

EXCESS LIABILITY

In consideration of the payment to Raheja QBE General Insurance Company Limited (hereafter called "the Company") of the premium payable for this insurance the Company will indemnify the Insured in accordance with this Policy, subject to the terms, conditions and exclusions of this Policy.

1. DEFINITIONS

- 1.1. **"Electronic Data"** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.
- 1.2. **"Insured"** means the **Insured** named in the **Schedule**
- 1.3. **"Limit of Liability"** means the applicable **Limit of Liability** specified in the **Schedule**.
- 1.4. **"Policy"** means this document and each endorsement issued by the **Company** and attached or intended to be attached to it.
- 1.5. **"Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- 1.6. **"Schedule"** means the schedule of insurance including any endorsement schedule given to **Insured** by the **Company**.
- 1.7. **"Underlying Insurance(s)"** means a policy of liability insurance, as listed in the schedule of underlying insurance contained within the **Schedule** or included by endorsement to this **Policy**, issued by the underlying insurer.

2. COVERAGE

The **Company** agrees to indemnify the **Insured** for the amount in excess of the total **Underlying Insurance(s)** limit of liability that the **Insured** shall become legally liable to pay provided that:

- 2.1. the insurers of the **Underlying Insurance(s)** have paid or been held liable to pay the full amount of the total limit of liability of the **Underlying Insurance(s)**;
- 2.2. the **Company's** liability under this **Policy** shall not exceed the **Limit of Liability** of this **Policy**;

- 2.3. this **Policy** is subject to the same terms, limitations, exclusions, conditions and definitions as the **Underlying Insurance(s)** except where amended by this **Policy**, its definitions, exclusions, conditions or by any endorsement attaching to this **Policy**.

In the event of any conflict between the provisions of the **Underlying Insurance(s)** and this **Policy**, the provisions of this **Policy** shall apply.

3. EXCLUSIONS

This **Policy** does not cover liability in respect of:

3.1. ASBESTOS

Any actual or alleged liability whatsoever for any claim or claims in respect of losses directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

3.2. ELECTRONIC DATA

3.2.1. communication, display, distribution or publication of **Electronic Data**. provided this clause 3.2.1 does not apply to personal injury or advertising liability resulting therefrom, only where payable by the **Underlying Insurance(s)**;

3.2.2. total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of **Electronic Data**;

3.2.3. error in creating, amending, entering, deleting or using **Electronic Data**;

3.2.4. total or partial inability or failure to receive, send, access or use **Electronic Data** for any time or at all;

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

3.3. FINES, PENALTIES, LIQUIDATED DAMAGES

Fines, penalties and/or liquidated damages.

3.4. POLLUTION

3.4.1. Personal injury or property damage directly or indirectly caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of **Pollutants** into or upon land, the atmosphere, or any water course or body of water. Provided this clause 3.4.1 does not apply if such discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.

3.4.2. Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution. Provided this clause 3.4.2 does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable,

unexpected and unintended happening taking place in its entirety at a specific time and place which results in personal injury or property damage.

- 3.4.3. The actual alleged or threatened discharge, dispersal, release, seepage, migration or escape of **Pollutants** in the United States of America or the Dominion of Canada or in any country to which the laws of the United States of America or the Dominion of Canada apply.

Our liability under clauses 3.4.1 and 3.4.2 above in respect of any one discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of **Pollutants** during any the period of insurance will not exceed the **Limit of Liability**.

3.5. **PUNITIVE DAMAGES**

Punitive damages and/or exemplary damages and/or aggravated damages and/or any additional damages resulting from the multiplication of compensatory damages.

3.6. **RADIOACTIVITY**

Claims directly or indirectly caused by, contributed to by or arising from:

- 3.6.1. ionising radiations or contamination by radioactivity from nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

For the purpose of this clause 3.6.1 combustion shall include any self-sustaining process of nuclear fission;

- 3.6.2. the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

3.7. **TERRITORIAL AND JURISDICTIONAL LIMITS**

- 3.7.1. Claims made and actions instituted within the United States of America or the Dominion of Canada or any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada.

- 3.7.2. Claims and actions to which the laws of the United States of America or the Dominion of Canada apply

Provided that clauses 3.7.1 and 3.7.2 shall not apply to claims and actions:

- 3.7.3. arising from the presence outside the country in which this **Policy** was issued, of any of the **Insured's** employees and/or directors, partners or proprietors who are normally

resident in such country and who are not undertaking manual work or supervision of work of any kind while in the United States of America or the Dominion of Canada;

- 3.7.4. for personal injury or property damage caused by or arising out of the **Insured's** products not knowingly exported by the **Insured** to the United States of America or the Dominion of Canada.

The **Limit of Liability** in respect of coverage provided by clauses 3.7.3 and 3.7.4 is inclusive and not in addition of all costs, expenses and interest.

3.8. **WAR AND TERRORISM**

Loss, damage, destruction, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- 3.8.1. war, invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority, or
- 3.8.2. any act of terrorism

For the purpose of this exclusion, an act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group of persons whether acting alone or on behalf of or in connection with any organization or government de jure or de facto, and which:

- 3.8.2.1. involves violence against one or more persons, or
- 3.8.2.2. involves damage to property, or
- 3.8.2.3. endangers life other than that of the person committing the action, or
- 3.8.2.4. creates a risk to health or safety of the public or a section of the public, or
- 3.8.2.5. is designed to interfere with or to disrupt an electronic system.

This **Policy** also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising

out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to clause 3.8.1 or 3.8.2.

4. CONDITIONS

4.1. CANCELLATION

4.1.1. This insurance may be cancelled at any time by the **Insured** giving written notice of cancellation to the **Company**, in which case the **Company** will retain the customary short period rate as per the following table for the time the **Policy** has been in force, 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 to the **Insured**. This insurance may also be terminated at the option of the **Company** on notice to that effect being sent to the **Insured** at least 15 days in advance of the termination, in which case the **Company** will be liable to repay a rateable proportion of the premium for the unexpired term from the date of cancellation. Provided the **Company** will be entitled to retain the agreed minimum premium.

For a period not exceeding	1 month	25% of the Annual Premium
-do-	3 months	45% of the Annual Premium
-do-	6 months	70% of the Annual Premium
-do-	9 months	85% of the Annual Premium
For a period exceeding	9 months	Full Annual Premium

4.1.2. When the premium is subject to adjustment, cancellation will not affect the obligation of the **Insured** to supply to the **Company** such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

4.1.3. Where “**Insured**” involves more than one person, the **Company** will only cancel the **Policy** when a written agreement to cancel the **Policy** is received from all persons named as the **Insured**.

4.2. CLAIMS

4.2.1. Whenever the **Insured** has information from which the **Insured** may reasonably conclude that an occurrence or circumstance which, in the event that the **Insured** should be held liable is likely to exceed 50% of the **Underlying Insurance(s)** limit of liability, notice shall be sent to the **Company** as soon as practicable and in any event within [x], provided

however that failure to notify the **Company** of any occurrence or circumstance which at the time of its happening did not appear to involve this **Policy**, but which at a later date would appear to give rise to claims hereunder, shall not prejudice such claims.

- 4.2.2. It is a condition precedent to the **Company'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 the **Company's** prior written consent. The **Company** shall not be liable for any settlement to which it has not consented. The **Company** shall not, however, refuse to consent to any settlement proposed by the **Insured** unless a Legal Counsel (to be nominated by the **Company**) shall advise that the settlement proposed is inappropriate in all the circumstances.
- 4.2.3. 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.
- 4.2.4. The **Insured** must:
- 4.2.4.1. take all reasonable precautions to prevent further loss or damage;
 - 4.2.4.2. endeavour to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of right of subrogation, and as may be reasonably practicable, the **Insured** must not without the consent of the **Company** carry out any alteration or repair until the **Company** has had an opportunity to inspect.
- 4.2.5. The **Company** shall be entitled to prosecute in the name of the **Insured** at its own expense and for its own benefit any claim for indemnity or damages or otherwise.
- 4.2.6. The **Company** shall have full discretion in the conduct of any legal proceedings and in the settlement in connection with any claim and the **Insured** shall give all information and assistance as the **Company** may require. This may include giving evidence in any legal proceedings.
- 4.2.7. The **Company** may refuse to pay a claim if the **Insured** is in breach of the **Insured's** duty of disclosure or any of the conditions of this **Policy**, including any endorsements noted on or attached to the **Schedule**. The **Company** will pay only once for loss or damage from the same event covered by this **Policy**. The **Company** may be entitled to refuse to pay a claim if:

- 4.2.7.1. it is in any way fraudulent;
- 4.2.7.2. any fraudulent means or devices are used by the **Insured** or anyone acting on the **Insured's** behalf to obtain any benefits under this **Policy**.

4.3. **DEFENCE COSTS**

In the event of any claim or claims against the **Insured**, which appear to exceed the **Underlying Insurance(s)** limit of liability available, the **Company** will not be liable for costs or expenses incurred in the defence or settlement of such claims. However, in the event that the **Company** provides the **Insured** with the **Company's** written consent, the **Company** will contribute to the costs and expenses incurred in such claim or claims in the proportion that the **Company's** share of the loss as finally settled bears to the total sum payable. If however any claim or claims are settled within the indemnity available under the **Underlying Insurance(s)** then no costs or expenses will be payable by the **Company**.

4.4. **DISPUTES & ARBITRATION**

All disputes arising out of or under this **Policy** shall be subject to Indian law.

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 thereto 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 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.

4.5. **NOTICE OF CHANGES**

This **Policy** is subject to the same terms, conditions and exclusions (except as regards the limit of liability, the premium, any agreement to renew or except where amended by this **Policy**, its definitions, exclusions, conditions or by any endorsement hereto) as are contained in the **Underlying Insurance(s)**. No amendment to the **Underlying Insurance(s)** during the Period of

Insurance specified in the **Schedule** shall be effective in extending the scope of this **Policy** unless agreed in writing by the **Company**.

4.6. **NOTICES**

Any notice given in writing by the **Company**:

- 4.6.1. to the first named **Insured** in the **Schedule** shall be deemed to be notice given to all of the parties comprising the **Insured**;
- 4.6.2. shall be effective immediately on receipt by the first named **Insured** of a personal delivery or electronic communication sent from the **Company** or in the case of notices by post, three business days after having been posted by the **Company** to the **Insured's** last address known to the **Company**.

4.7. **STEP DOWN PROVISION**

The **Company** agrees that if by reason of the payment of claim(s) by the **Underlying Insurance(s)**, during the Period of Insurance which results in the reduction or exhaustion of the aggregate limits of liability under the **Underlying Insurance(s)**, subject to the **Company's Limit of Liability** stated in the **Schedule**:

- 4.7.1. the **Company** will pay the excess over and above the reduced **Underlying Insurance(s)** in the event of reduction, or
- 4.7.2. on exhaustion of the total limit of liability of the **Underlying Insurance(s)** this **Policy** shall continue in force as if the **Underlying Insurance(s)**.

The cover provided by clauses 4.7.1 and 4.7.2 is subject to the terms, conditions and exclusions of the **Underlying Insurance(s)** except where amended by this **Policy**, its conditions, exclusions or any endorsement hereto.

4.8. **UNDERLYING INSURANCE**

The **Insured** agrees that the **Underlying Insurance(s)** and any renewals or replacements thereof must be maintained by the **Insured** in full effect during the currency of this **Policy** without alteration of terms or conditions except for any reduction of the aggregate limit or limits contained therein solely by payment of claims. Failure by the **Insured** to comply with the foregoing shall not invalidate this **Policy** but in the event of such failure, the **Company** shall only be liable to the same extent as the **Company** would have been liable had the **Insured** so maintained such **Underlying Insurance(s)**.

4.9. **GRIEVANCE REDRESSAL**

In case You are aggrieved in any way, You may contact Us at the specified address, during normal business hours for the following grievances:

- Any partial or total repudiation of claims by Us.
- Any dispute regard to premium paid or payable in terms of the Policy.
- Any dispute on the legal construction of the policies in so far as such disputes relate to claims.
- Delay in settlement of claims.
- Non-issue of any insurance document to customer after receipt of the premium.

If You are not satisfied with the decision of the Grievance Committee You are entitled to refer Your case for futher legal recourse.