

SPECIALIST INSURANCE POLICY FOR SINGLE PROJECT DESIGN RISKS

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A. THE COVER

Preamble

In consideration of the payment of the **Premium**, **RQBE** will provide an indemnify in accordance with, and subject to, the terms and conditions of this **Policy** and the **Schedule**.

SECTION 1: INSURING CLAUSE

RQBE agrees to indemnify the **Insured** against **Loss** arising from any **Claim** first made against the **Insured** and notified in writing to **RQBE** during the **Period of Cover**, for breach of professional duty in respect of **Design Services** provided by the **Insured** to any third party.

SECTION 2: OPTIONAL EXTENSIONS

2.0 Preamble

RQBE agrees to provide indemnity as may be available under this section, PROVIDED ALWAYS THAT:

- (a) each Optional Extension is subject to all the provisions of this policy;
- (b) no cover shall be available under any Optional Extension unless and until the Optional Extension is specified in the **Schedule**;
- (c) the granting of any Optional Extension is at the sole and absolute discretion of **RQBE** who reserves the right to charge such additional premium as it may require;
- (d) the indemnity available under each Optional Extension shall be part of and not in addition to the **Limit of Indemnity** and any payment made by **RQBE** under any Optional Extension shall erode the **Limit of Indemnity**.

2.1 Consultants, Sub-Contractors and Agents

RQBE agrees to indemnify the **Insured** against **Loss** arising from any **Claim** first made against the **Insured** during the **Period of Cover** arising from a breach of professional duty committed on the part of any consultant, sub-contractor or agent for whose professional services the **Insured** is legally liable PROVIDED ALWAYS THAT

- (a) no coverage shall extend to any such consultant, sub-contractor or agent.
- (b) the indemnity available under this Optional Extension shall not exceed in value twenty (20) percent of the **Limit of Indemnity**.

2.2 Project Management

RQBE agrees to indemnify the **Insured** against **Loss** arising from any **Claim** first made against the **Insured** during the **Period of Cover** for breach of professional duty in respect of **Project Management Services** provided by the **Insured** to any third party.

2.3 Construction Supervision

QBE agrees to indemnify the **Insured** against **Loss** arising from any **Claim** first made against the **Insured** during the **Period of Cover**, for breach of professional duty in respect of **Construction Supervision Services** provided by the **Insured** to any third party.

B. EXCLUSIONS

RQBE shall not be liable under this policy to indemnify the **Insured** in respect of any **Claim** against the **Insured** or **Loss** directly or indirectly based upon, attributable to, or in consequence of:

1. Airside Liability

Damage or injury to aircraft, passengers or crew.

2. Asbestos

The existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos.

3. Assumed Duty or Obligation

Any duty, obligation or other liability actually or allegedly assumed by the **Insured**:

- (a) other than in the normal course of the provision by the **Insured** of **Services**;
- (b) as a director, fiduciary, trustee, administrator or manager of any entity other than the **Insured** or any trust or pension, profit-sharing, health and welfare or other employee benefit plan established or maintained for the purpose of providing pensions, annuities or any other form of benefits to employees of the **Insured**;
- (c) pursuant to any agreement or contract (including any warranty or guarantee) if such duty, obligation or liability would not have existed in the absence of such agreement or contract.

4. Billings

- (a) a trading debt incurred by the **Insured** or any guarantee given by the **Insured** for a debt;
- (b) any legal obligation to refund any fee charged to a third party.

5. Bribes and Illegal Payments

- (a) any advantage, benefit, commission, contribution, gratuity, payment or any other favour to or for the benefit of any full or part-time:
 - i. domestic or foreign governmental or armed forces official, agent, representative, employee, or any member of their family or entity with which they are affiliated, or
 - ii. official, director, agent, partner, representative, principal shareholder or owner or employee or affiliate of any customer of the **Insured** or any member of their family or entity with which they are affiliated.
- (b) political contributions, whether domestic or foreign;
- (c) the receipt by an **Insured** of any profit, remuneration or advantage to which such **Insured** is not entitled.

6. Consequential or Economic Loss

Any consequential or economic loss, including liquidated damages.

7. Disproportionate Liability

Joint and several liability attaching to the **Insured** by reason of participation in a **Joint Venture**, except to the extent that, by reference to the total liability of the **Joint Venture**, the **Insured's** liability does not exceed the ratio governing the **Insured's** entitlement to a share of profits made by the **Joint Venture**.

8. Environment

Any loss, suit, injury, disease, illness, death, damage, cost or expense, including, but not limited to, losses, costs or expenses related to, arising from or associated with, clean-up, remediation, containment, removal or abatement of:

- (a) **Pollution**;
- (b) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (c) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any **Fungus, Mould**, mildew or yeast, or any **Spore**, toxin, substance, vapour, gas, or other emission or organic or inorganic body or substance produced or created or emanating therefrom, or any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbours, nurtures or acts as a medium of any **Fungus, Mould**, mildew or yeast, or any **Spore**, toxin, substance, vapour, gas, or other emission or organic or inorganic body or substance produced or created or emanating therefrom, regardless of any other cause, event, material, product and/or building component which actually or allegedly contributed concurrently or in any sequence to that loss, injury, disease, illness, death, damage, cost or expense.

9. Fraud and Dishonesty

- (a) any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of any **Insured** or any consultant, sub-contractor or agent for whose acts the **Insured** may be legally liable; or
- (b) any act or omission of any **Insured** or any consultant, sub-contractor or agent for whose acts the **Insured** may be legally liable, committed or alleged to have been committed with a reckless disregard for the consequences thereof; or
- (c) wilful breach of any statute, contract or duty by any **Insured** or any consultant, sub-contractor or agent for whose acts the **Insured** may be legally liable.

10. Insolvency

The insolvency, bankruptcy, receivership or liquidation of any party involved in any project or contract.

11. Intellectual Property

Actual or alleged infringement of copyright and/or design right whether registered or unregistered, infringement of trademark or patent, plagiarism, breach of confidentiality or any other infringement of intellectual property right.

12. Jurisdiction

Any **Claim** commenced:

- (a) in a country other than the state, territory or country in which this policy was issued;
- (b) to enforce a judgment, order, award, fine, penalty, tax or any matter deemed uninsurable under the law governing this policy, obtained or levied within or determined pursuant to the law of a state, territory or country other than the state, territory or country in which this **Policy** was issued.

13. Libel and Slander

Libel or slander by reason of words written or spoken.

14. Loss of Design Documents

Any loss, damage or destruction of or to **Design Documents** which are the property of, or are entrusted to, the **Insured** or their predecessors in business.

15. Obligations to Employees

Bodily injury, mental injury, sickness, disease or death of any **Employee** or damage to or destruction of any property of any **Employee**, including loss of use, arising out of, or in the course of, their employment.

16. Other Indemnity

Any loss in respect of which the **Insured** is, or would ordinarily be, entitled to indemnification from any source, collectible or otherwise.

17. Prior or Pending

- (a) any **Claim** made, threatened or intimated against the **Insured** prior to the commencement of the **Period of Cover**;
- (b) any fact or circumstance:
 - i. of which written notice has been given, or ought reasonably to have been given, under any previous policy affording cover of the same or a similar type as the cover afforded by this **Policy**; or
 - ii. of which the **Insured** first became aware prior to the commencement of 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**.

18. Project Management Services

Any act or omission of any **Insured** or any consultant, sub-contractor or agent for whose acts the **Insured** may be legally liable, committed or alleged to have been committed in relation to:

- (a) any aspect of insurance, investments, marketing, finance, law or tax; or

- (b) the provision of finance; or
- (c) any estimate of construction costs, except where such estimates are compiled by professionally qualified quantity surveyors.

19. Project Performance

The complete or partial failure to:

- (a) meet contractual specifications, requirements or commitments in respect of:
 - i. timeliness of progress or completion, including completion of specifications, shop drawing or schedules of specifications; or
 - ii. efficacy, functionality, performance output or durability;
- (b) certify completion, either full or partial, of a project and any costs, or loss, including time related construction bonus, or reduction, forfeiture or erosion thereof; or
- (c) supply electricity, gas, water, oil, petrol, information technology or telecommunication services; or
- (d) adhere to building or construction codes, either industry or government based.

20. Rectification or Mitigation

any action to mitigate or rectify a breach of professional duty that would otherwise be the subject of a **Claim** under this policy.

21. Related Party

Any **Claim** brought by or on behalf of a **Related Party**.

22. Retroactive Date

Any breach of professional duty actually or allegedly committed prior to the retroactive date stated in the **Schedule**.

23. Supervisory Services

Any supervision by the **Insured** of any consultant, sub-contractor or agent retained directly by the **Insured**.

24. Supply of Goods

Any loss arising from the sale, supply, maintenance, actual construction, installation, alteration, modification or manufacture of goods by or on behalf of the **Insured**.

25. Terrorism

Any loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any:

- (a) act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
- (b) action taken in controlling, preventing, suppressing or in any way relating to any act of **Terrorism**.

26. Untested Technology

The use of prototype technology or technology that has not previously been successfully utilised on a commercial basis.

27. War

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 nationalisation or requisition of or damage to property by or under the order of any government or public local authority.

Any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the **Claim** resulting therefrom is accidental or intentional.

28. Sanction Limitation Clause

RQBE shall not be deemed to provide cover and shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provisions of such cover, payment of such claim or provision of such benefit would expose **RQBE** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America or any other applicable national economic or trade sanction law or regulations.

C. CLAIMS CONDITIONS

1. Reporting and Notice

(a) The **Insured** shall, as a condition precedent to the **Insured's** right to be indemnified under this policy, give to **RQBE** a written notice as soon as practicable and in any event within 7 days of any **Claim** made against the **Insured** PROVIDED ALWAYS THAT such written notice is given to **QBE** during the **Period of Cover**.

(b) Notice of any **Claim** shall be given in writing to **RQBE** and delivered to:

Claims Manager

RQBE General Insurance Co. Ltd.

Commerz, 10th Floor, International Business Park, Oberoi Garden City

Off. Western Express Highway, Goregaon (East), Mumbai – 400 063

2. Notification of Circumstance

If, during the **Period of Cover**, the **Insured** becomes aware of any fact or circumstance which might give rise to a **Claim** under this policy and elects to give notice in writing to **RQBE** of such fact or circumstance, any **Claim** which may subsequently arise out of such fact or circumstance shall be deemed to be a **Claim** made during the **Period of Cover** PROVIDED ALWAYS THAT such written notice is given to **RQBE** during the **Period of Cover**.

3. Defence and Settlement

(a) The **Insured** agrees not to settle any **Claim**, incur any **Costs and Expenses**, make any admission, offer or payment or otherwise assume any obligation or liability with respect to any **Claim** without **RQBE's** prior written consent. **RQBE** shall not be liable for any settlement, **Costs and Expenses**, admission, offer or payment, or assumed obligation or liability to which it has not given its prior written consent.

- (b) **RQBE** shall be entitled at any time to conduct, in the name of the **Insured**, the investigation, defence or settlement of any **Claim**.
- (c) **RQBE** may, if it believes that any **Claim** will not exceed the **Deductible**, instruct the **Insured** to conduct the defence of the **Claim**. In such situations, **RQBE** will reimburse the **Insured** for all reasonable **Costs and Expenses** in the defence of the **Claim** in the event that any payment made to dispose of the **Claim** exceeds the **Deductible**. Nothing herein shall prevent **RQBE** from exercising its rights under 3(b) above, even if **RQBE** has instructed the **Insured** to conduct the defence of the **Claim**.

4. Insured's Right to Contest

In the event that **RQBE** recommends settlement in respect of any **Claim** and the **Insured** does not agree that such **Claim** should be settled, the **Insured** may elect to contest such **Claim** PROVIDED ALWAYS THAT **RQBE**'s liability in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus any **Costs and Expenses** incurred with **RQBE**'s prior written consent up to the date of such election.

5. Legal Counsel

- (a) **RQBE** shall not require the **Insured** to contest any **Claim** unless a Legal Counsel (to be selected by **RQBE**) advises that such **Claim** should be contested.
- (b) In formulating such advice, Legal Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the claimant, the likely **Costs and Expenses** and the prospects of the **Insured** successfully defending the **Claim**.
- (c) The cost of such Legal Counsel's opinion shall be regarded as part of the **Costs and Expenses**.

6. Claims Mitigation and Co-operation

The **Insured** shall, as a condition precedent to the **Insured's** right to be indemnified under this policy:

- (a) exercise due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder;
- (b) frankly and honestly disclose to **RQBE** all relevant information and, in addition, shall provide such assistance to **RQBE** or its agents as **RQBE** may require to enable it to investigate, defend or settle any **Claim** under this policy and/or enable **RQBE** to determine its liability under this policy.

Other than **Costs and Expenses** incurred to enable **RQBE** to determine its liability under this policy (which shall be borne by **RQBE**), compliance with this Condition shall be at the **Insured's** own cost, unless otherwise agreed in writing by **RQBE**.

7. Subrogation

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. **RQBERQBE**

8. Fraudulent Claims

If any claim is in any manner false, dishonest or fraudulent, or is supported by any false, dishonest or fraudulent means or devices, whether by any **insured** or anyone acting on behalf of an **insured** or with the **insured's** knowledge, then this **policy** shall be void and all benefits paid or potentially payable under it shall be forfeited.

D. GENERAL CONDITIONS

1. Limit of Indemnity

QBE's total liability under this policy for any one **Claim** and in the aggregate in respect of all **Claims** shall not exceed the **Limit of Indemnity**.

2. Deductible

(a) In respect of each **Claim** made against the **Insured**, the amount of the **Deductible** shall be borne by the **Insured** at their own risk and **QBE** shall only be liable to indemnify the **Insured** for that part of any **Claim** which is in excess of the **Deductible**.

(b) Where **QBE** elects, at its own discretion, to pay all or part of the **Deductible** in respect of any **Claim**, the **Insured** shall, within seven (7) days from the date of such payment, reimburse **QBE** in respect of the total amount of such payment.

(c) In respect of any **Claim** where the amount of the **Claim** is less than the amount of the **Deductible**, the **Insured** shall bear all **Costs and Expenses** associated therewith.

3. Alteration of Risk

The **Insured** shall give written notice to **RQBE** as soon as practicable of any material alteration of risk during the **Period of Cover** including:

(a) the **Insured** going into voluntary bankruptcy, receivership or liquidation or the **Insured** failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;

(b) any material change in the nature and extent of the **Services** or the terms and conditions upon which the **Services** are provided;

(c) any change in the individual or collective legal or beneficial ownership of 25% or more of the issued capital or voting rights of the **Insured**.

4. Territory

The cover this policy provides shall extend to legal liability arising out of breach of professional duty occurring anywhere in the world PROVIDED ALWAYS THAT no cover shall be available under this policy in respect of any **Claim** that is not determined in, accordance with, the law of the state, territory or country in which this **Policy** is issued.

5. Assignment of Interest

No change in, or modification of, or assignment of interest under this policy shall be effective unless made by written endorsement to this policy and signed by an authorised **RQBE** employee.

6. Cancellation

- (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** calculated according to the short-period rate except in the event of a **Claim** having been made or a circumstance having been notified prior to the date of cancellation in which case no refund in **premium** shall be due;
- (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 in the event of a **Claim** having been made or a circumstance having been notified prior to the date of cancellation in which case no refund in **premium** shall be due.

7. Other Insurance

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, **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.

8. Policy Construction and Interpretation

- (a) The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with the law of India and any disputes relating thereto shall be submitted to the exclusive jurisdiction of Indian courts of;
- (b) The 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;
- (c) Under this policy, the masculine includes the feminine and the singular includes the plural and vice versa.

E. DEFINITIONS

- 1. **"Claim"** shall mean:
 - (a) the receipt by the **Insured** of any written or verbal notice of demand made by a third party; or
 - (b) any civil proceeding (including arbitration) commenced against the **Insured**.
- 2. **"Construction Supervision Services"** shall mean the services provided by the **Insured** for a fee in the discharge of the **Insured's** express appointment as a supervisor of the construction, installation or erection by a third party of those components of the **Project** which appear in the **Design Documents**. For the avoidance of doubt, no cover is provided by this policy in relation to any supervision by the **Insured** of any consultant, sub-contractor or agent retained directly by the **Insured**.

3. **"Costs and Expenses"** shall mean the expenses incurred by or on behalf of the **Insured** or **RQBE** in the investigation, defence or settlement of a **Claim** and shall include legal costs and disbursements PROVIDED ALWAYS THAT such expenses are incurred with **RQBE's** prior written consent (such consent not to be unreasonably withheld).
4. **"Deductible"** shall mean the amount specified as the deductible in the **Schedule** and shall include **Costs and Expenses**.
5. **"Design Documents"** shall mean drawings and other documents produced by the **Insured** in any format (digital or otherwise) that fix or describe the size and character of architectural, structural, mechanical and electrical or material components.
6. **"Design Services"** shall mean the preparation by the **Insured** of **Design Documents** in the discharge for a fee of the **Insured's** express appointment as an independent design consultant in relation to the **Project**.
7. **"Employee"** shall mean any person employed under a contract of service or apprenticeship during or prior to the commencement of the **Period of Cover**.
8. **"Fungus"** shall mean any plant or organism belonging to the major group of fungi, lacking chlorophyll, including moulds, rusts, mildews, smuts and mushrooms.
9. **"Insured"** means:
 - (a) the entity named as the insured in the **Schedule** including its predecessors in business;
 - (b) any **Subsidiary**;
 - (c) any person who, during the **Period of Cover** is a principal, partner, director or **Employee** of either the entity named as the **Insured** in the **Schedule** or a **Subsidiary** and either holds, or is supervised by a person holding, a current qualification as an architect, engineer or surveyor which is professionally recognised in the jurisdiction in which this policy was issued.
10. **"Joint Venture"** shall mean any enterprise undertaken jointly by the **Insured** with one or more third parties.
11. **"Limit of Indemnity"** shall mean **QBE's** limit of liability under this policy as specified in the **Schedule**.
12. **"Loss"** shall mean any amount the **Insured** becomes legally liable to pay to a third party by way of compensatory damages and/or settlements for **Services**. **Loss** shall include **Costs and Expenses** but shall exclude fines, penalties, punitive or exemplary damages or any damages constituting the multiplication of a lesser damages sum, or taxes or any matters deemed uninsurable under the law governing this policy.
13. **"Mould"** shall mean any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produced moulds.
14. **"Period of Cover"** shall mean the period specified as the period of cover in the **Schedule**.

15. **"Pollution"** shall mean:
- (a) the actual, alleged or threatened discharge, dispersal, disposal, escape or release of any pollutant including any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals, radioactive and/or nuclear material or waste materials (including but not limited to any materials to be recycled, reconditioned or reclaimed) and shall include the contamination of the atmosphere or any water, land or other tangible property;
 - (b) any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any pollutant, thermal irritant or contaminant.
16. **"Premium"** shall mean the amount specified as the premium in the **Schedule** or in any endorsement issued by **RQBE**.
17. **"Project"** shall mean the works described in the **Schedule**.
18. **"Project Management Services"** shall mean the services provided by the **Insured** in the discharge for a fee of the **Insured's** express appointment as a project manager in relation to the **Project**.
19. **"Proposal"** shall mean the written proposal made by the **Insured** to **RQBE** containing particulars and statements which, together with other information provided by the **Insured**, are the basis of this policy and are considered as incorporated herein.
20. **"RQBE"** shall mean RQBE General Insurance Company Limited.
21. **"Related Party"** shall mean:
- (a) an **Insured**;
 - (b) any member of an **Insured's** family including any spouse, companion (who permanently resides with the **Insured**), domestic partner, parent, parent of the **Insured's** spouse or their partner or companion, or any sibling or child of the **Insured**;
 - (c) any entity or person who, either directly or indirectly, owns more than 10% of the issued share capital or voting rights of the **Insured**;
 - (d) any entity or person entitled to more than a 10% share of any profit generated by the **Insured** during the **Period of Cover**;
 - (e) any entity of which the **Insured** directly or indirectly owns more than 10% of the issued share capital or voting rights;
 - (f) any entity in whose profits the **Insured** is entitled to more than a 10% share during the **Period of Cover**;
 - (g) any entity of which the **Insured**, together with any **Related Party**, either directly or indirectly owns more than 10%.
22. **"Schedule"** shall mean the schedule to this policy.

23. **"Services"** shall mean **Design Services** and, where the relevant Optional Extension(s) is/are specified in the **Schedule, Construction Supervision Services** and/or **Project Management Services**.
24. **"Spore"** shall mean any dormant or reproductive body produced by or arising or emanating out of any **Fungus, Mould**, mildew, plant, organism or microorganism.
25. **"Subsidiary"** shall mean any additional body corporate named in the **Schedule**.
26. **"Terrorism"** shall mean any act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.