

# Newton Directors & Officers Liability Insurance – Non SEC

*POLICYHOLDER:*

*POLICY NUMBER:*

*AGENT/BROKER NAME:*

# Schedule

FORM:

Policy Number:

Item 1. Policyholder  
Address

Item 2. Policy Period Inception date:

Expiry date:

Both days inclusive at address in Item 1 above

Item 3. Limit of Liability any one **Claim** and in the aggregate for all **Claims**: {Insert Amount}

Item 4. Sub-Limit of Liability Bodily Injury & Property Damage Defence Costs (inclusive of the **Limit of Liability**) {Insert %} of the **Limit of Liability**

Item 5. Non - Executive Directors Protection **Excess Limit:** {Insert Amount}  
Separate aggregate limit for each non-executive director of the **Policyholder** Per **Non-Executive Director**

Item 6. Retention **Loss from any US Claim alleging an Employment Practices Violation:** {Insert Amount}  
**Loss from any Securities Claim:** {Insert Amount}  
**Loss from any other Claim:** {Insert Amount}  
(**Retentions** are not applicable to **Loss** of any **Insured Person** other than for indemnifiable **Loss**)

Item 7. Premium Premium: {Insert Amounts}  
Tax:  
Total payable:

Item 8. Continuity Date Cover 1.2 - Company Securities:  
All other Covers:

Item 9. Discovery {Insert Duration and Premium} effect at the expiry date of the **Policy Period**

SIGNED FOR AND ON BEHALF OF THE INSURER

DATE:

## NOTICE

The Covers under this policy are afforded for **Claims** first made against an **Insured** during the **Policy Period** and reported to the **Insurer** as required by this policy. Please read this policy carefully and review it with your insurance advisor.

In consideration of the payment of the premium the **Insurer** and the **Policyholder** agree as follows:

### **1. Covers**

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The following Covers apply to **Claims** first made during the **Policy Period** and reported as required under this policy.

#### **1.1 Management Liability**

The **Insurer** will:

- (i) pay to or on behalf of each **Insured Person** any **Loss** except to the extent that the **Insured Person** has been indemnified by the **Company** for the **Loss**; and
- (ii) reimburse the **Company** for any **Loss** for which it has indemnified an **Insured Person**.

#### **1.2 Company Securities**

The **Insurer** will pay the **Loss** of each **Company** arising from a **Securities Claim**.

#### **1.3 Investigation**

The **Insurer** will pay the **Investigation Costs** of each **Insured Person** arising from an **Investigation**.

#### **1.4 Non - Executive Directors Protection**

The **Insurer** will pay a separate **Excess Limit** on behalf of each of the **Policyholder's** non-executive directors serving during the **Policy Period** for any **Loss**, subject to the Sub-Limit specified in Item 5 of the Schedule.

#### **1.5 Extradition**

The **Insurer** will pay the **Extradition Costs** of each **Insured Person**.

#### **1.6 Outside Directorship**

The **Insurer** will pay on behalf of and/or reimburse each **Outside Entity Director** or the **Company** the **Loss** of each **Outside Entity Director**.

#### **1.7 Bodily Injury & Property Damage Defence Costs**

The **Insurer** will pay the **Defence Costs** of each **Insured Person** for any **Claim** in respect of **Bodily Injury and/or Property Damage**, subject to the Sub-Limit specified in Item 4 of the Schedule and subject to Exclusion 3.3 - Bodily Injury and Property Damage.

#### **1.8 Assets & Liberty**

The **Insurer** will pay the (i) **Bail Bond and Civil Bond Premium**, (ii) **Prosecution Costs** and any (iii) **Asset and Liberty Expenses**, of each **Insured Person**.

#### 1.9 **Public Relations Expenses**

The **Insurer** will pay the **Public Relations Expenses** of each **Insured Person**.

## 2. **Extensions**

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### 2.1 **New Subsidiary**

This policy will automatically extend to any entity which becomes a **Subsidiary** during the **Policy Period**.

For any such entity with total gross assets that are greater than 25% of the consolidated gross assets of the **Policyholder**, as at the inception date of this policy, this Extension 2.1 shall apply automatically for a period of 60 days from the date the **Policyholder** acquires control or holding of such entity provided the **Policyholder** shall submit in writing to the **Insurer** the particulars of such entity, in any case, prior to the end of the **Policy Period**. At the **Policyholder's** request, cover may be extended for a longer period of time provided that the **Policyholder** provides the **Insurer** with sufficient details during such 60 day hold cover period to permit the **Insurer** to assess and evaluate its exposure with respect to such entity and the **Policyholder** accepts any consequent amendments to the policy terms and conditions, including payment of any reasonable additional premium required by the **Insurer**.

This Extension 2.1 shall not apply to any entity that has its **Securities** listed on any exchange or market in the United States of America, its territories or possessions.

This Extension 2.1 shall only provide cover for:

- (i) **Wrongful Acts** committed or allegedly committed; or
- (ii) A matter which is the subject of an **Investigation**, extradition proceeding or **Asset and Liberty Proceeding** occurring or arising;

while an entity was or is a Subsidiary.

### 2.2 **Discovery**

The **Policyholder** shall be entitled to a **Discovery Period**:

- (i) automatically for 60 days if this policy is not renewed or replaced; or,
- (ii) as specified in Item 9 of the Schedule subject to the **Policyholder** making a request for such **Discovery Period** in writing and paying any additional premium required, no later than 30 days after the expiry of the **Policy Period**.

A **Discovery Period** is non-cancellable and shall not apply if a **Transaction** occurs.

### 2.3 **Lifetime Run Off for Retired Insured Persons**

The **Insurer** will provide an unlimited **Discovery Period** for any **Insured Person** who has resigned or retired in the event that this policy is not renewed or replaced or where such renewal or replacement does not provide cover for **Insured Persons** who have resigned or retired. This Extension 2.3

will not apply in the event an **Insured Person** resigns or retires from their position with the **Company** by reason of a **Transaction**.

### 3. Exclusions

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The **Insurer** shall not be liable under any Cover or Extension for any **Loss**:

#### 3.1 Conduct

arising out of, based upon or attributable to:

- (i) the gaining of profit or advantage to which the **Insured** was not legally entitled; or
- (ii) the committing of any deliberately dishonest or deliberately fraudulent act,

in the event that either of the above is established by final adjudication of a judicial or arbitral tribunal or by any formal written admission by the **Insured**.

For the purposes of determining the applicability of this Exclusion 3.1, the conduct of any **Insured** shall not be imputed to any other **Insured Person**.

#### 3.2 Prior Claims and Circumstances

arising out of, based upon or attributable to:

- (i) facts alleged or the same or related **Wrongful Act(s)** alleged or contained in any **Claim** which has been or could have been reported or in any circumstances of which notice has been or could have been given under any policy of which this policy is a renewal or replacement or which it may succeed in time; or
- (ii) any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration or adjudication as of the **Continuity Date**, or alleging or deriving from the same or essentially the same facts as alleged in such actions.

#### 3.3 Bodily Injury and Property Damage

for **Bodily Injury and/or Property Damage**, provided however; that any **Claim** for emotional distress shall not be excluded with respect to an **Employment Practice Violation**. This Exclusion 3.3 shall not apply to Cover 1.7 – Bodily Injury & Property Damage Defence Costs or any **Insured Person's Loss** in respect of any proceeding for a gross breach of duty causing the death of a person.

#### 3.4 US Claims Brought by Insureds

arising out of, based upon or attributable to any **US Claim** which is brought by or on behalf of any:

- (i) **Insured**; or
- (ii) **Outside Entity** in which an **Insured Person** serves or served as an **Outside Entity Director**.

This Exclusion 3.4 shall not apply to:

- (a) any **Claim** against any **Insured Person**:

- (i) pursued by any **Security** holder or member of any **Company** or **Outside Entity**; whether directly or derivatively, or pursued as a class action; and that has not been solicited or brought with the voluntary (rather than legally required) intervention, assistance or active participation of any **Insured**;
  - (ii) for any **Employment Practice Violation** brought by any **Insured Person**;
  - (iii) pursued by an **Insured Person** for contribution or indemnity, if the **Claim** directly results from another **Claim** otherwise covered under this policy;
  - (iv) pursued by any past director, officer or employee of either a **Company** or **Outside Entity**; or
  - (v) pursued by an insolvency administrator, receiver, trustee or liquidator of any **Company** or **Outside Entity** either directly or derivatively on behalf of a **Company** or **Outside Entity**;
- (b) **Defence Costs** of any **Insured Person**; or
- (c) any **Insured Person** engaged in any protected activity specified in 18 U.S.C. 1514(A) (“whistleblower” protection pursuant to the Sarbanes–Oxley Act of 2002) or any protected activity specified in any other “whistleblower” protection pursuant to any similar legislation.

## 4. Definitions

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### 4.1 Asset and Liberty Expenses

reasonable fees, costs and expenses incurred, with the **Insurer’s** prior written consent, by any **Insured Person** to defend any **Asset and Liberty Proceeding**.

### 4.2 Asset and Liberty Proceeding

any proceeding brought against any **Insured Person** by any **Official Body** seeking:

- (i) to disqualify an **Insured Person** from holding office as a director or officer;
- (ii) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of an **Insured Person**;
- (iii) a charge over real estate property or personal assets of an **Insured Person**;
- (iv) a temporary or permanent prohibition on an **Insured Person** from holding the office of or performing the function of a director or officer; or
- (v) a restriction of an **Insured Person’s** liberty to a specified domestic residence or an official detention.

#### 4.3 **Bail Bond and Civil Bond Premium**

the reasonable premium (but not collateral) for any bond or other financial instrument to guarantee an **Insured Person's** contingent obligation for a specified amount required by a court hearing a **Claim**.

#### 4.4 **Bodily Injury and/or Property Damage**

bodily injury, sickness, disease, death or emotional distress, or damage to, destruction, impairment or loss of use of any property.

#### 4.5 **Claim**

- (i) (a) a written demand, or a civil, regulatory, mediation, administrative or arbitration proceeding including any counter-claim, seeking compensation or other legal remedy;
  - (b) a criminal proceeding; or
  - (c) any **Securities Claim**;
- made or brought against an **Insured** alleging a **Wrongful Act**;
- (ii) an **Investigation**;
  - (iii) extradition proceedings; or
  - (iv) **Asset and Liberty Proceedings**.

#### 4.6 **Company**

the **Policyholder** or any **Subsidiary**.

#### 4.7 **Continuity Date**

the applicable date specified in Item 8 of the Schedule.

#### 4.8 **Defence Costs**

- (i) reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, by or on behalf of an **Insured** after a **Claim** is made in the investigation, defence, settlement or appeal of such **Claim**; and
- (ii) reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, of accredited experts, retained through defence counsel to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a covered **Claim**.

If the **Insurer's** prior written consent cannot reasonably be obtained before **Defence Costs** are incurred with respect to any **Claim**, the **Insurer** will give retrospective approval for such **Defence Costs** of up to twenty percent (20%) of the **Limit of Liability**.

"**Defence Costs**" shall not include the remuneration of any **Insured Person**, cost of their time or overhead of or any other costs of any **Company**.

#### 4.9 **Discovery Period**

a period immediately following the expiration of the **Policy Period** during which written notice may be given to the **Insurer** of a **Claim** first made during such period:

- (i) for a **Wrongful Act** occurring prior to the expiry of the **Policy Period**; or

- (ii) in the case of an **Investigation**, extradition proceedings or **Asset and Liberty Proceedings**, matters which occurred or arose prior to the expiry of the **Policy Period**.

#### 4.10 **Employment Practices Violation**

any actual or alleged act, error or omission with respect to any employment or prospective employment of any past, present, future or prospective employee or **Insured Person** of any **Company**.

#### 4.11 **Excess Limit**

the amount specified in Item 5 of the Schedule that is available to each of the **Policyholder's** non-executive directors when (i) the **Limit of Liability**; (ii) all other applicable management liability insurance whether specifically written as excess over the **Limit of Liability** of this policy or otherwise; and (iii) all other indemnification for **Loss** available to any non-executive director, have all been exhausted.

#### 4.12 **Extradition Costs**

reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent:

- (i) in any extradition proceedings or related appeal, any judicial review applications challenging the designation of any territory for the purposes of any extradition law, any challenge or appeal of any extradition decision by the responsible governmental authority, or any applications to the European Court of Human Rights or similar court; and,

- (ii) (a) of any accredited crisis counsellor and/or tax advisor, retained by the **Insured Person** exclusively and directly in connection with; and

- (b) of public relations consultants retained by an **Insured Person** and incurred exclusively and directly in connection with;

extradition proceedings brought against such **Insured Person**.

#### 4.13 **Insured**

any **Company** and any **Insured Person**.

#### 4.14 **Insured Person**

any natural person who was, is or during the **Policy Period** becomes:

- (i) a director or officer, but not an external auditor or insolvency office-holder of a **Company**;

- (ii) an employee of a **Company**;

- (iii) a de facto director or prospective director named as such in any listing particulars or prospectus issued by a **Company**;

- (iv) an **Outside Entity Director**;

but only when and to the extent that such **Insured Person** is acting in such **Insured Person** capacity;

- (v) **Insured Person** is extended to include:

- (a) the spouse or domestic partner (including same sex relationship civil partnerships, if applicable); and

- (b) the administrator, heirs, legal representatives, or executor of a deceased, incompetent, insolvent or bankrupt estate,

of an **Insured Person** referred to in (i) to (iv) above, in regards to the acts of an

## **Insured Person.**

### **4.15 Insurer**

Tata AIG General Insurance Company Limited

### **4.16 Investigation**

- (i) a raid on, or on-site visit to any **Company** which first takes place during the **Policy Period** by an **Official Body** that involves the production, review, copying or confiscation of documents or interviews of any **Insured Person**;
- (ii) a public announcement relating to (i) above;
- (iii) any formal written notification to an **Official Body** of a suspected material breach of an **Insured Person's** legal or regulatory duty;
- (iv) any hearing, examination, investigation or inquiry by an **Official Body** into the affairs of a **Company** or **Outside Entity**, or an **Insured Person** of such **Company**, once an **Insured Person**:
  - (a) is required to attend or produce documents to, or answer questions by or attend interviews with that **Official Body**; or
  - (b) is identified in writing by an investigating **Official Body** as a target of the hearing, examination or inquiry.

An "**Investigation**" shall be deemed to be first made when the **Insured Person** is first so required or so identified.

### **4.17 Investigation Costs**

- (i) in respect to Definition 4.16 ('Investigation') sub-section (i), (ii) and (iv), **Investigation Costs** mean the reasonable fees, costs and expenses, incurred for the principal purpose of representing an **Insured Person** with the **Insurer's** prior written consent, by or on behalf of an **Insured Person** of any legal advisor retained in such events;
- (ii) in respect to Definition 4.16 ('Investigation') sub-section (iii), **Investigation Costs** mean the reasonable fees, costs and expenses, incurred for the principal purpose of representing an **Insured Person** with the **Insurer's** prior written consent, by or on behalf of an **Insured Person** in connection with preparing a report (and any supplementary reports as necessary) to any **Official Body**.

"**Investigation Costs**" shall not include the remuneration of any **Insured Person**, cost of their time or overhead of or any other costs of any **Company**.

### **4.18 Limit of Liability**

the amount specified in Item 3 of the Schedule.

### **4.19 Loss**

any amount which the **Insured** is legally liable to pay resulting from a **Claim**, **Defence Costs**, and any other awards of damages (including punitive and exemplary damages), awards of costs or settlements (including claimant's legal costs and expenses), pre- and post- judgment interest on a covered judgment or award. **Loss** also includes civil and administrative fines and penalties, awarded against **Insured Persons**, to the extent such are insurable by law, and the multiplied portion of multiple damages.

**Loss** shall also include **Investigation Costs**, **Asset and Liberty Expenses**, **Prosecution Costs** and **Extradition Costs**.

**Loss** shall not include, taxes, remuneration or employment-related benefits, nor amounts which are uninsurable by law.

#### 4.20 **Official Body**

any regulator, government body, government agency, official trade body, or any other body that is empowered by statute to investigate the affairs of a **Company** or an **Insured Person**.

#### 4.21 **Outside Entity**

any entity other than an entity that: (i) is a **Subsidiary**; or (ii) is a bank, clearing house, credit institution, undertaking for collective investment in securities, investment firm, investment advisor/manager, investment fund or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or any similar entity; or (iii) has any of its securities listed on a securities exchange or market within the United States of America and is subject to any obligation to file reports with the United States Securities and Exchange Commission in accordance with Section 13 of the U.S. Securities and Exchange Act of 1934.

#### 4.22 **Outside Entity Director**

a natural person who did or does, or during the **Policy Period** begins to serve, at the specific request or direction of a **Company**, as a director or officer, trustee (except a pension trustee), governor or equivalent of an **Outside Entity**.

#### 4.23 **Policy Period**

the period from the inception date to the expiry date specified in Item 2 of the Schedule.

#### 4.24 **Policyholder**

the entity specified in Item 1 of the Schedule.

#### 4.25 **Policyholder's Directors**

any natural person who was, is or during the **Policy Period** becomes a director of the board of the **Policyholder**.

#### 4.26 **Prosecution Costs**

reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, by an **Insured Person**, to bring legal proceedings for a declaration and/or an injunction in connection with any **Asset and Liberty Proceedings**.

#### 4.27 **Public Relations Expenses**

reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, of public relations consultants retained by an **Insured Person** directly to mitigate the adverse effect or potential adverse effect on that **Insured Person's** reputation from a **Claim**, by disseminating findings made in a final judicial disposition of that **Claim** which exonerates the **Insured Person** from fault, liability or culpability.

#### 4.28 **Retention**

the applicable amount specified in Item 6 of the Schedule.

#### 4.29 **Securities**

any security representing debt of or equity interests in a **Company**.

#### 4.30 **Securities Claim**

any written demand or civil, criminal, administrative, regulatory or arbitration

proceedings (other than administrative or regulatory proceeding against the **Company**) alleging a violation of any laws (statutory or common), rules or regulations regulating **Securities**, the purchase or sale or offer or solicitation of an offer to purchase or sell **Securities**, or any registration relating to such **Securities**:

- (i) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell any **Securities** of a **Company**; or
- (ii) brought by a **Security** holder of the **Company** with respect to such **Security** holder's interest in **Securities** of such **Company**; or
- (iii) brought derivatively on behalf of a **Company** by a **Security** holder of that **Company**.

**Securities Claim** shall not mean any **Claim** by an director, officer or employee of a **Company** alleging, arising out of, based upon or attributable to the loss of, or the failure to receive or obtain, the benefit of any **Securities** (including any warrants or options).

#### 4.31 Senior Counsel

a senior lawyer to be mutually agreed upon by the parties, or in the absence of agreement, to be appointed by the head of the bar association/law society (or equivalent organisation) in the jurisdiction in which the **Loss** was incurred.

#### 4.32 Subsidiary

any entity in which the **Policyholder** either directly or indirectly through one or more other entities:

- (i) controls the composition of the board of directors;
- (ii) controls more than half of the shareholder or equity voting power; or
- (iii) holds more than half of the issued share capital or equity,

on or before the inception date of this policy or, for the purpose of Extension 2.1 –New Subsidiary during the **Policy Period**.

#### 4.33 Transaction

any one of the following events:

- (i) the **Policyholder** consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert, resulting in the extinction of the **Policyholder** as an independent legal entity; or
- (ii) any person or entity, or persons or entities acting in concert (other than a **Subsidiary** or **Subsidiaries**) becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **Policyholder** or control the appointment of directors who are able to exercise a majority of votes at meetings of the board of directors of the **Policyholder**.

#### 4.34 US Claim

a claim brought or maintained within the jurisdiction of, or based upon any laws of the United States of America, its territories or possessions.

#### 4.35 Wrongful Act

- (i) with respect to any **Insured Person**:
  - (a) any actual or alleged: (i) act, error or omission, (ii) breach of duty, (iii) breach of trust, (iv) misstatement, (v) misleading statement or

- (vi) breach of warranty of authority by an **Insured Person** in any of the capacities listed in Definition 4.14 – Insured Person; or any matter claimed against an **Insured Person** solely because of such listed capacity; or
- (b) an **Employment Practices Violation**; and
- (ii) with respect to any **Company**, any actual or alleged act, error or omission by the **Company**, but solely as respects to **Securities**.

## 5. Claims

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### 5.1 Reporting of Claims and Circumstances

The Covers provided under this policy are granted solely with respect to **Claims** first made against or by an **Insured** during the **Policy Period**, or applicable **Discovery Period**, or accepted as such in accordance with Section 5.2 – Related Claims or Circumstances, only if such **Claims** have been reported to the **Insurer** as soon as practicable, after the **Policyholder's** Risk Manager or General Counsel (or equivalent position) first becomes aware of such **Claim**, but in all events no later than either:

- (i) during the **Policy Period** or applicable **Discovery Period**; or
- (ii) within 60 days after the end of the **Policy Period** or the applicable **Discovery Period**, as long as notice is given to the **Insurer** within 60 days after such **Claim** was first made against an **Insured**.

Any **Insured** may, during the **Policy Period** or applicable **Discovery Period**, notify the **Insurer** of any circumstance reasonably expected to give rise to a **Claim**. The notice must include the reasons for anticipating that **Claim**, and full relevant particulars with respect to dates, the **Wrongful Act** (if applicable) and the potential **Insured** and claimant concerned.

All notifications relating to **Claims** or circumstances must be in writing or sent by facsimile to:

**Financial Lines Claims**  
**Tata AIG General Insurance Company Ltd.**  
**A-501, 5th Floor, Building No. 4, Infinity Park,**  
**Dindoshi, Malad (East), Mumbai 400 097.**

### 5.2 Related Claims or Circumstances

If notice of a **Claim** or circumstance is given as required by this policy, then any subsequent **Claim**, alleging, arising out of, based upon or attributable to the facts or acts, errors or omissions alleged in that **Claim** or notice of circumstance, shall be deemed to have first been made at the same time as that **Claim** or notice of circumstance was first made, and reported to the **Insurer** on the date the required notices were first provided.

Any **Claim** or series of **Claims** arising out of, based upon or attributable to continuous, repeated or related acts, errors or omissions, whether or not committed by more than one **Insured** and whether directed to or affecting one or more person or entity, shall be considered a single **Claim** for the purposes of this policy.

### 5.3 Defence & Settlement

All **Insureds** shall at their own cost, render all reasonable assistance to and cooperate with the **Insurer** in the investigation, defence, settlement or appeal

of a **Claim** or circumstance, and provide the **Insurer** with all relevant information pertaining to any **Claim** or circumstance, as the **Insurer** may reasonably require. In the event of any **Claim**, each **Insured** shall take reasonable steps to reduce or diminish any **Loss**.

The **Insured** shall have the obligation to defend and contest any **Claim** made against them. The **Insurer** shall be entitled to participate fully in the defence and in the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer**.

The **Insurer** will accept as necessary the retention of separate legal representation to the extent required by a material conflict of interest between any **Insureds**.

If a **Claim** is made against an **Insured Person** by the **Company**, the **Insurer** shall have no duty or obligation to communicate with any other **Insured Person** or the **Company** in relation to that **Claim**.

Only those settlements, judgments, **Defence Costs**, **Investigation Costs**, **Extradition Costs**, **Prosecution Costs**, **Asset and Liberty Expenses**, costs and expenses which have been consented to by the **Insurer** (which shall not be unreasonably withheld) shall be payable as **Loss** under this policy.

The applicable **Insured** or **Policyholder** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this policy.

#### 5.4 **Consent**

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, or consent to any judgment without the prior written consent (which shall not be unreasonably delayed or withheld) of the **Insurer**. Only liabilities, settlements and judgments resulting from **Claims** defended in accordance with this policy shall be recoverable as a **Loss** under this policy.

Where there is a dispute between the **Insured** and the **Insurer** as to whether a **Claim** should be settled or should continue to be defended, within 30 days after notice of such dispute, the **Insurer**, at its expense, shall refer the matter to a **Senior Counsel** who shall determine whether, on the balance of probabilities, the **Insured** is likely to succeed in defending the **Claim** to final resolution or whether the **Claim** should be settled.

If the **Senior Counsel** determines that the **Claim** should be settled, the **Insured** may elect to continue the defence of that **Claim** without the **Insurer's** prior written consent provided that the **Insurer's** liability for all **Loss** arising from that **Claim** shall not exceed the amount for which that **Claim** could have been settled plus the **Defence Costs** incurred to the date such determination was provided in writing to the **Insured**.

The **Senior Counsel** shall determine the amount for which that **Claim** could have been settled at the **Insurer's** expense, taking into account the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the **Insured** successfully defending the action.

#### 5.5 **Allocation**

The **Insurer** will be liable only for **Loss** derived exclusively from a covered **Claim**. If a **Claim** involves both covered and uncovered matters or persons under this policy, then the **Insured** and the **Insurer** shall use reasonable efforts to determine a fair and equitable allocation of **Loss** covered under this policy, on the basis of established judicial allocation principles which take

into account the legal and financial exposures, and the relative benefits obtained by the relevant parties.

If the **Insurer** and the **Insured** cannot agree on allocation in accordance with this clause within 14 days, then they agree to refer the determination to a **Senior Counsel**, whose decision shall be final and binding on all parties. The **Insured** and the **Insurer** shall be entitled to make written submissions to **Senior Counsel**. The expense of such determination by **Senior Counsel** will follow the same allocation of **Loss**.

#### 5.6 **Payment of Costs**

The **Insurer** will pay all covered **Defence Costs, Investigation Costs, Extradition Costs, Prosecution Costs, Asset and Liberty Expenses**, promptly after sufficiently detailed invoices for those costs are received by the **Insurer**.

#### 5.7 **Order of Payments**

The **Insurer** will pay **Loss** covered under this policy in the order in which such **Loss** is presented to the **Insurer** for payment. Should the **Insurer**, at its sole and absolute discretion, determine that the **Limit of Liability** will not be sufficient to cover all such **Loss**, the **Insurer** shall pay **Loss** in the following order:

- (i) **Loss of Insured Persons** where the **Company** has not indemnified such **Insured Person**;
- (ii) thereafter, with respect to any remaining balance of the **Limit of Liability**, the **Insurer** may, at its option, request the **Policyholder** to elect in writing either to stipulate the order and the amounts in which **Loss** is to be discharged, or to receive such balance to be held on behalf of any **Insured** who has incurred such **Loss**.

Subject to Section 6.1 – Limit of Liability, payment pursuant to this order of payments clause shall fully discharge the **Insurer** from its obligations under this policy.

#### 5.8 **Subrogation**

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, contribution and indemnity and the **Insured** will provide all reasonable assistance and will do nothing to prejudice such rights. The **Insurer** will not exercise its rights of subrogation against an **Insured Person** in connection with a **Claim**, unless it can establish that Exclusion 3.1 – Conduct, applies to that **Claim** and to that **Insured Person**.

## 6. **Limit & Retention**

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### 6.1 **Limit of Liability**

The total amount payable by the **Insurer** under this policy shall not exceed the **Limit of Liability**, except with respect to Cover 1.4 – Non-Executive Directors Protection, where the **Insurer's** liability is excess of the **Limit of Liability**. The **Insurer** shall have no liability in excess of all such limits, irrespective of the number of **Insureds** or amount of any **Loss**, including with respect to any **Claim** specified in Section 5.2 – Related Claims or Circumstances.

### 6.2 **Retention**

The **Insurer** will only pay for any amount of **Loss** which is in excess of the

**Retention.** The **Company** will be liable for the **Retention** as specified in Item 6 of the Schedule which will remain uninsured. A single **Retention** will apply to all **Loss** arising from any **Claim** specified in Section 5.2 – Related Claims or Circumstances.

If any **Company** is legally permitted or required to indemnify an **Insured Person**, but fails to do so within 30 days, then the **Insurer** shall advance all **Loss** within the **Retention** which will be repaid by the **Company** to the **Insurer** as soon as reasonably practicable.

### 6.3 Other Insurance & Indemnification

This policy shall always apply excess over any other valid and collectible insurance, including but not limited to, any directors and officers liability, management liability, employment practices liability, product liability or general liability insurance; or any indemnification available to the **Insured** from any other party.

With respect to **Outside Entities**, insurance provided by this policy applies excess over (i) any indemnification provided by an **Outside Entity**, and (ii) any other valid and collectible insurance issued to an **Outside Entity** for the benefit of its directors, officers or employees.

## 7. General Provisions

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### 7.1 Non-Rescindability

This policy is not avoidable or rescindable in whole or in part and the **Insurer** shall have no other remedy, with respect to any pre-inception misrepresentation or pre-inception non-disclosure by any **Insured** in connection with this policy, except with respect to Insurance Cover 1.2 – Company Securities, or for any fraudulent misrepresentation or fraudulent non-disclosure where established by final adjudication of a judicial or arbitral tribunal, or any formal written admission by or on behalf of any **Insured**.

### 7.2 Non-Payment

This policy may not be cancelled except for non-payment of the premium by the **Policyholder**.

### 7.3 Severable Nature of the Policy

This policy is a severable policy covering each **Insured** for their own individual interest.

No statements made by or on behalf of an **Insured** or any information or knowledge possessed by an **Insured**, shall be imputed to any **Insured Person** for the purpose of determining whether any individual **Insured Person** is covered under this policy.

With respect to Cover 1.2 – Company Securities, only the statements and knowledge of any Chief Executive Officer, Chief Operating Officer, Chief Financial Officer or Chief Legal Officer/General Counsel (or equivalent positions) of a **Company** will be imputed to that **Company**, and the knowledge of the same officeholders of the **Policyholder** will be imputed to all **Companies**.

### 7.4 Changes In Risk

For any United States Security and Exchange Commission registration or reporting obligation first attaching during the **Policy Period**, this policy shall

not cover any **Claims** with respect to any **Securities Claims** brought within or maintained within the jurisdiction, or based upon any laws of, the United States of America, its territories or possessions, unless the **Policyholder** has given to the **Insurer** notice of any such registration or reporting obligation and the **Insured** has accepted whatever terms, conditions and limitations the **Insurer** deems appropriate to the policy.

This General Provision 7.4 will not apply to **Securities** purchased or sold pursuant to Rule 144A of the Securities Act of 1933 (US).

#### 7.5 **Transactions**

The **Insurer** shall not be liable for **Loss** arising out of, based upon or attributable any act, error or omission committed after the effective date of a **Transaction**.

#### 7.6 **Disputes**

Except as otherwise specifically provided, any dispute regarding any aspect of this policy or any matter relating to cover thereunder which cannot be resolved by agreement within 30 days, shall be referred to binding arbitration by either party, upon giving seven (7) days notice to the other.

The place of arbitration shall be India, the language of the arbitration shall be English, the law applicable to and in the arbitration shall be Indian law and the arbitration process will be in accordance with the provisions of the Arbitration & Conciliation Act 1996, as amended from time to time. The **Insurer** and **Insured** will be responsible for their own costs and expense incurred in the arbitration.

#### 7.7 **Notice & Authority**

The **Policyholder** shall act on behalf of all **Insureds** in connection with all matters relevant to this **Policy** unless in the event of a **Transaction** or the receivership, bankruptcy, liquidation or administration of the **Policyholder** in which case each **Insured** shall act on their own behalf.

#### 7.8 **Assignment**

This policy and any rights under or in respect of it cannot be assigned without the prior written consent of the **Insurer**.

#### 7.9 **Governing Law**

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

#### 7.10 **Headings and Titles**

The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this policy. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in **bold** typeface have special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them.