt.

25. Property Damage to any property upon which the Insured is or has been working where the Property Damage arises from the work of the Insured.
26. The cost of performing, correcting or improving any work undertaken by the insured.
27. This insurance excludes loss, damage, cost or expenses of whatsoever nature directly or indirectly caused by, attributable to, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

It also excludes loss, damage, cost or expenses of whatsoever nature directly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to action taken in respect of any act of terrorism.
28. Ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel. For the purpose of this Exclusion, combustion will include any self-sustaining process of nuclear fission; or nuclear weapons material.
29. Any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or expropriation (including lawful seizure, resumption, confiscation, nationalization, requisition, destruction or damage) of or to property by or under the order of any Government or public or local authority.

VII. DUTIES OF THE INSURED IN CASE OF ANY LOSS, CLAIM OR LIABILITY:

Notwithstanding anything to the contrary it is condition precedent, to the Company incurring any obligation to the Insured, as set out in this Policy that:

The Insured immediately advise and notify the Company of any loss(s), claims, negligent acts, errors or omissions and/or any liability that may give rise to claim(s) recoverable, and/or invoke any provisions under this Policy, and/or invoke the companies obligations under this Policy;

The Insured shall in the abovementioned event or circumstance furnish to the Company to the extent possible;

- 1) How, when and where the "loss, negligent acts, errors or omissions" took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offence;

And,

If a claim is made or "action" is brought against any Insured, the Insured must:

- (1) Immediately record the specifics of the claim or "action" and the date received; and
- (2) Notify the Company immediately;

The Insured must see to it that the Company receives written notice of the claim or "action" as soon as practicable, and must immediately send to the Company any demands, notices, summonses or legal papers received in connection with such claim and/or any such matter that might be concerned with or effect this Policy.

Duty to co-operate:

Notwithstanding anything to the contrary the Insured will have a continued duty and obligation to co-operate with the Company in the investigation and defense of all claims and conduct of legal proceedings arising there from- the Insured shall:

- (i) Authorize the Company to obtain records and other information;
- (ii) Assist the Company upon the Company's request, in the enforcement of any right against any person or organization which may be liable to the Insured because of injury or damage to which this insurance may also apply; and
- (iii) Cooperate with the Company in the investigation or settlement of the claim or in the defence against the "action", which might affect this Policy. The Company shall have the right to avoid any obligation and/or liability and/or indemnity as under this contract, on non-co-operation, and/or

non-compliance by the Insured of the abovementioned.

- 3. The Insured shall not make any admission, offer, promise, payment or promise to indemnify another or someone without the written consent of the Company.**
- 4. The Insured shall at the expense of the Company, do and/or concur and/or assist in doing, and/or permit all such acts that may be necessary and/or reasonably required by the Company for the purpose of enforcement of rights and remedies, and/or for obtaining any relief and/or indemnity from any person(s) - to which the Company would become entitled to on account of subrogation and/or any losses/expenses that the company has incurred as under the policy and/or for any reason whatsoever; the aforesaid duty of the insured shall continue even after the insured has indemnified and/or the expiry of the policy or policy period.**
- 5. Notwithstanding anything to the contrary, when the insured reports a claim as per procedure set out in the aforesaid "Duties of the Insured" and the Company decides to provide indemnity and/or defence to the Insured as per its obligations under the policy – such decision of the Company to provide indemnity and/or defence is always provisional to the underlying loss, liability and/or claim being covered under the policy. Any determination to the contrary by the Company and/or any person at anytime shall allow the Company to immediately stop the provision of such indemnity and/or defense as required by the policy; the Company may further claim back from the insured all sums expended by the Company with respect to such loss, liability and/or claim. The Insured also agrees that the Insured shall be duty bound in the aforesaid instance to return all sums with respect to such loss, liability and/or claim as demanded by the Company.**

VIII. GENERAL CONDITIONS

(i) ENTIRE CONTRACT

By acceptance of this policy the insured agrees that the statements in the proposal are their statements and representations, that this policy is issued in reliance upon the truth of such statements and representations and that this policy embodies all agreements existing between the insured and the Company or any of its agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or by other person shall not

effect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms of this policy nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

(ii) **OTHER INSURANCE**

Coverage under this policy shall apply only in excess of any other coverage in place; this clause will apply whether the aforesaid coverage is insurance, self-insurance, and/or indemnification and/or any similar agreement, whether such other coverage is stated to be primary, pro-rata, contributory, excess, contingent or otherwise.

(iii) **SUBROGATION**

In the event of any payment under this policy, the Company shall be subrogated to all of the insured's rights of recovery; the Insured shall execute and deliver instruments and papers and do all else necessary to secure and maintain the company's right to recovery. The insured shall ensure nothing is done to prejudice this right and provide the company with whatever reasonable co-operation and assistance they might require.

In the event of any recovery being made, it is specifically understood that the recovered funds shall be applied in the following order:

- (a) The Company shall be reimbursed to the extent of any payment they have made under this policy.
- (b) The Company shall be reimbursed the actual costs and expenses they incurred in pursuing the recovery.
- (c) The insured shall be entitled to reimbursement in respect of its losses from the recovered amount only after the payment of (a) and (b) and only to the extent of any recovered funds that might remain.

(iv) **ASSIGNMENT**

This Policy is not assignable unless the express written prior consent of the company has been obtained; if the insured dies or is adjudged incompetent, this policy will cover the insured's estate, heirs, legal representative with respect to covered loss and/or liability's as set out in this policy. The insured's estate, heirs, legal representatives will however be subject to all terms and conditions of this policy; any breach of the duties of the insured as set out in this policy and/or any other terms as set out in this policy by such estate, heirs or legal representatives of the insured would discharge the company of any obligations as under this policy.

(v) **FRAUD**

The **Company** shall not be liable to make any payment under this **Policy** if the **Insured** and/or any person on behalf of the **Insured** has indulged in any fraudulent activity, which includes but is not limited to fraudulent claims and/or material misrepresentations and/or non-disclosure made in bad faith at the time of the inception of the **Policy** and/or anytime thereafter; the said **Policy** in this case shall be considered null and void from its inception and all such benefits of this **Policy** shall stand forfeited.

(vi) **DUE OBSERVANCE**

The due observance of and compliance with the terms, provisions, warranties and conditions of this policy insofar as they relate to anything to be done or complied with by the insured shall be a condition precedent to any liability of the Company.

(vii) **Insured's Continued Duty to the Company:**

The **Insured** shall give notice as soon as reasonably practicable of any fact, event or circumstance which materially changes the information supplied to the **Company** at the time when this **Policy** was affected. This includes but is not limited to the information provided to the **Company** by the **Insured** in the proposal and/or application which is an integral part of this **Policy**; the **Company** may amend the terms of this **Policy** and/or coverage provided there under and/or terminate coverage according to the materiality of such change. Material for change includes:

- a. any material change made or permitted by the insured in the Business or the nature of Information Technology offered by the Insured; or
- b. the Insured going into voluntary bankruptcy, receivership or liquidation or the Insured falling to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding up proceedings.

(viii) **Examination of the Insured(s) Books and Records**

The **Company** may examine and audit insured's books and records as they relate to this **Policy** at any time during the **Policy Period** and up to three years afterwards.

The Insured must keep records of all matters and information requested by the Company and must on reasonable notice allow the Company or its nominee to inspect and make copies of those records.

(ix) Cancellation of the Policy

The **Company** may cancel this **Policy** by sending 30 days notice to the **Insured** at the **Insured's** last known address. In such event New India will return a pro-rata unused portion of the premium for the unexpired policy period.

The Policy may also be cancelled by the Insured by giving 30 days written notice to New India which event New India will retain premium at the customary short period scale, provided that there has been no claim under the Policy during the policy period in which case no refund of premium shall be allowed.

The payment of refund premium by New India shall not be a condition precedent to the effectiveness of cancellation of this policy but such payment shall be made as soon as practicable.

(x) Examination of the Insured(s) Books and Records

The **Company** may examine and audit insured's books and records that relate to this **Policy** at any time during the **Policy Period** or three years thereafter.

The Insured must keep records of all matters and information requested by the Company and must on reasonable notice allow the Company or its nominee to inspect the make copies of those records.

(xi) Deductible

- i. With respect to each Claim made against the Insured the amount of the Deductible will be borne by the Insured, at their own risk and the Company will only be liable to indemnify the Insured for that part of any Claim, which is in excess of the Deductible.
- ii. With respect to a Claim where the amount of the Claim is less than the amount of the Deductible, the Insured must bear all Defense Costs and/or other costs associated with the Claim incurred by New India to determine liability of the insured or any costs incurred in connection with the said claim.

- iii. Any defense Costs incurred by the Company to determine whether it is obliged to indemnify the Insured under the Policy will not be subject to the deductible.

(xii) Relinquishment of obligations and benefits by the Company

In connection with any claims against the **Insured** at its discretion the **Company** may at any time, pay to the **Insured** the **limit of indemnity** or any lesser amount for which such claims can be settled and thereupon the **Company** shall relinquish the control of such claims to the **Insured** and be under no further liability in connection therewith except for costs and expenses incurred prior to the date of such payment.

(xii) Continuity of Coverage

The Company shall subject to the terms of this contract, when specifically set out in the schedule, in cases where the insured has maintained, **continuous and uninterrupted** (uninterrupted to mean constant and continuous coverage till the inception of this policy) **prior creditable coverage** (creditable coverage to mean coverage as provided by this policy) with the Company ; and/or in certain cases subject to prior approval (such approval to be specifically set out in the schedule) of the Company at the time of the inception of this policy, **where continuous and uninterrupted creditable coverage has been purchased and maintained by the insured with any other insurer**; the Company shall in the aforesaid instances cover any such loss(s), and/or liability's otherwise covered under this policy, but which occurs prior to the policy period and during the abovementioned period of continuous creditable coverage and that are reported during the said policy period.

The Company's total obligation for loss(s), and/or liability's that occur during the abovementioned period of continuous creditable coverage shall be as per the limits of indemnity as set out in this policy - the Company's obligation for the aforesaid loss(s) and/or liability's shall be non-cumulative - to mean that the insured shall not be allowed to aggregate policy's in order to increase the available limit of indemnity/liability and further the insured will only be able to claim, under continuous creditable coverage as aforesaid, if the insured had known or should and/or could have known of the occurrence, loss, claim and/or liability before the inception of this policy (**before the inception of this policy** means before, the policy period; and/or retroactive date if any); and/or if the insured has not claimed previously under any such policy and exhausted his limits under such policy. If the insured chooses to claim under this policy pursuant to this provision of the policy – the insured stands to forfeit any right, if any, to claim under any policy past and/or in the future.

The Company in cases where the continuous, creditable coverage was provided by some other insurer; may choose to seek contribution in full or

in part from such insurer on account of the indemnity and/or coverage provided to the insured on account of indemnity provided to the insured pursuant to such continuous, creditable coverage.

(xiii) **Duty to Co-operate**

The **Insured** shall assist and co-operate with the **Company** with respect to the investigation; defense; settlement of any claim, loss or liability arising out of a covered occurrence. In the event the **Insured** fails to co-operate with any such demand of the **Company** that concerns the abovementioned, the **Company** can at its instance seek to declare this **Policy** null and void from its inception

The Insured agrees not to settle any claim, incur any Defense Costs, Settlement make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim without the Company's written consent, such consent is not to be unreasonably withheld. The Company will not be liable for any settlement defense costs, admission, offer or payment, or assumed obligation to which it has not consented.

Notification of an event or circumstance

If during the **Policy Period** the Insured gives written notice to the **Company** of any occurrence which the Company accepts as being likely to give rise to a claim; any claim subsequently made against the **Insured** arising out of such occurrence shall be deemed to have been first made during the said **Policy Period**.

Any such claim made which is related to a previously made claim on account of commonality of occurrence, like the claim being from the same trial as per the previously made claim, shall be deemed to have been made and notified on the date of the previously made claim.

(xiv) **Precautions:**

It is condition precedent to the **Company** liability under this **Policy** that the **Insured** shall its own expense:

- a) Take reasonable precautions to prevent any loss, claim and/or liability under this **Policy** and as far as possible after discovery of any likely causes take such additional precautions required to prevent such loss, claim or liability;
- b) Comply with all local, federal and international laws, obligations and/or requirements, applicable to the **Insured**

The Insured must use its best endeavors to preserve all property, information and communication technology, appliances and plant and all other things which may assist in the investigation or defense of a Claim or fact or circumstance, in the exercise of a right of subrogation and, so far as reasonably practicable, the Insured must not, without the consent of the Company carry out any alteration or repair to relevant items until the Company has had an opportunity to inspect them.

(xv) Insured's Right to contest claim

If the Company recommends settlement in respect of any claim and the Insured does not agree that the Claim should be settled, then the Insured may elect to contest the Claim, PROVIDED ALWAYS THAT the Company's liability in connection with that Claim will not exceed the amount for which the Claim could have been so settled plus the Defense Costs incurred up to the date of the insured's election – but subject to the aggregate limit of liability as set out in this policy.

(xvi) Due Observance

If the Insured fails to comply with any term, Condition or provision of this Policy, the Company may refuse to pay a Claim.

(xvii) Legal Action Against 'NEW INDIA'

This insurance does not confer any right to any person to file a suit against the Company or to join the Company as a party to any suit for damages against the insured.

(xviii) Reduction of limits of indemnity per Policy Period

In the event of liability arising under the **Policy** or the payment of claim under the **Policy**, **aggregate limit of indemnity** per any one year under the **Policy** shall get reduced by the extent of quantum of liability to be paid or actual payment of such claim. Under no circumstances shall it be permissible to reinstate the limit of indemnity to the original level, even on payment of extra premiums

(xix) Severability

If any part, section, term is deemed in valid by any law and/or statute in force, the same shall not affect the validity and/or meaning of the rest of this **Policy**.

(xx) Governed by Laws of India

This **Policy** and its terms are governed by Indian law. Any dispute concerning the interpretation of the terms, conditions limitations and/or exclusions contained herein is understood and agreed to by both the **Insured** and the **Company** to be subject to Indian Law. Each party agrees to submit to any court of competent jurisdiction within India and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.

INTELLECTUAL PROPERTY ENDORSEMENT

The Company shall indemnify the Insured for Loss, resulting from any Claim first made against such Insured during the Policy Period or such Extended Reporting Period, arising from the **unintentional infringement** of copyright, patent, service mark, trade name, registered design or trade mark or any unintentional breach of confidentiality resulting from any of the aforesaid, this includes any unintentional misappropriation of ideas, or trade secrets, or of know-how; provided that such Claim's are reported to the Company in writing, in the manner, and within the time provided in this Policy.

The Company shall not however be liable, with respect to the aforesaid endorsement, for:-

- i) any loss, claim and/or liability outside the territorial limits of India
- ii) any claim made in any court of law outside India, or in respect of the enforcement of judgements, orders or awards obtained in, or pursuant to, any court of law outside India.

Loss, liability, breach, infringement and/or any claim arising there under, for the purpose of this extension, shall not be deemed unintentional unless the insured can demonstrate to the Company that they have exercised reasonable due diligence to avoid such breach or infringement.

All other terms, exclusions and conditions remain unaltered and apply.

FOR & ON BEHALF OF NEW INDIA ASSURANCE COMPANY LIMITED

DULY CONSTITUTED ATTORNEY(S)

DISHONESTY OF EMPLOYEES

The Company shall indemnify the Insured for Loss resulting from any claim first made against such Insured during the Policy Period, or, if exercised, during the Extended Reporting Period, arising from dishonest, fraudulent or criminal act(s) of an Employee of the Insured Organization provided that:

- a) the insured Organization, its partners, directors or officers had no knowledge of and have not directly or indirectly condoned, participated in or committed the dishonest, fraudulent or criminal act forming the basis of liability for such Loss; and;
- b) such Claim is reported to the Company as provided for in this policy.
- c) Loss arising due to acts of employees with criminal records are not covered as under this endorsement.

All other terms, exclusions and conditions remain unaltered and apply.

FOR & ON BEHALF OF NEW INDIA ASSURANCE COMPANY LIMITED

DULY CONSTITUTED ATTORNEY(S)