

HDFC ERGO Professional Indemnity Policy

Design and Construct Endorsement Wording

I. The Policy is amended as follows:

1. The Preamble is deleted and replaced with the following:

In consideration of the payment of the premium, and in reliance upon the statements made in the **Proposal**, and subject to the terms and conditions of this Policy (including any endorsement hereto), coverage under this Policy is afforded solely for **Financial Loss** resulting directly from **Claims** first made against the **Insured**, or **Professional Investigations**. Loss Mitigation or other Extensions of Cover first occurring during the **Period of Insurance** or the **Extended Reporting Period** (if applicable) and notified to the **Insurer** as required by Section 6.1 of this Policy.

2. The following Coverage Extensions are added to Section 2. Extensions of Cover:

2.8 Civil Fines and Penalties

The Insurer will pay **Civil Fines and Penalties** imposed on an **Employee** that arise from a covered **Claim** or **Professional Investigation** made against such **Employee**, but only to the extent that such **Civil Fines and Penalties** are insurable under both the law applicable to this Policy and the jurisdiction in which such **Civil Fines and Penalties** are imposed.

The cover provided under this Extension shall be subject to both the applicable **Sub-Limit of Liability** and **Retention** specified in the Schedule.

2.9 Defamation

The **Insurer** shall indemnify the **Insured** for **Financial Loss** resulting directly from a **Claim** first made against the **Insured** during the **Period of Insurance** or the **Extended Reporting Period**, if applicable, based upon libel, slander, offence or injurious falsehood committed unintentionally by an **Insured** on or after the **Retroactive Date** and prior to the end of the **Period of Insurance** within the provision of **Professional Services**.

The cover provided under this Extension shall be subject to both the applicable **Sub-Limit of Liability** and **Retention** specified in the Schedule.

2.10 Professional Investigations

The **Insurer** shall indemnify the **Insured** for all **Professional Investigation Costs** resulting directly from a **Professional Investigation**

arising from the rendering of or failure to render **Professional Services**.

The cover provided under this Extension shall be subject to both the applicable **Sub-Limit of Liability** and **Retention** specified in the Schedule.

3. Section 4. Definitions is amended as follows:

A. The last sentence of Definition 4.5 Claim is replaced with the following:

For the purposes of Sections 5, 6 and 7 only, **Claim** shall also mean **Professional Investigation**, **Potential Claim** and the event insured under Extension 2.6 Loss of Documents and Data.

B. The following is added to the end of Definition 4.10 Defence Costs:

Defence Costs shall not include **Professional Investigation Costs**.

C. Definition 4.10 Financial Loss is amended as follows:

1. Subsection 4.18.1 is replaced with the following:

4.18.1 the total amount the **Insured** is legally liable to pay for:

(i) compensatory, punitive, exemplary or multiple damages (to the extent insurable under the law of this Policy and the law of the jurisdiction in which the payment is to be made) and related costs (including pre-judgment and post-judgment interest, plaintiff's or claimant's legal fees, attorney's fees and expenses, court costs, accountant's costs and loss adjuster's costs) resulting from a **Claim** made against such **Insured**, for which coverage applies, awarded pursuant to a final judgment or other final adjudication of a court or tribunal by whose jurisdiction the **Insured** is bound, or following arbitration or other alternative dispute resolution processes whose findings are binding upon the **Insured**;

(ii) compensation for damages awarded by an **Official Body**, or

(iii) a settlement negotiated by the **Insured** with the **Insurer's** prior written consent; or

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2. The first sentence of Subsection 4.19.3 is replaced with the following:

4.19.3 the fees, costs, expenses and amounts covered under Extensions 2.5 Loss Mitigation, 2.6 Loss of Documents and Data, and 2.8 Civil Fines and Penalties in Section 2 of this Policy.

3. The following subsection is added:

4.18.4 **Professional Investigation Costs** resulting from a **Professional Investigation**;

D. Definition 4.27 Mental Anguish is replaced with the following:

4.27 Mental Anguish

Mental Anguish means mental injury, mental distress, emotional distress, emotional pain, and emotional suffering or shock.

E. Definition 4.47 Wrongful Act is replaced with the following:

4.47 Wrongful Act

Wrongful Act means a **Wrongful Professional Act** in connection with rendering or failure to render **Professional Services** to **Third-Party Clients**.

F. The following definitions are added:

Civil Fines and Penalties

Civil Fines and Penalties means civil money penalties and fines directly assessed by an **Official Body** against an **Employee** for personal civil liability or arising out of the provision or failure to provide **Professional Services**, but only if such fines and penalties are not relating to or resulting from a knowing, wilful or criminal violation of law.

Official Body

Official Body means any government, governmental or administrative body or agency or similar public body with authority over the **Professional Services** of the **Insured**, that has the legal authority to regulate, control, supervise, conduct **Professional Investigations**, perform audits, assess and levy fines and penalties, issue orders or directives, or to undertake other actions or measures; as well as, any other public or administrative agency or self-regulatory body or professional body that is empowered by statute or statutory regulation to perform the above functions.

Professional Investigation

Professional Investigation means any formal civil, administrative or regulatory investigation, hearing, examination or inquiry commenced or brought by an **Official Body** concerning:

- (i) the affairs of a **Company** in the provision of or failure to provide **Professional Services**; or
- (ii) an **Employee** acting in his capacity as such, commenced or brought by an **Official Body**, where no **Wrongful Professional Act** has been specified;

once an **Employee** of the **Company** is identified in writing and receives formal written notice from an **Official Body** requiring such **Employee** to cooperate or attend, or to produce documents, provided that:

- (a) such formal written notice from an **Official Body** first arises during the **Period of Insurance** or **Extended Reporting Period** (if applicable); and
- (b) the **Professional Investigation** concerns acts or conduct or a **Wrongful Professional Act** that occurs after the inception date of this Policy and the **Retroactive Date**; and
- (c) the **Insured** has notified the **Insurer** of such formal written notice from an **Official Body** in accordance with Section 6.2 of this Policy.

Professional Investigation does not mean any routine regulatory supervision, inspection or compliance reviews, or any industry wide investigation, hearing, examination or inquiry which focuses on five (5) or more industry actors rather than the **Insured**.

Professional Investigation Costs

Professional Investigation Costs means reasonable and necessary fees, costs, charges and expenses incurred, with the prior written consent of the **Insurer** (except as provided for under Extension 2.5, for or on behalf of an **Employee** or the **Employee's** legal representative:

- (a) in preparing for, attending or producing documents to a **Professional Investigation**; or
- (b) in responding to a raid on, or on-site visit to, any **Insured** by an **Official Body** that involves the production, review, copying or confiscation of files or interviews of any **Insured**.

Professional Investigation Costs shall not mean any fees, costs, charges or expenses incurred by the **Company** in connection with a **Professional Investigation**, remuneration of **Employees**, costs of their time or costs of overheads of the **Company**.

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Professional Services

Professional Services means services provided by or on behalf of the **Insured** to a **Third-Party Client**:

- (i) in the **Insured's** capacity as an architect or engineer, landscape architect, interior designer or space planner;
- (ii) in certification of elements of construction for compliance with laws, regulations, codes of practice, and construction plans;
- (iii) as a construction manager, program manager, project manager, owner's representative, including design assist services and constructability reviews; or
- (iv) in managing Building Information Modelling (BIM) systems, including but not limited to modification, alteration, transfer, protection, manipulation, use, or misuse thereof, or design assist system or program, and the foregoing within Integrated Project Delivery (IPD), Public-Private Partnership projects (P3s), or Lean Project Delivery System (LPDS);

including any related administrative service or back office operation of the **Insured** to support the provision of such services;

provided, that:

- (a) such services are provided to a **Third-Party Client** for compensation pursuant to a written contract or agreement; and
- (b) the services identified in sections (i) and (ii):
 - a. are allowed under applicable laws, statutes, rules, regulations issued by any **Official Body** having jurisdiction over the **Insured**; and
 - b. the **Insured** providing such services is duly authorised, licensed and/or approved to provide such services.

Professional Services do not include:

- 1. the day to day supervision of manual labour or physical construction work; or
- 2. supervision of any of subcontractors' workmanship
- 4. Section 5. Exclusions is amended as follows:
 - A. Exclusion 5. 3 Bodily Injury and Property Damage is deleted in its entirety.
 - B. Exclusions 5.2, 5.9, 5.14 and 5.16 are deleted and replaced with the following:

5.2 Assumed Liability, Guarantee, Warranty

arising from, based upon, in connection with, attributable to or as a consequence of any:

- 5.2.1 liability assumed or accepted by an **Insured** or **Service Provider** under any contract or agreement except to the extent that actual legal liability would have attached to an **Insured** or **Service Provider** in the absence of such contract or agreement as a matter of civil or common law as applicable; or
- 5.2.2 any express guarantee or warranty, including but not limited to, any express warranty ensuring that what is being designed, built or supplied is or will be fit for its intended purpose. Provided however, this exclusion will not apply to a warranty or guarantee by the **Insured** that the **Professional Services** performed by the **Insured** are in conformity with the standard of care applicable to such **Professional Services**.

5.9 Governmental Regulatory Action

arising from, based upon, in connection with, attributable to or as a consequence of any action or investigation brought by, in the right of, on behalf of or at the behest of, or instigated or maintained against an **Insured** by an **Official Body** or any other government, regulatory or licensing authority or commission, whether directly or indirectly, and whether brought in its capacity as an **Official Body**, - government, regulatory or licensing authority or commission, or as a receiver, conservator, liquidator, securities holder or assignee of an **Insured**, provided, that this exclusion shall not apply to:

- 5.9.1 a **Claim** by such entity when acting solely in its own interests in its capacity as a **Third-Party Client** of an **Insured**;
- 5.9.2 a **Claim** brought by such entity by, on behalf of or for the benefit of a **Third-Party Client** of any **Insured** seeking compensation for a specified **Wrongful Professional Act** of an **Insured**;
- 5.9.3 **Civil Fines and Penalties** covered under clause 4.19.3 of the definition of **Financial Loss**; or
- 5.9.4 **Professional Investigation Costs** covered under Extension 2.10.

5.14 Nuclear and Pollution

arising out of, based upon, in connection with, attributable to or as a consequence of:

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- 5.14.1 the hazardous properties of nuclear material including but not limited to the actual, alleged, threatened or potential:
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
 - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 5.14.2 any claim, suit, direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- Subsections 5.14.1 and 5.14.2 apply whether or not such **Pollutants** have any function in the **Insured's** business, operations, premises, site or location and regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to any **Financial Loss** associated with such **Pollutants**;
- 5.14.3 the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** at any time; provided however, this exclusion does not apply **Defence Costs** incurred as of the result of a **Claim** alleging a **Wrongful Professional Act** committed by the **Insured**.
- 5.16 Prior and Pending Claims or Notifications**
- arising out of, based upon, in connection with, attributable to or as a consequence of:
- 5.16.1 any act, fact, same or related **Wrongful Act**, event, **Circumstance**, situation, or **Claim** or other matter which has been the subject of any written notice given under any insurance policy or any policy of which this Policy is a direct or indirect renewal or replacement, or any policy expiring prior to the inception date of this Policy;
- 5.16.2 any act, error or omission or **Wrongful Act**, **Professional Investigation**, **Employee Dishonesty**, fact, event, **Circumstance**, situation, or **Claim** occurring, initiated, committed or commenced prior to:
- 1) the inception date of this Policy or of any policy issued by the **Insurer** to the **Policyholder** of which this Policy is a continuous renewal or replacement, of which a **Responsible Officer** became aware, knew or could have reasonably foreseen that could give rise to a **Claim** or coverage under this Policy; or
 - 2) the **Retroactive Date**;
- 5.16.3 any written demand, suit or proceeding, order, decree or judgment entered, against any **Insured**, or **Professional Investigation**, pending or initiated or commenced on or prior to the inception date of this Policy or of any policy issued by the **Insurer** to the **Policyholder** of which this Policy is a continuous renewal or replacement; or
- 5.16.4 any **Interrelated Wrongful Act**, **Professional Investigation**, **Employee Dishonesty**, loss of **Documents** as covered by Extension 2.6 or **Defamation** as covered by Extension 2.9 which has the same originating cause as any item referenced in 5.16.1, 5.16.2 or 5.16.3 above; or any **Mitigation Costs** relating to the foregoing.
- C. The following exclusions are added:
- Cost Overrun**
- arising from, based upon, in connection with, attributable to or as a consequence of any cost overrun or any error in estimation of the cost of a project, irrespective of the cause.
- Faulty Workmanship**
- arising from, based upon, in connection with, attributable to or as a consequence of any faulty workmanship in any construction, erection, fabrication, installation, assembly or manufacturing process performed or provided by the Insured or anyone for whom any Insured is legally responsible, including materials, parts or equipment furnished in connection therewith and any workmanship that is not in accordance with the drawings and specifications with respect to any construction, erection, fabrication, installation, assembly or manufacturing process.
- Mental Anguish**
- arising from, based upon, in connection with, attributable to or as a consequence of **Mental Anguish**; provided, that this exclusion shall not apply to:
- (i) **Mental Anguish** resulting directly from Bodily Injury caused by a **Wrongful Professional Act**;
 - (ii) Loss of Documents or Data, in accordance with Extension 2.6; or

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- (iii) **Mental Anguish** resulting from a **Wrongful Privacy Act**.

Products Liability

arising out of, based upon, in connection with, attributable to or as a consequence of any the sale or distribution of any product developed by the **Insured** or by others under license or trade name from the **Insured** for multiple sale or mass distribution;

- 5. Subsection 6.1.1. is deleted and replaced with the following:

- 6.1.1 The **Insurer** shall only be liable under this Policy for **Claims** that have been reported to the **Insurer** in writing as soon as reasonably practicable after a **Responsible Officer** first becomes aware of such **Claim** but no later than thirty (30) days after the expiry of the **Period of Insurance** or within the **Extended Reporting Period** (if applicable).

Written notice under this section shall include, but not be limited to, a description of the **Claim**, the nature of the alleged or potential **Financial Loss**, the details of the actual or potential claimants and the date and manner in which the **Insured** first became aware of the **Claim** or **Professional Investigation**.

ALL OTHER TERMS, CONDITIONS AND LIMITATIONS OF THIS POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.