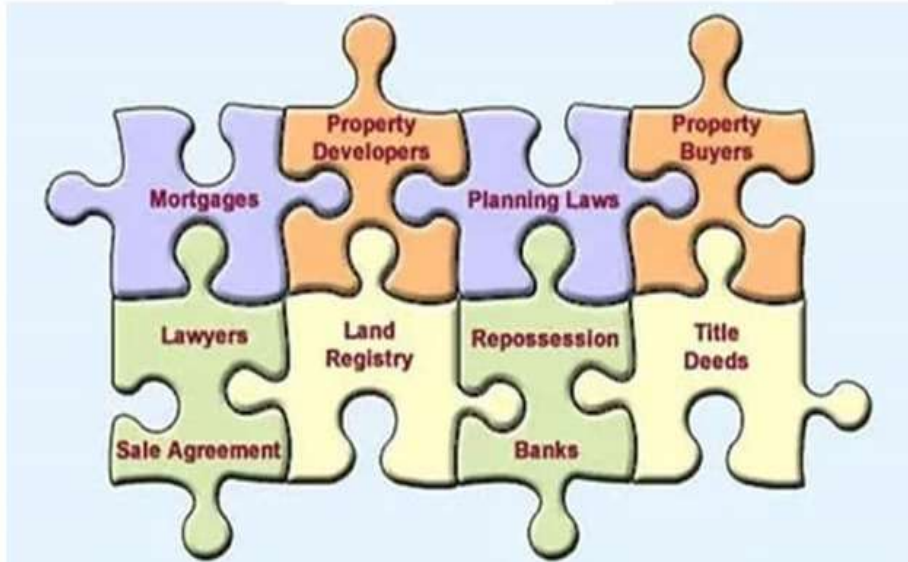


# Report of the Working Group On Revisiting Product Structure of Title Insurance Products



भारतीय बीमा विनियामक और विकास प्राधिकरण

Insurance Regulatory and Development Authority of India

(to be typed on Member's letterhead)

Dr. Subhash C Khuntia  
Chairman  
IRDAI  
Hyderabad

Respected Sir,

**Report of the Working Group to revisit the product structure of Title Insurance**

I have immense pleasure in submitting the report of the Committee on '**Revisiting the Product structure of Title Insurance**'. The Committee examined the views of various stakeholders that were brought to the table and also had extensive interactions with CREDAI who sought to put forth their views to the Committee.

As was the case with several other matters, the unprecedented pandemic threw the plans for discussions *vis a vis* timelines out of gear—some of the stakeholders had requested that we wait to have physical meetings for interaction but that seemed unlikely in the near future and we decided to conclude the report after discussions through virtual meetings.

On behalf of the Members of the Committee, and on my own behalf, I sincerely thank you for entrusting the responsibility of making recommendations on this important subject.

Place: Hyderabad  
Dated:

T. L. Alamelu  
**Chair of the Working Group**

**Members of the Working Group**

Shri. Saurabh Mishra	Smt. Mukta Sharma
Shri. Dinesh Kapila	Shri. Ankur Nijhawan
Shri. S. Devendar Reddy	Shri. S.P. Chakraborty
Smt. Aarti Harbhajanka	Smt. C. Latha
Shri. Loknath Kar	Shri. Pradeep Kumar Singh
Smt. Surabhi Goel	

## Acknowledgements

At the outset, the Working Group expresses its gratitude to the Chairman, IRDAI for providing the opportunity to work on the report on to Revisit the product structure of Title Insurance.

The Working Group would like to thank CREDAI & GIC(Re) representatives for sharing their valuable inputs and suggestions. Special thanks to Hyderabad Chapter of CREDAI for coordinating and arranging for their association's views.

The Working Group would like to thank the DFS (Ministry of Finance), Ministry of Housing and Urban Affairs, RERA of Maharashtra, GHMC Hyderabad for nominating their officials who have contributed with their valuable inputs and shared their rich experience.

The Working Group would like to thank the General Insurance Companies and the Re-insurers for sharing their views.

The Working Group would like to place on record it's appreciation to all stakeholders for their active participation in virtual meetings, given the pandemic situation.

The Working Group would like to commend the efforts of Mr. Pradeep Singh, Member Convenor and the Non-life team for the logistic support and for facilitating the finalization of this report.

## Abbreviations

AXA	AXA France Vie India Reinsurance Branch
CREDAI	Confederation of Real Estate Developers' Associations of India
CBR	Cross Border Reinsurer
Covid-19	Coronavirus Disease 2019
DFS	Department of Financial Services, Ministry of Finance, Gov. of India
FRB	Foreign Reinsurers Branch
GHMC	Greater Hyderabad Municipal Corporation
GIC(Re)	General Insurance Corporation of India
GST	Goods and Services Tax
IRDAI	Insurance Regulatory Development Authority of India
RERA	Real Estate (Regulation and Development) Act, 2016
RERA projects	Real State Regulatory Authority projects
SARS-CoV-2	Severe Acute Respiratory Syndrome Coronavirus 2
XL	XL Insurance Company SE, India Reinsurance Branch
WG	Working Group



IRDAI/NL/ORD/PRO/180/10/2019

1<sup>st</sup> October, 2019

**ORDER**

**Sub: Working Group to Revisit the product structure of Title Insurance**

Title Insurance products are currently offered by only a few General Insurers in the Indian market. However, each Insurer's product features vary in policy terms and conditions, scope of coverage, etc., based on the support received from their reinsurers. It is noted that the number of Title Insurance policies sold are minimal despite the availability of product for the last one and half years and the obligation cast in terms of Section 16(1) of Real Estate (Regulation and Development) Act, 2016 upon the promoter/developers to obtain the said policy. The feedback received from the Government of India reveals that the stakeholders, especially the Developers Associations have flagged the need for standardization in the Title Insurance Products.

In view of the above, the Authority has decided to constitute a Working Group to revisit the product structure of Title Insurance.

2. The Working Group will consist of the following members:

- 1) Smt. T.L. Alamelu, Member (NL), IRDAI, Chair
- 2) Smt. Mudita Mishra, Director (Insurance), Department of Financial Services, Ministry of Finance, Government of India, Member
- 3) Shri. Dinesh Kapila, Economic Advisor (Housing), Ministry of Housing and Urban Affairs, Government of India, Member
- 4) Shri. S. Devendar Reddy, Chief City Planner, Greater Hyderabad Municipal Corporation, Hyderabad, Member
- 5) Ms. Aarti Harbhajanka, KPMG India, Knowledge Partner of MahaRERA, representing MahaRERA, Member
- 6) Shri. Loknath Kar, Chief Legal & Principal Compliance Officer, ICICI Lombard General Insurance Co Ltd., Member
- 7) Smt. Surabhi Goel, Executive Vice President and Head, Liability and Reinsurance, HDFC Ergo General Insurance Co Ltd., Member
- 8) Smt. Mukta Sharma, Chief Manager, New India Assurance Co Ltd., Member
- 9) Shri. Ankur Nijhawan, CEO, AXA France Vie-India Reinsurance Branch, Member
- 10) Shri. S.P. Chakraborty, General Manager, Actuarial Department, IRDAI, Member
- 11) Smt. Latha. C, Deputy General Manager, Reinsurance Department, IRDAI, Member
- 12) Shri. Pradeep Kumar Singh, Manager, Non-Life Department, Member Converter

  
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2)\* Shri Saurabh Mishra, Joint Secretary, DFS replaced Smt Mudita Mishra Director (Insurance), DFS after her transfer.

3. The terms of reference of the working group are as under:

- i. To examine the Legal and Regulatory Framework in place and its impact on the marketability of Title Insurance in India.
- ii. To study the structure of Title Insurance products available in the current Indian market and analyse the reasons for sluggish demand.
- iii. To develop a standard Title Insurance product suitable to Indian Market and recommend measures to spur the demand for the product.
- iv. To suggest augmentation of reinsurance capacity within the domestic market.
- v. To examine any other aspect relating to Title Insurance products in India.

4. The Working Group shall submit its report in twelve weeks' time from the date of this order.

  
(M. Pulla Rao)  
Executive Director (General)

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## Executive Summary

1. Title Insurance is a form of indemnity insurance that insures against financial loss from defects in Title to real property. In certain jurisdictions, institutional lenders require Title Insurance to protect their interest in the collateral of loans secured by real estate. In India, the Real Estate (Regulation and Development) Act, 2016, for the first time, gave statutory recognition to the concept of 'Title Insurance'. It provides that a promoter shall obtain all such insurances as may be notified by the appropriate Government including but not limited to Title of the land and building as part of the real estate project and construction of the real estate project.
2. Chapter I of this report sets the context to the need for Title Insurance products in India and the setting up of the Working Group on Revisiting the Product Structure of Title Insurance Products.
3. Chapter II deals with the current legal and regulatory framework for real estate development. The Real Estate (Regulation and Development) Act, 2016 has brought in certain insurance related provisions wherein insurance in respect of Title of the land finds a place. This chapter analyses the various relevant provisions.
4. Chapter III deals with the structure of current products and examines the various provisions.
5. Chapter IV deals with the specific recommendations of the Working Group with regard to the products being recommended. The detailed recommendations have been tabulated and attached to this Summary as an annexure.
6. Needless to add reinsurance plays an important role, especially when new products are introduced in the market, both from the point of view of augmenting capacity and transfer of required expertise from other domains. The Working Group recognised the fact that increased reinsurance capacity within the country through GIC Re, FRBs and Lloyd's will help improve the underwriting capacity of the insurers and increase retention in this area within the country.



**Executive Summary of revised Product structure  
(A brief Comparison)**

<b>(a)</b>	<b>(b) Current structure</b>	<b>(c) Recommended structure</b>		
<b>Nature of policy</b>	Comprehensive cover for all Promoter and allottees and successors	Comprehensive cover Promoter and allottees and successors ( Same as currently available)	Promoter Legal Expenses Policy  <b>(Additional option</b> at the time of start of fin appraisal of the project)	Allottee Retail Policy  <b>(Additional option</b> for end user individual buyer of the property unit)

<b>COVERAGE highlights</b>				
<b>Insured</b>	<p>Promoter/Developer and all successors in Title of the foregoing including any appointed society/association/condominium/federation relating to the development, including but not limited to any purchaser, mortgagee, transferee, chargee, tenant, assignee, trustee, beneficial owner or successor for the time being of the Property or any part of the Property and/or the rights therein or associated therewith</p> <p>Promoter and Allottees only; subsequent purchasers from original allottees can only benefit from cover if they pay an additional premium</p>	As per existing products (mentioned in column b)	Promoter/Developer	Retail individual buyer

	The Definition of Insured may include or exclude specifically purchasers who are successors in Title			
<b>Time of purchase of the policy</b>	At the beginning of the financial appraisal and due diligence of the project/application to RERA for approval till the handing over to individual buyer.	<p>Ideally at the beginning of financial appraisal and due diligence of the project/application for RERA approval till the handing over to individual buyer.</p> <p>The policy can also be purchased at any point of time.</p>	At the beginning of the financial appraisal and due diligence of the project/application for RERA approval. <b>As regards minimum mandatory cover the State/UT Governments may decide as per their local situations. However, in order to ensure uniformity, Ministry of Housing and Urban Development (MoHUA) in consultation may wish to examine the matter in consultation with the Ministry of Law &amp; Justice, the States and the Union Territories.</b>	At the time of the possession/handing over to the individual buyer

<b>Sum Insured</b>	Full development value of the project	Full development value of the project (As per RERA act).  Insurer may look to provide for loss limit policies subject to available reinsurance capacities.	Certain % of the project values  (This aspect may also be examined by MoHUA in consultation with the Ministry of Law & Justice and the States and the Union Territories.	Purchased value of the unit by the end individual buyer
<b>Term</b>	7 to 12 years	As per existing products for full length of the project and even after the project has been handed over till the expiry of coverage period 7 years or 12 years.	Initial years or until handing over to the end individual buyer subject to maximum period of 7 years	As per his/her own choice deemed fit to his requirements annually/long term 3 years' options
<b>Coverage Focus</b>	Comprehensive cover for all legal defence cost and compensation liability as prescribed under RERA Act	Comprehensive cover for all legal defence cost and compensation liability prescribed under RERA Act	Purely for <b>legal defence cost only</b> against suits challenging the Title of the project	End individual buyer protection for the purchased Title for any future legal suits
<b>Premium/ deductible /</b>	More favourable on price less favourable on payment terms	As per existing products premium payment	Suitable single payment/instalments as may be decided by the insurer	Suitable full payment/instalments as may be decided by the insurer

<p><b>Co-payment etc</b></p>	<p>Rates are lower and no upfront diligence costs</p> <p>One-year instalment plan</p> <p>Rates are higher Up to 2/3-year instalment plan</p> <p>Excess of 1% of Limit of Indemnity or 5% of the claim amount or</p> <p>Deductible of 10% of Loss (Co-pay)</p>	<p>options available</p> <p>Deductible may be as agreed between insurers and insured</p>		
<p><b>Insured Risks</b></p>	<p>Lack of Title Fraud, forgery, duress, undue influence etc Lack of access</p> <p>Additional coverage</p> <p>Known Defects (if agreed by the insurance company) Lack of all other easements: drainage and services etc Historic transfers at undervalue to avoid creditors Errors in searches Missing landlords, breach of historic lease terms , defective leases Historic breaches of planning permission and historic missing occupancy certificates Reserved rights and easements which</p>	<p>As per existing products (mentioned in the left column b)</p>	<p>As per recommended sample wordings.</p>	<p>As per recommended sample wordings.</p>

	<p>prevent development and/or use of the property</p> <p>Challenges to the Title or use of common parts of the property</p> <p>Breach of burdens and restrictive covenants which prevent development and use of the property</p>			
<b>Exclusions</b>	<p>Claims relating Tribal rights over Agricultural Land.</p> <p>Changes in Insured's use of property.</p> <p>Claims relating to environmental issues &amp; property damage.</p> <p>Claims arising from exercise of statutory rights by Government and State Bodies.</p> <p>Claims arising from future changes in planning or property laws by Government or State entities.</p> <p>Claims arising from defects in the Title which are created after commencement of policy.</p> <p>Claims arising from Insolvency of Insured.</p>	<p>As per existing products (mentioned in the left column b)</p>	<p>As per recommended sample wordings</p>	<p>As per recommended sample wordings</p>

	<p>Additional exclusions conditions like</p> <ul style="list-style-type: none"> <li>• Taxes (including value added taxes) or assessments which are not shown as existing liens in the Public Records at the Date of Cover.</li> <li>• Any persons or parties in possession not disclosed by the Public Records.</li> <li>• Discrepancies, conflicts in boundary lines, encroachments, or any other facts which a correct survey of the Land would disclose.</li> <li>• The dimensions or area of the Land</li> </ul> <p>Subsurface or subsoil estate or rights in the Land, together with the oil, gas, stones, any fossil substances, minerals, deposits, products, petroleum, hydrocarbons and other substances, and related rights to use the surface, or subsidence caused by the exercise of such</p>			
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	<p>rights; natural servitudes, air rights or air space owned by the jurisdiction in which the Land is located, or those claiming under the jurisdiction in which the Land is located.</p> <ul style="list-style-type: none"> <li>• Water rights, claims, or Title to water, whether or not shown in the Public Records.</li> <li>• Riparian rights, any rights of ownership in submerged lands, filled-in-lands, or the beds, coasts or banks of streams, rivers, tidelands, sea coasts, foreshore, beach, lakes, lagoons, estuaries, tributaries, ravines and springs</li> <li>• Any compulsory purchase or acquisition by a government authority, expropriation, nationalization, resumption or similar rights conferred by law unless notice of the exercise of the right is recorded, filed or registered in the</li> </ul>			
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	Public Records at the Date of Cover			
<b>Claims</b>	<p>45 days to notify claim</p> <p>In some policies there are subjectivities like Insurer may decline a claim if Statement of Loss not submitted in 20 days</p> <p>“The Statement of Loss shall describe the defect in, or lien or encumbrance on the Title, or other matter indemnified against under this Policy which constitutes the basis of Loss and shall state the basis of calculating the amount of the Loss. If the Insurer is prejudiced by the failure of the Insured to provide the required Statement of Loss, the Insurer's obligations to the Insured under the policy may terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such Statement of Loss.”</p>	As per existing products (mentioned in the left column b)	As per recommended sample wordings	As per recommended sample wordings
<b>Special costs regarding placement</b>	No independent due diligence	Triparty mechanism for due diligence may be	Triparty mechanism for due diligence shall	Not required. Available to all customers on the



<b>of coverage</b>	Upfront costs for third party due diligence generally borne by the insured	developed among financial institutions, developers and insurers.	be developed among financial institutions, developers and insurers.	basis of due diligence already taken place.
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## Chapter I: Introduction

1. Like many other things, Title Insurance was born of necessity—in this case, the need to protect owners of real estate from challenges to their property Titles.
2. Title Insurance is a form of indemnity insurance. It insures against financial loss from defects in Title to real property. Title Insurance will defend against a law suit attaching the Title or reimburse the insured for the actual monetary loss incurred upto the limit prescribed in the policy.
3. Title Insurance differs in several respects from other types of insurance. Where most insurances are contracts where the insurer indemnifies another party against a possible specific type of loss at a future date, Title Insurance insures against losses caused by Title problems that have their source in past events. Title Insurance companies attempt to achieve this by searching public records to develop and document the chain of Title and to detect known claims against or defects in the Title to the subject property.
4. In certain jurisdictions, institutional lenders require Title Insurance to protect their interest in the collateral of loans secured by real estate. A loan policy provides no coverage or benefit for the buyer/owner and so the decision to purchase an owner policy is independent of the lender's decision to require a loan policy.
5. Prior to Title Insurance coming into vogue, buyers in real estate transactions bore sole responsibility for ensuring the validity of the land Title held by the seller. If the Title were later deemed invalid or found to be fraudulent, the buyer lost his investment.
6. The genesis of Title Insurance lies in the case of *Watson v. Muirhead* (1868) heard by the Pennsylvania Supreme Court, wherein Plaintiff Watson had lost his investment in a real estate transaction as the result of a prior lien on the property. Defendant Muirhead, the conveyancer, had discovered the lien prior to the sale but told Watson the Title was clear after his lawyer had (erroneously) determined that the lien was not valid. The courts ruled that Muirhead was not liable for mistakes based on professional opinions. As a result, in 1874, the Pennsylvania legislature passed an act allowing for the incorporation of Title Insurance companies.
7. In India, the Real Estate (Regulation and Development) Act, 2016, for the first time gave statutory recognition to the concept of 'Title Insurance'. It provides that a promotor shall obtain all such insurances as may be notified by the appropriate Government including but not limited to Title of the land and building as part of the real estate project and construction of the real estate project.

8. Upon promulgation of The Real Estate (Regulation and Development) Act, 2016 in March 2016 mandating the Promoters/ Developers to acquire appropriate Title Insurance for the project they are promoting/developing and in view of the fact that there was no formal supply of insurance products in the country providing such covers, the Insurance Regulatory and Development Authority of India set up a committee on June 10, 2016 to study the need and scope for Title Insurance in the Indian market vis a vis the existing practices in the international market, identify the insurable risks and make suggestions regarding the policy wordings etc.
9. This Committee, during the course of its proceedings met with the Insurers, Reinsurers, association of Promoters/Developers of Real Estates and the revenue department of various state Governments to assess feasibility of promoting “Title Insurance” as an insurance product not only to cater to the requirements under Section 16 of the The Real Estate (Regulation and Development) Act, 2016 but also commercial significance and sustainability of such a product. The Committee noted that in the absence of a uniform, structured and digitised documentation system recording the transition of ownership of lands and buildings and the complex legal system administering the same, it is difficult to ascertain or value the ‘Title Risk’ inherent to such projects, at least for the purpose of extending any long term indemnification against such risks in the form of insurance products. Besides, the Insurers in India had hardly any knowledge or experience to underwrite such risks. In view of the same, the Committee in its report recommended that the insurers may be allowed to extend such covers on the basis of the knowledge and experience of their international re-insurance partners, who have been providing such cover in the international market for a reasonable period of time.
10. Some insurers designed and filed products for “Title Insurance” with assistance from their respective re-insurance partners. However, the real estate industry of the country found the cost of such insurance not feasible besides pointing out other features of the product not meeting their exact needs.
11. The Ministry of Housing and Urban Affairs, GOI has held meetings with various stakeholders, representatives of IRDAI and suggested that the product structure needs to be revisited so that it becomes more suitable to developers and retail property buyers.
12. IRDAI then set up the current working group to examine the legal and regulatory framework in place and its impact on the marketability of Title Insurance in India. The Working Group was tasked with the responsibility of studying available products and

develop Title Insurance product as a standard one suitable to the Indian market, apart from examining other related aspects.

13. The Working Group set about its task initially through two physical meetings, one in late 2019 and the other in early 2020 but the Covid-19 situation threw several challenges, conduct of physical meetings of the group as well as with important stakeholders being one of them. However, the Group managed to carry out its meetings and various interactions through video conferencing in the second half of 2020 and early 2021 (a total of four meetings were held through video conferencing) and completed its task.

## **Chapter II: Current Legal and Regulatory Framework and its impact on marketability**

**14.** The Real Estate (Regulation and Development) Act, 2016 notified in the official Gazette on March 26, 2016, for the first time gave statutory recognition to the concept of “Title Insurance”. Section 16, of Chapter III of the Act, prescribes:

### **15. FUNCTIONS AND DUTIES OF THE PROMOTER**

*15.1 The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of -*

- (i) Title of the land and building as a part of the real estate project; and*
- (ii) construction of the real estate project.*

*15.2 The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.*

*15.3 The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee.*

*15.4 On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.*

The penalty provisions prescribed under section 61 of Chapter VIII of Act includes penalty for non-compliance to the abovementioned provisions too, which reads as under:

### **16. OFFENCES PENALTIES AND ADJUDICATION**

*16.1 If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.*

16.2 The other relevant provisions of the Act, which casts responsibility on the promotor/ developer against any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter under the contract and the periodicity of such statutory liability of the promotor/developer is as under:

**17. STRUCTURAL DEFECT (Section 14 (3) of the Act)**

*17.1 In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.*

17.2 However, it is worthwhile mentioning here that certain projects of given specification has been kept out of the ambit of the application of the provisions of the Act under the proviso to section 3(1) under Chapter II of the Act, which are:

- (a) *where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: ...*
- (b) *where the promoter has received completion certificate for a real estate project prior to commencement of this Act;*
- (c) *for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project...*

**18.** Consequent to promulgation of the Act and as contemplated therein, various state governments adopted the Rules under the Act delineating procedural and administrative prescriptions to propagate the objects of the Act. In the Rules prescribed by many such State Governments, the subject 'Title' has been extensively dealt with and the responsibility of Title of any project undertaken by them has been categorically established upon such promoters of the projects.

## **Chapter III: Structure of product currently available**

**19.** Presently, the product which is available in the market is the one which is available to property developers and investors although the policies do benefit societies and individual homeowners indirectly. The product was initially created as a response to Section 16 of the RERA Act and also extended to investors in completed real estate assets as the same underwriting principles apply. None of the insurers at present has filed a retail product.

### **20. Coverage:**

20.1 The policy covers three categories of Title defects created prior to the policy date and which are detailed as 20 perils on the Schedule

20.2 Undiscovered defects: inadequate Title to the property, inadequate easement rights over third party lands, rights granted to third parties which may prevent the development

20.3 Undiscoverable defects: fraud in historic transactions, missing historic planning documents, rights contained in documents missing from public records

20.4 Discovered defects: defects in Title which are highlighted in the Report on Title (these can be underwritten for an additional premium)

Complete list of Insured Perils per policy wordings annexed.

### **21. Important Exclusions:**

21.1 The policy exclusions are standard as they occur in international markets, important ones as under:

- Claims relating Tribal rights over Agricultural Land.
- Changes in Insured's use of property.
- Claims relating to environmental issues & property damage.
- Claims arising from exercise of statutory rights by Government and State Bodies.
- Claims arising from future changes in planning or property laws by Government or State entities.
- Claims arising from Insolvency of Insured.

- Claims arising from defects in the Title which are created after commencement of policy.

## **22. Some Examples of post policy defects as follows:**

- New defects created by subsequent conveyancing errors.
- Fraud embedded in the current transaction to be insured which arises after policy inception.
- Changes in planning/zoning laws rendering historic planning invalid.
- Boundary disputes arising from future changes in design or construction.

Complete list of policy exclusions per policy wording annexed

## **23. Policy Term:**

The policy will cover the Developer, the Society and ultimately all shareholders in the Society for a term of 12 years (minimum policy tenure 7 years). So essentially, option is provided to the Insured to cover between 7 – 12 years.

## **24. Limit of Indemnity:**

The Limit of Indemnity will be the fully developed value of the property/ the aggregate sales value of the project. Considering practical issues arising from Insured and limited capacity, policies with first loss limits can be offered.

## **25. Excess:**

1% of Sum Insured or 5% of the claim payout whichever is greater (excess can be modified)

## **26. Premium Payment:**

Usually a single, one-time payment, in certain cases an instalment facility may be provided

## **27. Underwriting considerations:**

The premium is derived from rating a number of factors including but not limited to: quality of legal report, location of the property, known defects coverage, sum insured, age of the property and level of excess required.



## 28. Underwriting Process:

The process is simple and efficient: fill in the proposal form and provide Reports on Title (readily available with the Insured as diligence is performed by Insured's own lawyers) and plans. No upfront diligence fees are required to be paid.

## 29. Claims:

29.1 Loss: The policy will indemnify an insured for actual loss suffered and for all legal costs associated with resolving the claim

29.2 Claim Process: The insurer will request further details from the insured on receipt of notification of a claim and will instruct panel solicitors to assess and make recommendations for resolving the claim.

29.3 Claim Resolution: Negotiating a settlement and acquiring all necessary competing interests from third parties Litigating or defending litigation on behalf of the Insured Indemnification of the insured for actual loss suffered

Full claims process, documentation and resolution detailed in the policy wordings annexed.

## 30. Here are details of two specimen products currently available, for Information:

COVERAGE	Specimen 1	Specimen 2
Insured	Promoter/Developer and all successors in Title of the foregoing including any appointed society/association/condominium/federation relating to the development, including but not limited to any purchaser, mortgagee, transferee, chargee, tenant, assignee, trustee, beneficial owner or successor for the time being of the Property or any part of the Property and/or the rights therein or associated therewith.	Promoter and Allottees only; subsequent purchasers from original allottees can only benefit from cover if they pay an additional premium The Definition of Insured specifically excludes purchasers who are successors in Title
Term	7 to 12 years	7 years

<p>Premium</p>	<p>More favourable on price less favourable on payment terms</p> <p>Rates are lower and no upfront diligence costs One year instalment plan</p> <p>Excess of 1% of Limit of Indemnity or 5% of the claim amount</p>	<p>Less favourable on price; more favourable on payment terms</p> <p>Rates are higher Up to 3 year instalment plan</p> <p>Deductible of 10% of Loss (Co-pay)</p>
<p>Insured Risks</p>	<p>Lack of Title Fraud, forgery, duress, undue influence etc Lack of access</p> <p>Additional coverage</p> <p>Known Defects (if agreed by the insurance company) Lack of all other easements: drainage and services etc Historic transfers at undervalue to avoid creditors Errors in searches Missing landlords, breach of historic lease terms , defective leases Historic breaches of planning permission and historic missing occupancy certificates Reserved rights and easements which prevent development and/or use of the property Challenges to the Title or use of common parts of the property Breach of burdens and restrictive covenants which prevent development and use of the property</p>	<p>Lack of Title Fraud, forgery, duress, undue influence etc Lack of access</p>
<p>Exclusions</p>	<p>Claims relating Tribal rights over Agricultural Land.</p> <p>Changes in Insured's use of property.</p> <p>Claims relating to environmental issues &amp; property damage.</p>	<p>Taxes (including value added taxes) or assessments which are not shown as existing liens in the Public Records at the Date of Cover.</p>

	<p>Claims arising from exercise of statutory rights by Government and State Bodies.</p> <p>Claims arising from future changes in planning or property laws by Government or State entities.</p> <p>Claims arising from defects in the Title which are created after commencement of policy.</p> <p>Claims arising from Insolvency of Insured.</p>	<p>Any persons or parties in possession not disclosed by the Public Records.</p> <p>Discrepancies, conflicts in boundary lines, encroachments, or any other facts which a correct survey of the Land would disclose.</p> <p>The dimensions or area of the Land</p> <p>Subsurface or subsoil estate or rights in the Land, together with the oil, gas, stones, any fossil substances, minerals, deposits, products, petroleum, hydrocarbons and other substances, and related rights to use the surface, or subsidence caused by the exercise of such rights; natural servitudes, air rights or air space owned by the jurisdiction in which the Land is located, or those claiming under the jurisdiction in which the Land is located.</p> <p>Water rights, claims, or Title to water, whether or not shown in the Public Records.</p> <p>Riparian rights, any rights of ownership in submerged lands, filled-in-lands, or the beds, coasts or banks of streams, rivers, tidelands, sea coasts, foreshore, beach, lakes, lagoons, estuaries, tributaries, ravines and springs .</p> <p>Any compulsory purchase or acquisition by a government</p>
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		authority, expropriation, nationalization, resumption or similar rights conferred by law unless notice of the exercise of the right is recorded, filed or registered in the Public Records at the Date of Cover
Claims	45 days to notify claim	<p>The Insurer can decline a claim if Statement of Loss not submitted in 20 days:</p> <p>“The Statement of Loss shall describe the defect in, or lien or encumbrance on the Title, or other matter indemnified against under this Policy which constitutes the basis of Loss and shall state the basis of calculating the amount of the Loss. If the Insurer is prejudiced by the failure of the Insured to provide the required Statement of Loss, the Insurer's obligations to the Insured under the policy may terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such Statement of Loss.”</p>
Placement of Coverage	No independent diligence	Upfront costs for third party diligence

## **Chapter IV: Products being recommended for Title Insurance**

- 31.** There is a need to expand Title Insurance products to improve the marketability of this Specialized product. The product has to be necessarily aligned with the requirements of Developers and customized to the needs of Individual buyers' which can spur the demand for the products in the segment.
- 32.** Therefore, Working Group (WG) suggest two new product structure, coverage and wordings for the Following products.
  - 32.1** Legal Expenses Policy for Land Title Owners and Developers/Promoters
  - 32.2** Retail Policy for Allottees, individual customers and financiers who purchase units in RERA projects.
- 33.** It is suggested to put in place synchronised efforts to popularize the new insurance products so that there is demand for the Title Insurance product from individual buyers and financing banks/institutions as well.
- 34.** The promoter can opt for the full comprehensive product which is already available with insurance companies. Promotor may also opt for a minimum legal defence cost liability policy e.g.10% of project value up to 25 Cr sum insured while in process for registration and approval with RERA Authorities.
- 35.** While the product for retail individual buyers may be sold at the time of handing over of the property or collecting last instalment or during possession/registration or transferring Title rights of the property.
- 36.** The suggested sample wordings for both of the new policies may be as per following.

## Promoter Legal Expenses (Defence Cost) Policy

### I Covered Risks

Subject to the Deductible, the General Exclusions from Coverage, the Conditions, the Specific Exclusions from Coverage set out in Schedule B and payment of the premium and any Service Tax / GST and charges for the Policy, the Insurer agrees to indemnify the Insured, as of the Inception Date, against Loss, not exceeding the Limit of Indemnity, sustained or incurred by the Insured by reason of:

- (a) Title in the Project being vested at the Date of Cover other than as specified in Schedule A;
- (b) Title not being marketable at the Date of Cover;
- (c) Any defect in or Lien on the Title at the Date of Cover. This Covered Risk includes, but is not limited to, indemnification against Loss from a defect in or Lien on the Title caused by:
  - (i) forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation;
  - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
  - (iii) a document affecting Title not properly created, executed, witnessed, sealed, stamped, acknowledged, notarized or delivered;
  - (iv) a document affecting Title executed under a falsified, expired or otherwise invalid power of attorney;
  - (v) a document affecting Title not properly filed, recorded, or indexed in the Public Records; or
  - (vi) a defective judicial or administrative proceeding.
- (d) There being no legal right of access to and from the Land and Building at the Date of Cover.

## **II General Exclusions from Coverage**

The following matters are expressly excluded from the coverage of the Policy, and the Insurer will not indemnify the Insured for Loss, costs, legal fees or expenses, that arise by reason of:

- a) Loss associated with diminution in value of the Property as a result of a Covered Risk;
- b) Loss resulting from an act or omission by the Insured, including the failure of the Insured to mitigate loss;
- c) Any Covered Risk known at the Date of Cover.
- (d) (i) any Law restricting, regulating, prohibiting, or relating to contaminated land, pollution or other environmental protection;  
  
(ii) any governmental, police or emergency power; or  
  
(iii) any compulsory purchase or acquisition by a government authority, expropriation, nationalization, resumption or similar rights conferred by law unless notice of the exercise of the right is recorded, filed or registered in the Public Records at the Date of Cover, and except where the government is taking such action to restore its rightful Title in the Project.
- (e) Liens, adverse claims, or other matters:
  - (i) created, assumed, permitted or agreed to by the Insured;
  - (ii) not known to the Insurer and not recorded in the Public Records at Date of Cover, but Known to the Insured as at the Date of Cover and not disclosed in writing to the Insurer by the Insured prior to the date on which the Insured became covered by the Policy;
  - (iii) resulting in no loss to the Insured;
  - (iv) not in existence or created at the Date of Cover but coming into existence or created subsequent to the Date of Cover;
  - (v) resulting in loss that would not have been sustained if the Insured had paid the purchase price for Title to the Project;
- (f) any claim arising by reason of bankruptcy, insolvency or similar creditors' rights laws;

- (g) war, insurrection, riot, civil unrest, act of a public enemy, epidemic, quarantine restriction, governmental restriction of access to or use of the Project, nationalization, natural disasters, or other similar causes;
- (h) any claim caused directly or indirectly by malicious or non-malicious electronic data activity.
- (i) any claim relating to the interpretation or enforcement of the Policy brought other than as specified in Condition 18 (“Arbitration”) or Condition 19 (“Governing Law”); and
- (j) Notwithstanding any other provision, no cover is provided under this Policy for any claim, loss, liability, cost or expense of whatever nature directly or indirectly arising out of, contributed to by, or resulting from coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof, or any other communicable disease. This exclusion also applies to any claim, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by, or resulting from: (i) any fear or threat (whether actual or perceived) of; or (ii) any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof, or any other communicable disease.

### **III Conditions**

The coverage of the Policy is subject to the following conditions:

#### **1. Definition of Terms**

The following terms when used in the Policy mean:

- a) **“Affiliate”** an Entity for which either:
  - 1) the stock, shares, memberships, or other equity interests of the Entity are majority-owned by the Insured; or



- 2) the stock, shares, memberships, or other equity interests of the Insured are majority-owned by the Entity; or
- 3) the stock, shares, memberships, or other equity interests of the Insured and of the grantee are majority-owned by the same Entity.

- b) **“Allottee”** the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the Promoter, in accordance with the Real Estate (Regulation and Development) Act, 2016.
- c) **“Building”** Building includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial, or for the purpose of any business, occupation, profession or trade, or for any other related purpose, as defined in Schedule A hereto.
- d) **“Conditions”** the conditions applicable to and forming part of the Policy.
- e) **“Covered Risks”** those risks set out in Section I of the Policy.
- f) **“Date of Cover”** the date specified in Schedule A  
the amount specified in Schedule A
- g) **“Deductible”**
- h) **Entity”** A corporation, limited company, partnership, trust, limited liability company or partnership, or other similar legal entity.

i) **“Issuance Date”**

The date the Policy is issued.

j) **“Insured”**

The Entity specified in Schedule A and:

- 1) successors to the Insured’s Title to the Project by operation of law, including inheritance, as distinguished from purchase;
- 2) successors to the Insured by dissolution, merger, consolidation, distribution, or reorganization; and
- 3) the association of Allottees, following the conveyance of all the apartments, plots or buildings, as the case may be, to the Allottees, or the common areas to the association of Allottees, in accordance with the Real Estate (Regulation and Development) Act, 2016;

*provided, however,* the Insurer reserves all rights and defenses against any successor in 1-3, above, which it would have had against the Insured specified in Schedule A.

k) **“Land”**

The Land specified in Schedule A. The term “Land” does not include any of the following:

- 1) land beyond the boundary of the Land, or
- 2) any right, Title, interest, estate or easement in, or over or under abutting highways, streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit Covered Risk (c).

- l) **“Law”** Any governmental power, burden, requirement, restraint or regulation, whether created by or resulting from legislative act, ordinance, governmental by-law, decree, secondary law including administrative rules and regulation.
- m) **“Lien”** A lien, charge, privilege, right, obligation, hypothecation, mortgage, attachment, encumbrance or other security interest on or in respect of the Project and the Title.
- n) **“Limit of Indemnity”** The amount specified in Schedule A, as it may be decreased by Condition 12 (“Reduction of Limit of Indemnity”); and Condition 13 (“Reduction of Liability –Mortgage”).
- o) **Loss** Shall have the meaning and shall be ascertained in accordance with Condition 8 (“Determination and Extent of Loss – Legal Expenses”)
- p) **“Knowledge”, “Known”** (i) actual knowledge or notice of the Insured; or  
(ii) knowledge or notice that may be imputed to the Insured or ought to be known to the Insured by reason of the Public Records or any other records that impart notice of matters affecting the Title.
- q) **“Public Records”** The deed registry or those records in offices or registries maintained by authority of a governmental agency in which conveyances of Title to land and mortgages and encumbrances on that Title must be registered, recorded, inscribed or filed, either to establish their validity or to give notice to potential purchasers of the land of their existence.
- r) **Policy”** This Title Insurance Policy, including Schedule A and Schedule B.

s) **“Project”** Means the Real Estate Project registered by the Insured under the Real Estate (Regulation and Development) Act, 2016, as specified in Schedule A, consisting of the Land together with the Buildings on the Land and affixed improvements to the Land at the Date of Cover that by law constitute a part of the real estate.

The term “Project” does not include any of the following:

- (A) buildings and affixed improvements to land beyond the boundary of the Land, or
- (B) any right, Title, interest, estate or easement in, or over or under abutting highways, streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit Covered Risk (c).

t) **“Register”** To inscribe, register, make application to inscribe, register, record or file in the Public Records.

u) **“Schedule A”** The schedule attached to and forming part of the Policy entitled ‘Schedule A’.

v) **“Schedule B”** The schedule attached to and forming part of the Policy entitled ‘Schedule B’.

w) **“Third Party Claim”** A claim by a third party which alleges a Covered Risk

x) **“Title”** The estate or interest in the Project specified in Schedule A

## **2. Policy Term**

The term of the Policy is specified in Schedule A.

## **3. Duty of Fair Presentation**

- (a) The Insured agrees and warrants that prior to the Inception Date it has:
  - (i) disclosed every material fact and circumstance in respect of the Covered Risks, which the Insured knows or ought to know (the “Material Representations”);
  - (ii) presented the Material Representations in reasonably clear and accessible manner
- (b) The Insured agrees and warrants that every Material Representation as to a matter of fact is substantially correct, and every Material Representation as to a matter of expectation or belief is made in good faith.
- (c) If the Insurer is materially prejudiced by a breach of the insured’s obligations in this Condition 3(a) and 3(b):
  - (i) The Insurer’s liability to the Insured under this Policy in relation to that particular Material Representation shall be reduced to the extent of the prejudice;
  - (ii) the Insurer has the option to terminate its obligation pursuant to Condition 7 (“Defense and Prosecution of Actions”) in relation to the particular Material Representation; and
  - (iii) no amount of the Premium shall be refunded.

## **4. Notice to be given by the Insured**

(a) The Insured shall notify the Insurer in writing within 10 calendar days in the event that:

(i) the Insured is named a party, or is called to give evidence, in any action or proceeding brought by a third party relating to a Covered Risk;

(ii) the Insured shall receive Knowledge of:

1.any matter which could affect a Covered Risk; or

2.any litigation,

that might cause Loss for which the Insurer may be liable under the Policy.

(b) If the Insurer is materially prejudiced by a breach of the insured's obligations in this Condition 4(a):

(i) The Insurer's liability to the Insured under this Policy as that particular claim or potential claim shall be reduced to the extent of the prejudice;

(ii) the insurer has the option to terminate its obligation pursuant to Condition 8 ("Defence and Prosecution of Actions") as to that particular claim or potential claim; and

(iii) no amount of the Premium shall be refunded.

(c) If notice is delivered to the Insurer by the Insured in accordance with Condition 5 during the term of the Policy, then any subsequent insured Loss directly arising out of the facts or circumstances identified in such notice shall be deemed reported at the time such notice was received by the Insurer.

## **5. General Duties of the Insured**

The Insured shall:

(a) use reasonable endeavours to mitigate any Loss in relation to a claim or potential claim under the Policy;

- (b) not deliberately or recklessly prejudice the Insured's or the Insurer's position or interests nor deliberately or recklessly prejudice the potential or actual rights of recovery of the Insured or the Insurer in relation to a claim or potential claim under the Policy;
- (c) not settle or admit liability in relation to a claim nor propose or enter into settlement negotiations in relation to a claim without the prior written consent of the Insurer; and
- (d) take such action as the Insurer may reasonably request in relation a claim.
- (e) (e) If the Insurer is materially prejudiced by a breach of the insured's obligations in this Condition 5(a), 5(b), 5(c) and 5(d):
  - (i) the Insurer's liability to the Insured under this Policy as the particular claim or potential claim under the Policy shall be reduced to the extent of the prejudice;
  - (ii) the Insurer has the option to terminate its obligation pursuant to Condition 7 ("Defence and Prosecution of Actions") as to that particular claim or potential claim; and
  - (iii) no amount of the Premium shall be refunded.

## **6. Defence and Prosecution of Actions**

- (a) The Insurer shall have the right, in addition to the options contained in Condition 7 ("Options to Pay or Otherwise settle claims"), at its own cost, to institute and prosecute any action or proceeding, or to do any other act, that in its opinion may be necessary or desirable to establish the Title, as indemnified, or to prevent or reduce Loss to the Insured. The Insurer may take any appropriate action under the terms of the Policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability, or a waiver of any provision of the Policy. If the Insurer exercises its rights under this Condition 8, it must do so diligently.
- (b) Whenever the Insurer brings an action, or asserts a defense, as required or permitted by the Policy, the Insurer may pursue the litigation to a final determination by a court of competent jurisdiction, and the Insurer expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order to the highest court of competent jurisdiction.

- (c) During any period of war, insurrection, riot, civil unrest, act of a public enemy, epidemic, quarantine restriction, governmental restriction of access to or use of the Project, nationalization, natural disasters, or other similar causes beyond the reasonable control of, and without the fault of the Insurer that impairs the ability of the Insurer to provide a defence under the Policy this obligation to provide a defence shall be suspended. The Insurer shall not have liability for loss arising from any adverse ruling during such period of suspension, or for any other loss arising from a delay in providing the defence otherwise due under the Policy as a result of the incidents giving rise to such suspension

## 7. Options to Pay or Otherwise Settle Claims; Termination of Liability

In case of a claim under the Policy, the Insurer shall have the following additional options:

(a) To pay or tender payment of the Limit of Indemnity.

- (i) To pay or tender payment of the Limit of Indemnity under the Policy that the Insurer is obligated to pay. Upon the exercise by the Insurer of this option, all liability and obligations of the Insurer to the Insured under the Policy, other than to make the payment required in this Condition 9(a)(i) shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To pay or otherwise settle with the Insured, or with a party other than the Insured.

- (i) To pay or otherwise settle with a party other than the Insured for, or in the name of, the Insured any claim that the Insurer is liable to indemnify the Insured for Loss under this Policy; or

- (ii) To pay or otherwise settle with the Insured the Loss provided for under the Policy that the Insurer is obligated to pay.

Upon the exercise by the Insurer of either of the options provided for in Condition 9(b)(i) or 9(b)(ii), the Insurer's obligations to the Insured under the Policy for the claimed Loss, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.



## 8. Determination and Extent of Loss – Legal Expenses

- (a) This Policy is a contract of indemnity against actual monetary Loss incurred by the Insured who has suffered Loss by reason of the Covered Risks.
- (b) Loss is incurred to the extent that the Insured:
  - (i) incurs legal costs and expenses in defending against a Third Party Claim; and / or
  - (ii) incurs the cost of out-of-court settlement of a Third Party Claim.

*provided, however*

- (iii) the aggregate amount of indemnity payable by the Insurer for all claims under the Policy shall not exceed the Limit of Indemnity;
- (iv) indemnity is payable only in excess of the Deductible in all cases;
- (v) the Policy does not indemnify against any consequential, exemplary or punitive damages to which the Insured may be subject;
- (vi) indemnity under 8(b)(i) is subject to the Insurer's prior written approval of counsel selected by the Insured to act for the Insured in defending against a Third Party Claim, which approval will not be unreasonably withheld or delayed; and
- (vii) indemnity under 8(b)(ii) is subject to the prior written approval of the Insurer, which approval will not be unreasonably withheld or delayed.

c) The Insurer and the Insured shall use reasonable endeavours to agree the amount of Loss suffered by the Insured.

d) At the written request of the Insurer, and in addition to the notices required under Condition 21

("Notices, where sent"), the Insured shall provide to the Insurer a statement of Loss ("Statement of Loss") signed and sworn to by the Insured within 20 calendar days after the Insurer's request for the same. The Statement of Loss shall describe the defect in, or lien or encumbrance on the Title, or other matter indemnified against under this Policy which constitutes the basis of Loss and shall state the basis of calculating the amount of the Loss. If the Insurer is prejudiced by the failure of the Insured to provide the required Statement of Loss, the Insurer's obligations to the Insured under the policy may terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with respect to that particular claim under the Policy made by the Insured matter or matters requiring such Statement of Loss.

(e) If the Parties fail after a reasonable period of time to agree the amount of Loss suffered by the Insured, then the Parties shall resolve their dispute in accordance with Condition 17 (“Disputes under Policy; Arbitration Clause”).

## 9. Limitation of Liability

- (a) If, in response to a Third Party Claim alleging
- i. Title in the Project was not vested at the Date of Cover as specified in Schedule A;
  - ii. Title in the Project is not marketable;
  - iii. a defect in, or Lien on the Title at the Date of Cover; or
  - iv. no legal right of access to and from the Project

and the Insurer

- i. establishes that the Title was vested at the Date of Cover as specified in Schedule A;
- ii. establishes marketability of the Title;
- iii. or removes the alleged defect in, or Lien on the Title;
- iv. or cures the lack of legal right of access to or from the Project,

all as indemnified, in a reasonably diligent manner by any method, including settlement, arbitration, litigation and the completion of any appeal, the Insurer shall have fully performed and discharged its obligations under the Policy with respect to such claim.

- (b) In the event of any litigation, including litigation by the Insurer or with the Insurer’s consent,  
The Insurer shall have no liability for Loss until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as indemnified.
- (c) The Insurer shall not be liable for Loss to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Insurer.

## **10. Reduction of Limit of Indemnity**

All payments under the Policy shall reduce the Limit of Indemnity by the amount of the payment.

## **11. Reduction of Limit of Indemnity - Mortgage**

The Limit of Indemnity shall be reduced by any amount the Insurer pays under any policy insuring a mortgage excluded from coverage in Schedule B, or to which the Insured has agreed, assumed or taken subject, or which is executed by the Insured after Date of Cover and which is a Lien on the Title, and the amount so paid shall be deemed a payment to the Insured under the Policy.

## **12. Payment of Loss**

Payment of Indemnity in respect of Loss shall be made within 30 calendar days of the date on which liability and the extent of Loss have been definitely fixed in accordance with these Conditions.

## **13. Rights of Recovery Upon Payment or Settlement**

- (a) Whenever the Insurer shall have settled and paid a claim under the Policy, the Insurer shall be subrogated and entitled to all the Insured's rights and remedies in respect to the claim that the Insured has against any person or Project, to the extent of the amount of any Loss, costs, legal fees, and expenses paid by the Insurer. If requested by the Insurer, the Insured shall execute documents to evidence the transfer to the Insurer of such rights and remedies. The Insured shall permit the Insurer to sue, compromise, or settle in the name of the Insured and to use the name of the Insured in any transaction or litigation involving such rights and remedies.
- (b) The Insurer's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of indemnification, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

#### **14. Primary and Non Contributory**

The coverage provided under the Policy is a primary cover without any right of contribution from any other insurance.

#### **15. Liability Limited to the Policy; Policy Entire Contract**

- (a) The Policy, together with all endorsements, if any, attached to it by the Insurer, is the entire Policy and contract between the Insured and the Insurer. In interpreting any provision of the Policy, the Policy shall be construed as a whole.
- (b) Any claims for Loss that arises out of the status of the Title or by any action asserting such claim, shall be restricted to the Policy.
- (c) Any amendment of, or endorsement to, the Policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of the Policy.
- (d) Each endorsement to the Policy issued at any time is made a part of the Policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the Policy, (ii) modify any prior endorsement, (iii) change the Inception Date, change the Date of Cover or (v) increase the Limit of Indemnity.
- (e) To the extent that any provision of the Policy is inconsistent with the Insurance Act, 1938, the provision of the Insurance Act, 1938 shall take precedence.

#### **16. Severability**

In the event any provision of the Policy, in whole or in part, is held invalid or unenforceable under applicable law, the Policy shall be deemed not to include such provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

#### **17. Disputes under Policy; Arbitration Clause**

- (a) If any dispute or difference shall arise as to the quantum to be paid under the 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 here to or if they cannot agree upon a single arbitrator within thirty calendar 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.

- (b) It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as herein before provided, if the Insurer has disputed or not accepted liability under or in respect of the Policy.
- (c) It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon the Policy that award by such arbitrator/arbitrators of the amount of expenses shall be first obtained.
- (d) If the Insurer shall disclaim liability for a claim hereunder and if the insured person shall not within twelve calendar months from the date of receipt of the notice of such disclaimer notify the Insurer in writing that he/ she does not accept such disclaimer and intends to recover his/ her claim from the Insurer, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

## **18. Governing Law**

Any interpretation of this policy or issue relating to its construction, validity or operation shall be determined by the laws of India.

## **19. Cancellation**

- (a) Within the first 15 calendar days following the Inception Date, the Insured may cancel this  
Policy by giving written notice for the cancellation of the Policy by registered post, and then Insurer shall refund premium on short term rates (as per market practice), provided no claim has been paid or reported under the Policy.

Notwithstanding anything contained herein or otherwise, no refunds of premium shall be made in respect of the Policy where any Notice is required to be given by the Insured in accordance with Condition 4, or any claim has been admitted by Insurer or has been lodged with the Insurer, or any benefit has been availed by Insured under the Policy.

## **20. Notices; Where Sent**

Any notice of claim and any other notice or statement in writing required to be given to the Insurer under the Policy must be delivered to [Address and Email details]

*[ Other clauses relating to grievance etc....as required by the IRDAI Protection of Policyholders' Interests Regulations, 2017].*

## **21. Grievances**

In case of any grievance relating to servicing the policy, the insured may submit in writing to the policy issuing office or regional office for redressal. If the grievance remains unaddressed, insured may contact [.....]

The insured can also approach the office of Insurance Ombudsman of the respective areas and regions for redressal of grievance. The contact details of the Insurance Ombudsman offices are as below-

Names of Ombudsman and Address of Ombudsman Centres

Updated list (as available on IRDA website) to be provided along with the policy wordings.

## **Schedule A**

### **Declarations**

**Insurer:**

**Limit of Indemnity:** INR 25 crores [or 10% of the total value of the Project, whichever is higher]

**Deductible:** 10% of the Limit of Indemnity

**Premium:** INR

**Service Tax** INR

**Applicable GST:**

**Premium Payment Terms:** The Premium is payable on or before the Inception Date.

It is hereby agreed that, as a condition precedent to any liability under the Policy, the Premium due must be paid and actually received by the Insurer in full.

**Date of Cover:** The Date on which the Real Estate Project is registered by the Insured under the Real Estate (Regulation and Development) Act, 2016

**Inception Date:** [Date on which Policy is Issued]

**Policy Term:** The Policy will remain in force until the conveyance of all the apartments, plots or buildings, as the case may be, to the Allottees, or the common areas to the association of Allottees, in accordance with the Real Estate (Regulation and Development) Act, 2016.

**Insured:** [The Promoter of the Project]

**Land:** [Legal Description of the Land]

**Project:** [Description of The Real Estate Project]

**Title is vested in:** The Insured

**The Title (the estate or interest in the Project):** The legal and beneficial ownership interest, Title and rights in respect of the Project and the marketability thereof.



## **Schedule B**

### **Specific Exclusions from Coverage**

The Policy does not indemnify against loss, and the Insurer will not pay costs, legal fees, or expenses that arise by reason of:

1. Taxes (including value added taxes) or assessments which are known by the Insured to be outstanding at the Date of Cover.
2. Any persons or parties in possession not disclosed by the Public Records.
3. Discrepancies, conflicts in boundary lines, encroachments, or any other facts which a correct survey of the Land would disclose.
4. Subsurface or subsoil estate or rights in the Land, together with the oil, gas, stones, any fossil substances, minerals, deposits, products, petroleum, hydrocarbons and other substances, and related rights to use the surface, or subsidence caused by the exercise of such rights; natural servitudes, air rights or air space owned by the jurisdiction in which the Land is located, or those claiming under the jurisdiction in which the Land is located.
5. Water rights, claims, or Title to water, whether or not shown in the Public Records.
6. Riparian rights, any rights of ownership in submerged lands, filled-in-lands, or the beds, coasts or banks of streams, rivers, tidelands, seacoasts, foreshore, beach, lakes, lagoons, estuaries, tributaries, ravines and springs.

## **Retail policy for individual customers and financiers**

### **Allottee/Individual Buyer Retail Policy**

#### **I Covered Risks**

Subject to the General Exclusions from Coverage, the Conditions, the Specific Exclusions from Coverage set out in Schedule B and payment of the premium and any Service Tax / GST and charges for the Policy, the Insurer agrees to indemnify the Insured, as of the Inception Date, against Loss, not exceeding the Limit of Indemnity, sustained or incurred by the Insured by reason of:

- a) Title in the Property being vested at the Date of Cover other than as specified in Schedule A;
- b) Title not being marketable at the Date of Cover;
- c) Any defect in or Lien on the Title at the Date of Cover. This Covered Risk includes, but is not limited to, indemnification against Loss from a defect in or Lien on the Title caused by:
  - (i) forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation;
  - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
  - (iii) a document affecting Title not properly created, executed, witnessed, sealed, stamped, acknowledged, notarized or delivered;
  - (iv) a document affecting Title executed under a falsified, expired or otherwise invalid power of attorney;
  - (v) a document affecting Title not properly filed, recorded, or indexed in the Public Records; or
  - (vi) a defective judicial or administrative proceeding.

(d) There being no legal right of access to and from the Land and Building at the Date of Cover.

In addition, the Insurer shall pay the costs, legal fees and expenses incurred in the defense of any matter covered by this Policy, but only to the extent provided in the Conditions.

## **II General Exclusions from Coverage**

The following matters are expressly excluded from the coverage of the Policy, and the Insurer will not indemnify the Insured for Loss, costs, legal fees or expenses, that arise by reason of:

(i) any Law restricting, regulating, prohibiting, or relating to contaminated land, pollution or other environmental protection;

(ii) any governmental, police or emergency power; or

(iii) any compulsory purchase or acquisition by a government authority, expropriation, nationalization, resumption or similar rights conferred by law unless notice of the exercise of the right is recorded, filed or registered in the Public Records at the Date of Cover, and except where the government is taking such action to restore its rightful Title in the Property.

(iv) Liens, adverse claims, or other matters:

a) created, assumed, permitted or agreed to by the Insured;

b) not known to the Insurer and not recorded in the Public Records at Date of Cover, but Known to the Insured as at the Date of Cover and not disclosed in writing to the Insurer by the Insured prior to the date on which the Insured became covered by the Policy;

c) resulting in no loss to the Insured;

d) not in existence or created at the Date of Cover but coming into existence or created subsequent to the Date of Cover;

e) resulting in loss that would not have been sustained if the Insured had paid the purchase price for Title to the Property;

(v) any claim arising by reason of bankruptcy, insolvency or similar creditors' rights laws;

- (vi) war, insurrection, riot, civil unrest, act of a public enemy, epidemic, quarantine restriction, governmental restriction of access to or use of the Property, nationalization, natural disasters, or other similar causes;
- (vii) any claim caused directly or indirectly by malicious or non-malicious electronic data activity.
- (viii) any claim relating to the interpretation or enforcement of the Policy brought other than as specified in Condition 18 (“Arbitration”) or Condition 19 (“Governing Law”); and
- (ix) Notwithstanding any other provision, no cover is provided under this Policy for any claim, loss, liability, cost or expense of whatever nature directly or indirectly arising out of, contributed to by, or resulting from coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof, or any other communicable disease. This exclusion also applies to any claim, loss, cost or expense of whatever nature directly or indirectly arising out of, contributed to by, or resulting from: (i) any fear or threat (whether actual or perceived) of; or (ii) any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of coronavirus disease (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), or any mutation or variation thereof, or any other communicable disease.

### **III Conditions**

The coverage of the Policy is subject to the following conditions:

#### **1. Definition of Terms**

The following terms when used in the Policy mean:

- a) **“Affiliate”** an Entity for which either:
  - 4) the stock, shares, memberships, or other equity interests of the Entity are majority-owned by the Insured; or
  - 5) the stock, shares, memberships, or other equity interests of the Insured are majority-owned by the Entity; or
  - 6) the stock, shares, memberships, or other equity interests of the Insured and of the

grantee are majority-owned by the same Entity.

- b) **“Building”** Building includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial, or for the purpose of any business, occupation, profession or trade, or for any other related purpose, as defined in Schedule A hereto.
- c) **“Conditions”** the conditions applicable to and forming part of the Policy.
- d) **“Covered Risks”** those risks set out in Section I of the Policy.
- e) **“Date of Cover”** the date specified in Schedule A  
the amount specified in Schedule A
- f) **“Deductible”**
- g) **Entity”** A corporation, limited company, partnership, trust, limited liability company or partnership, or other similar legal entity.
- h) **“Issuance Date”** The date the Policy is issued.
- i) **“Insured”** The Entity specified in Schedule A.:
  - 4) successors to the Insured’s Title to the Property by operation of law, including inheritance, as distinguished from purchase;
  - 5) successors to the Insured by dissolution, merger, consolidation, distribution, or reorganization;

Provided, however, the Insurer reserves all rights and defenses against any successor in 1-2, above,

which it would have had against the Insured specified in Schedule A.

- j) **“Land”** The Land specified in Schedule A. The term “Land” does not include any of the following:
- 3) land beyond the boundary of the Land, or
  - 4) any right, Title, interest, estate or easement in, or over or under abutting highways, streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit Covered Risk (c).
- k) **“Law”** Any governmental power, burden, requirement, restraint or regulation, whether created by or resulting from legislative act, ordinance, governmental by-law, decree, secondary law including administrative rules and regulation.
- l) **“Lien”** A lien, charge, privilege, right, obligation, hypothecation, mortgage, attachment, encumbrance or other security interest on or in respect of the Property and the Title.
- m) **“Limit of Indemnity”** The amount specified in Schedule A, as it may be decreased by Condition 12 (“Reduction of Limit of Indemnity”); and Condition 13 (“Reduction of Liability –Mortgage”).
- n) **Loss** Shall have the meaning and shall be ascertained in accordance with Condition 10 (Determination and Extent of Loss”)
- Loss shall include the costs, legal fees and expenses incurred by the Insurer in the defence of any matter indemnified under the Policy, in accordance with Condition12 (“Reduction of Limit of Indemnity”)

Loss shall be subject to the Deductible.

- o) Knowledge,  
Known** (i) actual knowledge or notice of the Insured; or  
(ii) knowledge or notice that may be imputed to the Insured or ought to be known to the Insured by reason of the Public Records or any other records that impart notice of matters affecting the Title.
- p) Public  
Records** The deed registry or those records in offices or registries maintained by authority of a governmental agency in which conveyances of Title to land and mortgages and encumbrances on that Title must be registered, recorded, inscribed or filed, either to establish their validity or to give notice to potential purchasers of the land of their existence.
- q) Policy** This Title Insurance Policy, including Schedule A and Schedule B.
- r) Property** Means the Land together with the Buildings on the Land and affixed improvements to the Land at the Date of Cover that by law constitute a part of the real estate.
- The term “Property” does not include any of the following:
- (C) buildings and affixed improvements to land beyond the boundary of the Land, or
  - (D) any right, Title, interest, estate or easement in, or over or under abutting highways, streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit Covered Risk (c).

- s) **“Register”** To inscribe, register, make application to inscribe, register, record or file in the Public Records.
- t) **“Schedule A”** The schedule attached to and forming part of the Policy entitled ‘Schedule A’.
- u) **“Schedule B”** The schedule attached to and forming part of the Policy entitled ‘Schedule B’.
- v) **“Title”** The estate or interest in the Property specified in Schedule A
- w) **“Unit”** The Unit in the Property acquired by the Insured as specified in Schedule A

## 2. Policy Term

The term of the Policy is specified in Schedule A.

## 3. Duty of Fair Presentation

- (a) The Insured agrees and warrants that prior to the Inception Date it has:
  - (i) disclosed every material fact and circumstance in respect of the Covered Risks, which the Insured knows or ought to know (the “Material Representations”);
  - (ii) presented the Material Representations in reasonably clear and accessible manner
- (b) The Insured agrees and warrants that every Material Representation as to a matter of fact is substantially correct, and every Material Representation as to a matter of expectation or belief is made in good faith.
- (c) If the Insurer is materially prejudiced by a breach of the insured’s obligations in this Condition 3(a) and 3(b):



- (i) The Insurer's liability to the Insured under this Policy in relation to that particular Material Representation shall be reduced to the extent of the prejudice;
- (ii) the Insurer has the option to terminate its obligation pursuant to Condition 7 ("Defense and Prosecution of Actions") in relation to the particular Material Representation; and
- (iii) no amount of the Premium shall be refunded.

#### **4. Notice to be given by the Insured**

(a) The Insured shall notify the Insurer in writing within 10 calendar days in the event that:

- i) the Insured is named a party, or is called to give evidence, in any action or proceeding brought by a third party relating to a Covered Risk;
- ii) the Insured shall receive Knowledge of:

1. any matter which could affect a Covered Risk; or

2. any litigation,

that might cause Loss for which the Insurer may be liable under the Policy.

(b) If the Insurer is materially prejudiced by a breach of the insured's obligations in this Condition 4(a):

- (i) The Insurer's liability to the Insured under this Policy as to that particular claim or potential claim shall be reduced to the extent of the prejudice;.
- (ii) the insurer has the option to terminate its obligation pursuant to Condition 8 ("Defence and Prosecution of Actions") as to that particular claim or potential claim; and
- (iii) no amount of the Premium shall be refunded.

(c) If notice is delivered to the Insurer by the Insured in accordance with Condition 5.

during the term of the Policy, then any subsequent insured Loss directly arising out of the facts or circumstances identified in such notice shall be deemed reported at the time such notice was received by the Insurer.

## **5. General Duties of the Insured**

The Insured shall:

- (a) use reasonable endeavours to mitigate any Loss in relation to a claim or potential claim under the Policy;
- (b) not deliberately or recklessly prejudice the Insured's or the Insurer's position or interests nor deliberately or recklessly prejudice the potential or actual rights of recovery of the Insured or the Insurer in relation to a claim or potential claim under the Policy;
- (c) not settle or admit liability in relation to a claim nor propose or enter into settlement negotiations in relation to a claim without the prior written consent of the Insurer; and
- (d) take such action as the Insurer may reasonably request in relation a claim.
- (e) If the Insurer is materially prejudiced by a breach of the insured's obligations in this Condition 5(a), 5(b), 5(c) and 5(d):
  - (i) the Insurer's liability to the Insured under this Policy as the particular claim or potential claim under the Policy shall be reduced to the extent of the prejudice;
  - (ii) the Insurer has the option to terminate its obligation pursuant to Condition 7 ("Defence and Prosecution of Actions") as to that particular claim or potential claim; and
  - (iii) no amount of the Premium shall be refunded.

## **6. Duty of Insured to Cooperate in Respect of a Claim Under the Policy**

- (a) In all cases where the Policy permits or requires the Insurer to prosecute or provide for the defence of any action or proceeding and any appeals, the Insured shall:
  - i) Secure to the Insurer the right to so prosecute or provide defence in the

action or proceeding, including the right to use, at the Insurer's option, the name of the Insured for this purpose;

ii) Whenever requested by the Insurer, at the Insurer's expense, give (to the extent permitted by Law including any Law relating to confidentiality restrictions to which the Insured is subject), all reasonable cooperation:

(A) In securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and

(B) In any other lawful act that in the opinion of the Insurer may be necessary or desirable to establish the Title or any other matter as indemnified.

iii) At the Insurer's reasonable request (which shall be given in writing):

(A) Submit to examination under oath and review by any authorized representative of the Insurer;

(B) Produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Insurer, all records in the possession of the Insured or its representatives, employees and agents, in whatever medium maintained, including but not limited to books, ledgers, cheques, memoranda, correspondence, reports, e-mails, disks, USB memory sticks (or similar portable memory devices), tapes, and videos whether bearing a date before or after the Date of Cover, that reasonably pertain to the action, proceeding, claim or the Loss; and

(C) Grant its permission, in writing, for any authorized representative of the Insurer to examine, inspect, and copy all of those records in the custody or control of a third party that pertain to the action, proceeding, claim or the Loss.

Provided That all information designated as confidential by the Insured provided to the Insurer pursuant to this Condition 6(a)(iii) shall not be disclosed to others

unless, in the reasonable judgment of the Insurer, it is necessary in the administration of the claim for the Insured to do so.

- (c) If the Insured fails to cooperate in the manner set-out in Condition 6(a) unless prohibited by law or governmental regulation, the Insurer shall give notice in writing to the Insured of such failure and shall give the Insured a reasonable period of time to cure such failure.

If the Insured does not cure such failure within such period, and the Insurer is materially prejudiced by such failure,

(i) the Insurer's liability to the Insured under this Policy as the particular action or proceeding shall be reduced to the extent of the prejudice;

(ii) the Insurer has the option to terminate its obligation pursuant to Condition 7 ("Defence and Prosecution of Actions") as to that particular action or proceeding; and

(iii) no amount of the Premium shall be refunded.

## **7. Defence and Prosecution of Actions**

- (a) Subject to the conditions contained in Condition 6 ("Duty of Insured to Cooperate in respect of a claim under the Policy"), the Insurer, at its own cost and without unreasonable delay, shall provide for the defence of an Insured in any action or proceeding in which any third party asserts a claim covered by the Policy adverse to the Insured. This obligation is limited to those causes of action alleging matters that the Insurer is liable to indemnify the Insured for Loss under the Policy. The Insurer shall have the right to select counsel of its choice to represent the Insured as to those allegations or causes of action. The Insurer shall not be liable for, and will not pay the fees of, any other counsel. The Insurer will not pay any fees, costs or expenses incurred by the Insured in the defence of allegations or causes of action that allege matters not covered by the Policy.
- (b) The Insurer shall have the right, in addition to the options contained in Condition 8 ("Options to Pay or Otherwise settle claims"), at its own cost, to institute and prosecute any action or proceeding, or to do any other act, that in its opinion may be necessary or desirable to establish the Title, as indemnified, or to prevent or reduce Loss to the Insured. The Insurer may take any appropriate action under the terms of the Policy, whether or not it shall be liable to the Insured. The

exercise of these rights shall not be an admission of liability, or a waiver of any provision of the Policy. If the Insurer exercises its rights under this Condition 8, it must do so diligently.

- (c) Whenever the Insurer brings an action, or asserts a defense, as required or permitted by the Policy, the Insurer may pursue the litigation to a final determination by a court of competent jurisdiction, and the Insurer expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order to the highest court of competent jurisdiction.
- (d) During any period of war, insurrection, riot, civil unrest, act of a public enemy, epidemic, quarantine restriction, governmental restriction of access to or use of the Property, nationalization, natural disasters, or other similar causes beyond the reasonable control of, and without the fault of the Insurer that impairs the ability of the Insurer to provide a defence under the Policy this obligation to provide a defence shall be suspended. The Insurer shall not have liability for loss arising from any adverse ruling during such period of suspension, or for any other loss arising from a delay in providing the defence otherwise due under the Policy as a result of the incidents giving rise to such suspension

## **8. Options to Pay or Otherwise Settle Claims; Termination of Liability**

In case of a claim under the Policy, the Insurer shall have the following additional options:

- (e) To pay or tender payment of the Limit of Indemnity.
  - (i) To pay or tender payment of the Limit of Indemnity under the Policy that the Insurer is obligated to pay. Upon the exercise by the Insurer of this option, all liability and obligations of the Insurer to the Insured under the Policy, other than to make the payment required in this Condition 9(a)(i) shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To pay or otherwise settle with the Insured, or with a party other than the Insured.

- (i) To pay or otherwise settle with a party other than the Insured for, or in the name of, the Insured any claim that the Insurer is liable to indemnify the Insured for Loss under this Policy; or
- (ii) To pay or otherwise settle with the Insured the Loss provided for under the Policy that the Insurer is obligated to pay.

Upon the exercise by the Insurer of either of the options provided for in Condition 9(b)(i) or 9(b)(ii), the Insurer's obligations to the Insured under the Policy for the claimed Loss, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

## 9. Determination and Extent of Loss

- a) This Policy is a contract of indemnity against actual monetary Loss sustained or incurred by the Insured who has suffered Loss by reason of the Covered Risks.
- b) Loss is sustained to the extent that the value of the Title is reduced as a result of a Covered Risk, and Loss is incurred to the extent that the Insured is legally obligated to pay an amount to a third party as a result of a Covered Risk, in accordance with the Conditions.
- c) The amount of indemnity payable by the Insurer for any claim under the Policy shall be:
  - (i) in the case of Loss sustained by the Insured, the amount equal to the difference between (1) the insured value of the Title at the Inception Date, which is the Limit of Indemnity and (2) the actual value of the Title at the Inception Date, reduced as a result of a Covered Risk, determined in accordance with guidelines issued by the appropriate and approved body of surveyors;  
  
and / or
  - (ii) in the case of Loss incurred by the Insured, the actual amount of the payment which the Insured is legally obligated to pay to a third party including any interim demands, guarantees, deposits, or other payments, that are legally required to be made by the Insured during the pendency of any proceedings or litigation *provided, however*

- (iii) the aggregate amount of indemnity payable by the Insurer for all claims under the Policy shall not exceed the Limit of Indemnity; and
- (iv) The Policy does not indemnify against any consequential, exemplary or punitive damages to which the Insured may be subject.

- d) The Insurer and the Insured shall use reasonable endeavours to agree the amount of Loss suffered by the Insured.
- e) At the written request of the Insurer, and in addition to the notices required under Condition 21

(“Notices, where sent”), the Insured shall provide to the Insurer a statement of Loss (“Statement of Loss”) signed and sworn to by the Insured within 20 calendar days after the Insurer’s request for the same. The Statement of Loss shall describe the defect in, or lien or encumbrance on the Title, or other matter indemnified against under this Policy which constitutes the basis of Loss and shall state the basis of calculating the amount of the Loss. If the Insurer is prejudiced by the failure of the Insured to provide the required Statement of Loss, the Insurer’s obligations to the Insured under the policy may terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with respect to that particular claim under the Policy made by the Insured matter or matters requiring such Statement of Loss.

- f) If the Parties fail after a reasonable period of time to agree the amount of Loss suffered by the Insured, then the Parties shall resolve their dispute in accordance with Condition 18 (“Disputes under Policy; Arbitration Clause”).

## **10. Limitation of Liability**

- (a) If, in response to a third party claim alleging
  - i. Title in the Property was not vested at the Date of Cover as specified in Schedule A;
  - ii. Title in the Property is not marketable;
  - iii. a defect in, or Lien on the Title at the Date of Cover; or
  - iv. no legal right of access to and from the Property

and the Insurer

- i. establishes that the Title was vested at the Date of Cover as specified in Schedule A;
- ii. establishes marketability of the Title;
- iii. or removes the alleged defect in, or Lien on the Title;
- iv. or cures the lack of legal right of access to or from the Property,

all as indemnified, in a reasonably diligent manner by any method, including settlement, arbitration, litigation and the completion of any appeal, the Insurer shall have fully performed and discharged its obligations under the Policy with respect to such claim.

b) In the event of any litigation, including litigation by the Insurer or with the Insurer's consent, The Insurer shall have no liability for Loss until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as indemnified.

c) The Insurer shall not be liable for Loss to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Insurer.

#### **11. Reduction of Limit of Indemnity**

All payments under the Policy shall reduce the Limit of Indemnity by the amount of the payment.

#### **12. Reduction of Limit of Indemnity - Mortgage**

The Limit of Indemnity shall be reduced by any amount the Insurer pays under any policy insuring a mortgage excluded from coverage in Schedule B, or to which the Insured has agreed, assumed or taken subject, or which is executed by the Insured after Date of Cover and which is a Lien on the Title, and the amount so paid shall be deemed a payment to the Insured under the Policy.

#### **13. Payment of Loss**

Payment of Indemnity in respect of Loss shall be made within 30 calendar days of the date on which liability and the extent of Loss have been definitely fixed in accordance with these Conditions.



## **14. Rights of Recovery Upon Payment or Settlement**

(a) Whenever the Insurer shall have settled and paid a claim under the Policy, the Insurer shall be subrogated and entitled to all the Insured's rights and remedies in respect to the claim that the Insured has against any person or property, to the extent of the amount of any Loss, costs, legal fees, and expenses paid by the Insurer. If requested by the Insurer, the Insured shall execute documents to evidence the transfer to the Insurer of such rights and remedies. The Insured shall permit the Insurer to sue, compromise, or settle in the name of the Insured and to use the name of the Insured in any transaction or litigation involving such rights and remedies.

(b) The Insurer's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of indemnification, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

## **15. Primary and Non Contributory**

The coverage provided under the Policy is a primary cover without any right of contribution from any other insurance.

## **16. Liability Limited to the Policy; Policy Entire Contract**

(a) The Policy, together with all endorsements, if any, attached to it by the Insurer, is the entire Policy and contract between the Insured and the Insurer. In interpreting any provision of the Policy, the Policy shall be construed as a whole.

(b) Any claims for Loss that arises out of the status of the Title or by any action asserting such claim, shall be restricted to the Policy.

(c) Any amendment of, or endorsement to, the Policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of the Policy.

(d) Each endorsement to the Policy issued at any time is made a part of the Policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the Policy, (ii) modify any prior endorsement, (iii) change the Inception Date, change the Date of Cover or (v) increase the Limit of Indemnity.

(e) To the extent that any provision of the Policy is inconsistent with the Insurance Act, 1938, the provision of the Insurance Act, 1938 shall take precedence.

## **17. Severability**

In the event any provision of the Policy, in whole or in part, is held invalid or unenforceable under applicable law, the Policy shall be deemed not to include such provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

## **18. Disputes under Policy; Arbitration Clause**

- (a) If any dispute or difference shall arise as to the quantum to be paid under the 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 here to or if they cannot agree upon a single arbitrator within thirty calendar 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.
- (b) It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as herein before provided, if the Insurer has disputed or not accepted liability under or in respect of the Policy.
- (c) It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon the Policy that award by such arbitrator/arbitrators of the amount of expenses shall be first obtained.
- (d) If the Insurer shall disclaim liability for a claim hereunder and if the insured person shall not within twelve calendar months from the date of receipt of the notice of such disclaimer notify the Insurer in writing that he/ she does not accept such disclaimer and intends to recover his/ her claim from the Insurer, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

## **19. Governing Law**

Any interpretation of this policy or issue relating to its construction, validity or operation shall be determined by the laws of India.

## 20. Cancellation

- (b) Within the first 15 calendar days following the Inception Date, the Insured may cancel this Policy by giving written notice for the cancellation of the Policy by registered post, and then Insurer shall refund premium on short term rates (as per market practice), provided no claim has been paid or reported under the Policy.

Notwithstanding anything contained herein or otherwise, no refunds of premium shall be made in respect of the Policy where any Notice is required to be given by the Insured in accordance with Condition 4, or any claim has been admitted by Insurer or has been lodged with the Insurer, or any benefit has been availed by Insured under the Policy.

## 21. Notices; Where Sent

Any notice of claim and any other notice or statement in writing required to be given to the Insurer under the Policy must be delivered to [Address and Email details]

## 22. Grievances

In case of any grievance relating to servicing the policy, the insured may submit in writing to the policy issuing office or regional office for redressal. If the grievance remains unaddressed, insured may contact [.....]  
The insured can also approach the office of Insurance Ombudsman of the respective areas and regions for redressal of grievance. The contact details of the Insurance Ombudsman offices are as below-

Names of Ombudsman and Address of Ombudsman Centres

Updated list (as available on IRDA website) to be provided along with the policy wordings.

## **Schedule A**

### **Declarations**

**Insurer:**

**Limit of Indemnity:** INR [Purchase price of Unit]

**Premium:** INR

**Service Tax  
Applicable GST:** INR

**Premium Payment Terms:** The Premium is payable on or before the Inception Date.

It is hereby agreed that, as a condition precedent to any liability under the Policy, the Premium due must be paid and actually received by the Insurer in full.

**Date of Cover:** [The Date on which Title to the Unit is acquired by the Insured]

**Inception Date:** [Date on which Policy is Issued]

**Policy Term:** 12 years from Inception Date.

**Insured:** [Allottee]

**Land:**

**Building:**

[Legal description of Unit acquired by the Insured]

**Unit:**

**Title is vested in:**

The Insured

**The Title (the estate or interest in the Property):**

The legal and beneficial ownership interest, Title and rights in respect of the Unit and the marketability thereof

## **Schedule B**

### **Specific Exclusions from Coverage**

The Policy does not indemnify against loss, and the Insurer will not pay costs, legal fees, or expenses that arise by reason of:

7. Taxes (including value added taxes) or assessments which are known by the Insured to be outstanding at the Date of Cover.
8. Any persons or parties in possession not disclosed by the Public Records.
9. Discrepancies, conflicts in boundary lines, encroachments, or any other facts which a correct survey of the Land would disclose.
10. Subsurface or subsoil estate or rights in the Land, together with the oil, gas, stones, any fossil substances, minerals, deposits, products, petroleum, hydrocarbons and other substances, and related rights to use the surface, or subsidence caused by the exercise of such rights; natural servitudes, air rights or air space owned by the jurisdiction in which the Land is located, or those claiming under the jurisdiction in which the Land is located.
11. Water rights, claims, or Title to water, whether or not shown in the Public Records.
12. Riparian rights, any rights of ownership in submerged lands, filled-in-lands, or the beds, coasts or banks of streams, rivers, tidelands, seacoasts, foreshore, beach, lakes, lagoons, estuaries, tributaries, ravines and springs.

## Endorsement

### Standard Form of Loss Payee/Mortgagee Endorsement

POLICY ENDORSEMENT NO. [ ]

<b>Policy:</b>	Policy Unique Market Reference Number:
<b>Inception Date:</b>	
<b>Date of Policy:</b>	
<b>Insured:</b>	
<b>Insurer:</b>	
<b>Effective Date of Endorsement:</b>	

a. This Endorsement is issued as part of the Policy. Except as expressly stated, this Endorsement does not (a) modify any of the terms and provisions of the Policy; (b) modify any other Endorsement; (c) amend the Inception Date; (d) amend the Date of Policy or (e) increase the Limit of Indemnity. To the extent a provision of the Policy is inconsistent with an express provision of an Endorsement, the Endorsement shall govern and control. Otherwise, this Endorsement is subject to all terms and provisions of the Policy.

b. With effect from the Inception Date the Policy is amended to include the following:

The Insurer hereby confirms that the Insured's rights of payment under the Policy [up to a maximum aggregate amount of [.....]] are assigned to a mortgagee of the Insured, being [.....]. (the "**Mortgagee**"), a bank established and organised under the laws of [.....] with its registered office in [.....], entered in the register of [.....] under unique reference number [.....] whose files are kept by [....] with the share capital in the amount of [.....] (fully paid)] or its successors or permitted assignees and such assignment shall remain in place until receipt by the Insurer of further written instructions from the Insured.

Further, the Insurer agrees that it shall not accept or act upon written instructions from the Insured requesting cancellation or amendment of such assignment without first having received written confirmation from the Mortgagee confirming its agreement to such cancellation or amendment of the assignment.

**This endorsement is issued by [Insurer]**

**Signed for and on behalf of [Insurer] by: .....**

.....

Name

.....

Title

.....

Date



## References

1. Write-up on 'Title Insurance' - [https://en.wikipedia.org/wiki/Title\\_insurance](https://en.wikipedia.org/wiki/Title_insurance)
2. Article on 'TITLE INSURANCE: AN AMERICAN TRADITION' - <http://mlsTitleandabstract.com/tradition.htm>
3. The Real Estate (Regulation and Development) Act, 2016 - <https://www.up-rera.in/pdf/reraact.pdf>

## ANNEXURE

### Suggestions of CREDAI

CREDAI has submitted its suggestions to the Working group and the same are summarized as follows:

#### **1. Title Insurance as a security against loss due to defects in Title of the property.**

Title to a land, as a concept, is a complex one and on account of there being no uniformity across the country in respect of land records, its regular and timely updation, the innumerable laws on the subject, both by State legislatures and Union of India, formulating a standard policy document for “Title Defect Insurance” would be an insurmountable task.

“Land”, under the Indian Constitution, is a State subject.

Some of the relevant entries in the State List provide as under:

*18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.*

*43. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.*

*47. Taxes on lands and buildings.*

“Land” is identified as a state subject, however many subjects pertaining to land, are also included in the Concurrent List, on which both Parliament and state assemblies can legislate. The legislative landscape, thus, is complicated by the fact that many subjects pertaining to ‘land’ are in the ‘state’ and ‘concurrent’ lists of the Constitution.

2. CREDAI has opined that since the insurance policy would be linked to ‘land’ and that being a ‘State’ and in some cases ‘Concurrent List’ subject under the Schedule of the Constitution of India, Title related issues would vary from state to state. The digitization process of records has still not begun in most States and only a few cities in certain selective States have started the process a few years back. Thus, the basic records of Title are still not finally updated and completed in a digitized way.

3. CREDAI has mentioned that the Government of India is in pursuit of introducing a Draft Model Land Title Bill, which would not only digitize all current existing records of Title but also integrate boundary plans, layout plans and other related information and details on land in one comprehensive Title document but also have the government guarantee the Title of the land. This would transform the way land records are currently being maintained and updated drastically. Coupled with it, is the fact that our Country has hundreds of land laws, a lot of these law being peculiar to a particular State in question, leading to a multiplicity of original and active land laws. Despite that, there is no official comprehensive database of all land laws in India.

4. CREDAI opines that has never been an exercise to rationalize existing land laws. It is of the view that the Government first needs to bring about clarity on the **land laws and land records**. This would involve, first, the creation of an exhaustive database of all land laws in India. Parallel to it, an exercise needs to be undertaken regarding creation of a database for land records and its regular and timely updation.

5. CREDAI points out that the Department of Land Resources is currently under the Ministry of Rural Development, which is the nodal agency for coordination of land policy across States. But land is not merely a rural concern. CREDAI suggests that as India becomes increasingly urbanized, there is a need to have an exclusive Ministry responsible for comprehensive creation and up-keeping of land records database for both, rural and urban populations. The creation of a separate Authority to serve as the nodal agency for coordinating land policy across different types of land is critical, in its opinion.

6. CREDAI is of the view that the land laws and land records database should be available for public inspection online. 3. CREDAI is of the view that a discussion about having Title Insurance policies might be pre-mature, given that the Model Land Title Act has not been adopted by all the States. 4. Having said that, CREDAI states that as a Real Estate body, it is of the view that the insurance policy ought to cover the liabilities stated under the RERA Act 2017 and all the relevant provisions under the same regarding Title issues so that the policy is in sync with the legislation regulating real estate projects. CREDAI believes that while standard wordings may be followed, there needs to be scope for some kind of customization, given that the risk might vary from project to project and exclusions should be minimum. CREDAI is of the view that the transferability of the policy has to be made clear. It is has also mentioned that adequate attention needs to be paid to matters such as due diligence and confidentiality.

7. CREDAI has also raised concerns regarding the reasonableness and the rationality when it comes to premium determination. CREDAI points out that prompt processing and disposal of claims is also an area of concern.