

DIRECTORS & OFFICERS LIABILITY

AND

**COMPANY REIMBURSEMENT
INSURANCE**

EXCESS POLICY

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PREAMBLE

In consideration of the payment of Premium, Raheja QBE General Insurance Company Ltd (herein referred to as "RQBE") will provide indemnity in accordance with, and subject to, the terms, conditions and exclusions of this Policy.

SECTION 1 - INSURING CLAUSE

Insuring Clause A

Insuring Clause

- 1.1 RQBE agrees to indemnify the Insured in accordance with the Policy terms, conditions, exclusions, extensions and endorsements of the Primary Policy with which this Policy shall run concurrently. PROVIDED ALWAYS THAT any claim for such indemnity is covered by, or but for the relevant Limit of Indemnity applicable would have been covered by, the Primary Policy and RQBE shall only be liable after the Limit of Indemnity of the applicable Primary and/or Underlying Policy or Policies has been exhausted and then only up to the Limit of Indemnity as specified in the Schedule to this Policy.

SECTION 2 - EXCLUSIONS

PREAMBLE

RQBE shall not be liable under this Policy to indemnify the Insured in respect of any claim against the Insured:

Primary Cover Exclusions

- 2.1 which is howsoever excluded from the Primary and/or Underlying Policy or Policies.

Pending or Prior

- 2.2 (a) made, threatened or intimated against the Insured prior to the Period of Cover;
- (b) directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:
- (i) of which written notice has been given, or ought reasonably to have been given, under any previous policy or any preceding period of cover or
 - (ii) of which the Insured first became aware prior to the Period of Cover, and which the Insured knew or ought reasonably to have known had the potential to give rise to a claim under this Policy and/or the Primary and/or Underlying Policy or Policies.

Territorial Cover Exclusions

- 2.3 arising out of any legal liability of whatsoever nature directly or indirectly arising out of any acts, errors or omissions committed or alleged to have been committed within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

Jurisdictional Cover Exclusions	2.4	<p>(a) brought in a Court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.</p> <p>(b) for the enforcement of judgements, orders or awards obtained within, or determined pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates.</p>
Fines and Penalties	2.5	for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law, including but not limited to, civil penalties.
Nuclear	2.6	directly or indirectly based upon, attributable to, or in consequence of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel
War	2.7	directly or indirectly based upon, attributable to, or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition of or damage to property by or under the order of any government or public local authority.
Breach of Professional Duty	2.8	<p>directly or indirectly based upon, attributable to, or in consequence of:</p> <p>(a) the rendering or failure to render professional services and/or professional advice; or</p> <p>(b) a breach or alleged breach of any contract for the provision of professional services and/or professional advice.</p>

SECTION 3 - CONDITIONS

Follow Form	3.1	This Policy is subject to the same terms, conditions, exclusions, extensions and endorsements that are contained in the policy or policies of the Primary Policy , and of this Policy (and where the same are inconsistent, the terms, conditions, limitations and exclusions of this Policy shall prevail over the Primary Policy, and the Primary Policy shall prevail over any inconsistency with any other Underlying Policy or Policies)
Amendments to Primary Cover	3.2	No amendment to the Primary and/or Underlying Policy or Policies during the Period of Cover shall be effective in extending the scope of cover under this Policy unless and until otherwise agreed in writing in advance by RQBE.
Cancellation of Primary Cover	3.3	The Policy shall terminate immediately and automatically upon the cancellation of any one or more of the Primary and/or Underlying Policy or Policies, whether cancelled by the Insured or the applicable Insurer. Notice of cancellation or non-renewal of any such policies duly given by any of the applicable Insurers shall serve as notice of the cancellation or non-renewal of

this Policy by the Insurer.

**Maintenance of
Underlying Policy or
Policies/Drop-Down
Provisions**

- 3.4 The Insured agrees that the Primary and/or Underlying Policy or Policies shall be maintained in full effect during the currency of this Policy except for any reduction in the aggregate limit solely by payment of claims made during the Period of Cover.

The failure of the Insured to comply with the foregoing shall not invalidate this Policy but in the event of such failure RQBE shall only be liable to the same extent as if the Insured had complied with this condition.

In the event of the exhaustion of any aggregate limit whether partial or total of the Primary and/or Underlying Policy or Policies by reason of payment of claims thereunder this Policy shall:

- (i) in the event of partial exhaustion pay in excess of the reduced Primary and/or Underlying Policy or Policies;
- (ii) in the event of total exhaustion continue in force as the Primary and/or Underlying Policy or Policies on the same Policy conditions, exclusions, extensions and endorsements of the Primary Policy EXCEPT as otherwise stated herein.

subject always to the **Limit of Indemnity** and all terms, conditions, limitations and exclusions of the Primary Policy and any **Underlying Policy or Policies** and of this **Policy** and where the same are inconsistent, the terms, conditions, limitations and exclusions of this **Policy** shall prevail over the Primary Policy, and the Primary Policy shall prevail over any inconsistency with any other Underlying Policy or Policies.

Right to Associate

- 3.5 In the event that a claim appears likely to exceed 50% of the aggregate of the Primary Policy and Underlying Policy limits, and as a condition precedent to any liability hereunder: (a) the Insured shall keep RQBE fully informed of all developments and shall obtain RQBE's consent to any significant step proposed to be taken in the defence of the claim; and (b) RQBE may at its sole and absolute discretion elect to associate with the investigation, defence or settlement any claim that is or may, in RQBE's opinion, be covered under this Policy, even if the limits under the Primary and any Underlying Policy or Policies have not been exhausted, and in the exercise of this right RQBE shall be entitled to all assistance and cooperation from the Insured.

Settlement

- 3.6 It is a condition precedent to RQBE's liability under this Policy that the Insured shall not settle any claim or admit any liability with respect to any claim which may exceed the Primary and Underlying Policy limits without RQBE's prior written consent. RQBE shall not be liable for any settlement to which it has not consented. RQBE shall not, however, refuse to consent to any settlement proposed by the Insured unless a Senior Counsel (to be nominated by RQBE) shall advise that the settlement proposed is inappropriate in all the circumstances. It is hereby agreed and understood that (i) this is not an arbitration clause; (ii) the Legal Counsel will act as an expert, not an arbitrator, and (iii) the Legal Counsel's advice shall not be or be deemed to be an

arbitration award.

- Legal Costs Contribution** 3.7 In the event of a claim to which RQBE may be liable to contribute, no legal costs shall be incurred without RQBE's consent being first obtained and if RQBE shall consent it shall only contribute the proportion that its share of the claim as finally settled bears to the total amount payable.
- If, however, a settlement of the claim be practical prior to the claim proceeding to determination by a court of law whether by compromise or otherwise for an amount not exceeding the Underlying Policy limits no legal costs shall be payable by RQBE.
- Insured's Right to Contest** 3.8 In the event that RQBE recommends settlement in respect of any claim and the Insured does not agree that such claim should be settled, then the Insured may elect to contest such claim. PROVIDED ALWAYS THAT RQBE's total liability in connection with such claim shall not exceed the amount for which the claim could have been so settled plus the costs incurred with RQBE's written consent up to the date of such election.
- Legal Counsel Clause** 3.9 (a) RQBE shall not require the Insured to contest any claim unless a Legal Counsel (to be nominated by RQBE) shall advise that such claim should be contested.
- (b) in formulating such advice, the Legal Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely costs and the prospects of the Insured successfully defending the claim.
- (c) The cost of such Senior Counsel's opinion shall be regarded as part of the costs.
- (d) It is hereby agreed and understood that (i) this is not an arbitration clause; (ii) the Legal Counsel will act as an expert, not an arbitrator, and (iii) the Legal Counsel's advice shall not be or be deemed to be an arbitration award.
- Appeal or Review** 3.10 In the event that the Insured and the Underlying Insurer or Insurers elect not to appeal against or seek review of any decision or judgement against the Insured which exceeds the limits of the Underlying Policy or Policies RQBE shall be entitled to take over and conduct an appeal or review in the name of the Insured, it being understood that.
- (a) the costs and expenses of the appeal or review shall be taken into account in the calculation of the proportion of other costs and expenses for which RQBE may be liable under this Policy; and
- (b) RQBE's liability all legal costs under this Policy is still limited to the Limit of Indemnity under this Policy, even if the result of the appeal or review is

that the judgement against the Insured exceeds the Limit of Indemnity under this Policy.

Subrogation and Recoveries	3.11	The Insured shall do whatever is necessary to preserve or enable RQBE to enforce any legal rights or remedies or obtain relief or indemnity from other parties to which RQBE is or may become entitled or subrogated, even if such acts and things need to be done before RQBE has made any payment.
Limit of Indemnity	3.12	RQBE's total liability under this Policy for any and all claims shall not exceed the aggregate Limit of Indemnity specified in the Schedule to this Policy including Costs and Expenses incurred in the defence or settlement of any claim
Cancellation	3.13	<p>(a) The Insured may cancel this Policy at any time by notifying RQBE in writing and RQBE will provide a refund of Premium for the unexpired Period of Cover with the short-period rate EXCEPT if claims have been notified or payments have been made under this Policy then the premium shall be deemed to be fully earned and no refund of premium will be due..</p> <p>(b) RQBE may cancel this Policy by giving thirty (30) days notice in writing to the Insured at the Insured's last known address and RQBE will provide a pro-rata refund of Premium for the unexpired Period of Cover EXCEPT if claims have been notified or payments have been made under this Policy then the premium shall be deemed to be fully earned and no refund of premium will be due..</p>
Policy Construction and Interpretation	3.14	<p>Policy Construction</p> <p>The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with Indian law.</p> <p>The marginal notes and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.</p> <p>Under this Policy, the masculine includes the feminine and the singular includes the plural and vice versa.</p> <p>Arbitration</p> <p>If any dispute or difference shall arise as to the quantum to be paid under this Policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties hereto or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Indian Arbitration and Conciliation</p>

Act 1996.

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

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

Other Insurance 3.15 If at the time a claim arises under this Policy the Insured is or would but for the existence of this Policy be entitled to indemnity under any other policy or policies, other than the Primary and/or Underlying Policy or Policies, RQBE shall not be liable except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this Policy not been effected.

SECTION 4 - DEFINITIONS

Insured 4.1 Insured shall mean the entity specified as the Insured in the Schedule to this Policy and shall incorporate the definition of the "Insured" applying in the Primary and/or Underlying Policy or Policies.

Limit of Indemnity 4.2 "Limit of Indemnity" shall mean the limit of RQBE's total liability under this Policy as specified in the Schedule.

Period of Cover 4.3 "Period of Cover" shall mean the period specified in the Schedule.

Policy 4.4 "Policy" shall mean:

- (a) the Schedule, terms, conditions, definitions and exclusions contained herein;
- (b) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Cover;
- (c) the Proposal.

Premium 4.5 "Premium" shall mean the Premium specified in the Schedule or in any endorsement to the Schedule.

Proposal 4.6 "Proposal" shall mean the written Proposal made by the Insured to RQBE containing particulars and statements which, together with other information relating to the Insured are the basis of this Policy and are considered as incorporated herein.

Primary and/or 4.7 "Primary and/or Underlying Policy or Policies" shall mean the primary and

**Underlying Policy
or Policies**

other subsequent layer professional indemnity policy or policies effected in connection with the placement of the Insured's professional indemnity insurance program and which are intended to provide indemnity to the Insured in respect of any one claim before any indemnity which may be available to the Insured under this Policy.

**Primary and/or
Underlying Insurer
or Insurers**

4.8 "Primary and/or Underlying Insurer or Insurers" shall mean the Insurers to the Primary and/or Underlying D&O Insurance Policy or Policies effected in connection with the placement of the Insured's professional indemnity insurance programme.

RQBE

4.9 "RQBE" shall mean Raheja QBE General Insurance Company Limited.

Schedule

4.10 "Schedule" shall mean the Schedule to this Policy.