

## **LIBERTY**

# **EXCESS BUYER'S WARRANTY AND INDEMNITY** **INSURANCE POLICY**

**Policy Number:**

**DATE OF ISSUE:** [insert]

**Important Notice**

This is the Policy Schedule to the attached warranty and indemnity policy. In the event of any inconsistency between the terms of the attached warranty and indemnity policy (including its conditions, conditions precedent and exclusions) and any other document (including but not limited to the contents of any of the appendices to the warranty and indemnity policy, the terms of the Sale Agreement or the terms of the Insured Warranties and Indemnities), the terms of the attached warranty and indemnity policy prevail.

**EXCESS BUYER'S WARRANTY AND INDEMNITY INSURANCE POLICY**



WHEREAS the **Insured** named in the **Schedule**, which shall be the basis of this contract and is deemed to be incorporated herein, has applied to the **Liberty General Insurance Limited** (hereafter referred to as the "**Insurer**") for the insurance hereinafter contained and has paid the **Premium** as consideration for such Insurance.

This Excess Warranty and Indemnity Insurance Policy is issued by the Insurer to the Insureds and represents the complete agreement between the Insurer and the Insureds concerning the coverage provided hereunder.

**WHEREAS**, the Insureds have purchased insurance coverage from the Underlying Insurers pursuant to the Underlying Policies; and

**WHEREAS**, the Insureds desire to purchase excess insurance coverage to insure themselves against Loss in excess of the coverage provided by the Underlying Policies and the Insurer desires to provide such excess insurance, subject to the terms and conditions of this Policy.

**NOW, THEREFORE**, In consideration of payment of the **Premium** by the **Insured** and subject to all the terms, conditions and exclusions, including all definitions, of this **Policy**, **Insurer** agrees as follows:

## **SECTION 1. DEFINITIONS**

All capitalised terms which are not otherwise defined in this Policy shall have the respective meanings given to them in the Followed Policy.

The following capitalised terms shall have the meanings set out next to them below:

- (a) "**Additional Insureds**" means the Additional Insureds set forth in Item 1 of the Schedule and their permitted assigns.
- (b) "**Affiliate**" of any person or entity means any person or entity that, directly or indirectly, controls, is controlled by or is under common control with, the indicated person or entity.
- (c) "**Commencement Date**" has the meaning set forth in Item 3 of the Schedule.
- (d) "**Expiry Date**" has the meaning set forth in Item 3 of the Schedule.
- (e) "**Followed Policy**" means the Followed Policy set forth in Item 2(a) of the Schedule, as amended in accordance with the terms of the Followed Policy.
- (f) "**Insolvency**" means, in relation to any entity, that entity entering into receivership, administration, formal insolvency, liquidation, dissolution, rehabilitation or any similar proceeding, or such entity being taken over by any regulatory authority.
- (g) "**Insolvent**" means being in a state of Insolvency.
- (h) "**Insureds**" means the Named Insured and the Additional Insureds.
- (i) "**Insurer**" means the Insurer set forth in Item 1 of the Schedule.

- (j) “**Limit of Liability**” means the amount set forth in Item 4(a) of the Schedule.
- (k) “**Named Insured**” means the Named Insured set forth in Item 1 of the Schedule and its permitted assigns.
- (l) “**Policy**” means this Second Excess Warranty and Indemnity Insurance Policy, including the Schedule.
- (m) “**Policy Period**” means the period of time from the Commencement Date until (and including) the Expiry Date as set forth in Item 3 of the Schedule.
- (n) “**Premium**” means the total premium set forth in Item 6 of the Schedule.
- (o) “**Primary Insurer**” means [insert].
- (p) “**Total Underlying Limit**” means the amount set forth in Item 4(b) of the Schedule, which is the aggregate limit of liability of the Underlying Policies.
- (q) “**Underlying Insurers**” means the insurers set forth in Item 2(a) and Item 2(b) of the Schedule in respect of the Underling Policies (and each such insurer shall be an “**Underlying Insurer**”).
- (r) “**Underlying Policies**” means the policies set forth in Item 2(a) and Item 2(b) of the Schedule (and each such policy shall be an “**Underlying Policy**”).

## **SECTION 2. INSURING AGREEMENT**

Subject to the terms and conditions of this Policy, the Insurer shall, excess of the Total Underlying Limit, provide the Insureds with coverage, in accordance with the same terms, conditions, exclusions and limitations of the Followed Policy, except as regards the Premium, the Limit of Liability, the Total Underlying Limit and any other provisions expressly stated in this Policy (noting that for the avoidance of doubt, no retention shall apply to this Policy). Notwithstanding anything herein to the contrary, in no event shall this Policy provide coverage broader than that provided by the Followed Policy, unless such broader coverage is specifically and expressly agreed to by the Insurer and identified in this Policy as broader coverage.

## **SECTION 3. LIMIT OF LIABILITY**

The Limit of Liability is the limit of the Insurer’s aggregate liability to the Insureds for all payments made by the Insurer in connection with this Policy.

## **SECTION 4. EROSION OF THE TOTAL UNDERLYING LIMIT AND THE RETENTION**

- (A) Liability for any Loss shall attach to and be payable by the Insurer only after:
  - a) the Underlying Insurers shall have paid or agreed to pay or been held in a final non-appealable order, judgement, award, finding or other adjudication of a court, tribunal, commission or arbitrator to be obligated to pay the full amount of the Total Underlying Limit in accordance with the terms of the Followed Policy; or

- b) in the event of an Insolvency of an Underlying Insurer, either:
  - i. the relevant Underlying Insurer is deemed to have paid or incurred (in accordance with section 4(C) below) the full amount of the limit of liability in respect of that Underlying Policy; or
  - ii. if the amount which the relevant Underlying Insurer is deemed to have paid or incurred in accordance with section 4(C) below is less than the full amount of the limit of liability in respect of that Underlying Policy, the Insureds shall have paid or incurred the amount which is the difference between the amount which the relevant Underlying Insurer is deemed to have paid or incurred and the full amount of the limit of liability in respect of that Underlying Policy, in each case in accordance with the terms of the relevant Underlying Policy.
- (B) After the Total Underlying Limit has been paid or exhausted in accordance with section 4(A) above, this Policy shall: (i) pay Loss in excess of the Total Underlying Limit; and (ii) “drop down” and continue in force as primary insurance.
- (C) In the event that (i) any Underlying Insurer is or becomes Insolvent and (ii) the relevant Underlying Insurer would have been liable to pay Loss but for such Insolvency, then, for the purposes of this Policy, the relevant Underlying Insurer will be deemed to have paid or incurred in full the amount of Loss that it would have paid or incurred under the relevant Underlying Policy but for such Insolvency. For the avoidance of doubt, except as set forth in the foregoing sentence and section 4(A) above, the Insurer’s obligations under this Policy shall not be increased, expanded or otherwise changed due to any Insolvency of any Underlying Insurer or any other inability, refusal or any other reason of any Underlying Insurer to pay any Loss.
- (E) Defence Costs are not payable by the Insurer in addition to the Limit of Liability. Such Defence Costs are part of Loss and are subject to the Limit of Liability, which will be reduced by any such Defence Costs the Insurer pays.
- (F) The Retention under the Followed Policy and the Total Underlying Limit can be eroded by all Loss that is covered by the Followed Policy, notwithstanding that such Loss may not be covered under this Policy.
- (G) This Policy shall recognise the erosion of the Total Underlying Limit through payments by, on behalf of or in the place of the Underlying Insurers in accordance with the terms of the Underlying Policies (notwithstanding that such Loss is not covered under this Policy).

## **SECTION 5. UNDERLYING LIMIT**

Except as set out in section 4 above, the risk of uncollectability (in whole or in part) of the limit of liability of any Underlying Policy, whether because of financial impairment or insolvency of any Underlying Insurer, or

for any other reason whatsoever, is expressly retained by the Insureds and is not in any way or under any circumstances insured or assumed by the Insurer.

#### **SECTION 6. AMENDMENTS TO THE UNDERLYING POLICIES**

If the terms, conditions, exclusions and/or limitations of the Underlying Policies are changed in any manner after the date of this Policy, the Named Insured shall give to the Insurer, as soon as reasonably practicable, written notice of the full particulars of such change. This Policy shall become subject to any such change only if the Insurer consents in writing to such change (such consent not to be unreasonably withheld).

#### **SECTION 7. NOTICE PROVISIONS**

(A) Where the Followed Policy requires notice to the Primary Insurer, the Insureds shall have the same obligations and rights to notify the Insurer under this Policy, except that with respect to this Policy any notice to the Insurer must be directed as follows:

Liberty General Insurance Limited  
10th floor, Tower A, Peninsula Business Park,  
Ganapatrao Kadam Marg, Lower Parel, Mumbai,  
Maharashtra 400013

(B) As soon as reasonably practicable after the Insureds become aware of any of the following events, the Named Insured shall give written notice thereof to the Insurer in the same manner and at the same addresses as set forth in Section 7(A) above:

- (i) the cancellation of any Underlying Policy, any Underlying Policy otherwise ceasing to be in effect, or the Total Underlying Limit (or any portion of it) being uncollectible under any Underlying Policy (in whole or in part); or
- (ii) any Insolvency of any Underlying Insurer.

(C) Any failure of the Insureds to comply with any of the provisions in Section 7 of this Policy shall not relieve the Insurer of its obligations under this Policy, except and only to the extent the Insurer is actually prejudiced thereby.

#### **SECTION 8. CLAIM PARTICIPATION**

The Insurer does not assume any duty to defend the Insureds.

Save in relation to a Claim where the quantum of Loss is not reasonably expected to exceed the Retention under the Followed Policy and subject to the Followed Policy, the Insurer shall be entitled to participate fully in the defence, negotiation and settlement of any matter that appears to the Insurer to be reasonably likely to



involve the Insurer or this Policy. With respect to any such matter, the Insureds shall give the Insurer full cooperation and such information as it may reasonably request.

#### **SECTION 9. FOLLOWED POLICY**

Except as otherwise provided in this Policy, the Insurer shall be entitled to all of the rights, privileges and protections which the Followed Policy affords to the Primary Insurer in accordance with the terms, conditions and limitations of the Followed Policy and the Insureds shall be entitled to all of the rights, privileges and protections which the Followed Policy affords to the Insureds in accordance with the terms, conditions and limitations of the Followed Policy. For the avoidance of doubt, the Insurer acknowledges and agrees that the limitations on the exercise of rights of subrogation, claims in contribution and rights acquired by assignment set out in the Followed Policy apply under this Policy and are intended to confer a benefit upon, and are enforceable at the suit of, such persons specified in the Followed Policy.

#### **SECTION 10. PREMIUM PAYMENT**

The Insurer's obligations under this Policy shall be conditional upon payment of the Premium in cleared funds within 20 Business Days after the Completion Date. Subject to clause [insert] of the Followed Policy, the Premium shall be fully earned at the Commencement Date. This Policy may not be renewed or, subject to clause [insert] of the Followed Policy, cancelled by the Insureds or the Insurer.

#### **SECTION 11. RELIANCE**

In entering into this Policy, the Insurer is relying upon the No Claims Declarations given by the Insureds pursuant to the Followed Policy.

#### **SECTION 12. OTHER MATTERS**

The descriptions in the headings of this Policy are solely for convenience, and form no part of the interpretation or the terms and conditions of coverage.

This Policy constitutes the entire agreement and understanding concerning the subject matter of this Policy and supersedes the terms and conditions of any prior oral or written agreements, discussions or other communications entered into between the Insurer and/or its Affiliates (including their respective representatives), on the one hand, and the Insureds and/or their respective Affiliates (including their respective representatives), on the other hand, concerning the subject matter of this Policy.

The Insurer shall act on its own behalf with respect to all matters concerning this Policy and neither the Primary Insurer nor any other person whatsoever may act on behalf of or bind the Insurer with respect to the Policy terms or any matter concerning this Policy.

### **SECTION 13. CHOICE OF LAW AND FORUM**

This Policy shall be governed by and construed in accordance with the laws of India without regard to the authorship of the language and without any presumption in favour of any party and without reference to conflicts-of-laws principles that would require or allow the application of the law of any other jurisdiction.

### **SECTION 14. RIGHTS OF THIRD PARTIES**

Except as expressly provided in any Underlying Policy or this Policy this Policy shall not confer any benefits on any third parties, including contractors, subcontractors, consultants or agents, and no such third party may enforce any term of this Policy.

### **SECTION 15. SANCTIONS**

This Policy does not provide any cover and the Insurer will not be liable to pay any claim under this Policy or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer 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, Hong Kong or United States of America.

### **SECTION 16. SEVERAL LIABILITY AND EXCLUSIONS**

This Policy is subject to the Several Liability and Exclusion Clauses set forth in Appendix A.

## **APPENDIX A**

### **Notices**

#### **WAR AND CIVIL WAR EXCLUSION CLAUSE**

Notwithstanding anything to the contrary contained herein, this Policy does not cover loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, actions 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 or destruction of or damages to property by or under the order of any government or public or local authority.

#### **RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE**

This Policy does not cover:

- loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or
  - any legal liability of whatsoever nature,
- directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

#### **ASBESTOS EXCLUSION CLAUSE**

This Policy shall not apply to and does not cover any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity, however, this exclusion shall not apply to any claim or part of a claim for financial loss arising out of a breach of professional duty where the originating cause is not directly relating to any asbestos exposure subject to any other exclusions set out in this Policy.

#### **FRAUDULENT CLAIMS CLAUSE**

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy, or if any loss hereunder be occasioned by the wilful act or with the connivance of the Insured, the Underwriters, without prejudice to any other right(s) they might have under this Policy, shall be entitled to refuse to pay such claim.

#### **SANCTIONS EXCLUSION CLAUSE**

This Policy does not cover and the Underwriters shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover would expose the Underwriters 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.

#### **SEVERAL LIABILITY CLAUSE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.