

**Terms and Conditions**

**Recitals:**

- (A) The Insured is seeking warranty and indemnity insurance with respect to the [Purchase Agreement] and the Insurer agrees to provide such insurance, in each case, subject to the terms, conditions, limitations and exclusions set out in this Policy.
- (B) The Insured and the Insurer intend that this Policy shall provide coverage with respect to losses arising as a result of breaches of certain warranties [and covenants] set out in the [Purchase Agreement] where the event, fact, matter or circumstance giving rise to such breach has occurred prior to the Signing Date with respect to the Insured Signing Warranties and after the Signing Date and prior to the Closing Date with respect to the Insured Closing Warranties.

**It is agreed as follows:**

**1. Definitions and Interpretation**

11.1 In this Policy (including the Schedule and the Appendices) the following words and expressions when capitalised or in bold type shall have the following meanings:

“**Act**” means the Insurance Contract Act, 1938

“**Actual Knowledge**” means, with respect to a relevant individual, the actual personal knowledge of the relevant individual [after due and careful inquiry] but shall not be deemed to include (i) any constructive, implied or imputed knowledge of such individual or (ii) any actual, constructive, implied or imputed knowledge of any (or, any other, as the case may be) director, officer, employee, contractor, agent or advisor of the Insured, in each case, which is not within the actual personal knowledge of the relevant individual.

“**Breach**” means a breach of [an Insured Warranty][any of the Insured Warranties], provided that the event, fact, matter or circumstance giving rise to such breach has occurred prior to the Signing Date with respect to the Insured Signing Warranties and after the Signing Date and prior to the Closing Date with respect to the Insured Closing Warranties].

“**Business Days**” has the meaning given in the [Purchase Agreement].

**OR**

“**Business Day**” means a day other than a Saturday or Sunday on which banks are ordinarily open for the transaction of normal banking business in India.

“**Buyer Group**” means has the meaning given in the [Purchase Agreement].

“**Buyer Team Members**” means the following individuals (and “**Buyer Team Member**” shall mean any one of them):

- a) [\_\_\_\_\_].
- b) [\_\_\_\_\_].
- c) [\_\_\_\_\_].

being the individuals who have been principally responsible for the Insured's evaluation, negotiation and implementation of the transaction to which the [Purchase Agreement] relates, including carrying out, assessing and evaluating the due diligence conducted with respect to the [Target][Target Group].

“**Claim Notice**” means a notice fulfilling the requirements of Clause 9 of this Policy.

“**Closing**” has the meaning given in the [Purchase Agreement].

“**Closing No Claims Declaration**” means the no claims declaration (in substantially the form attached hereto as Appendix 4) executed and submitted to the Insurer in connection with the underwriting of this Policy with respect to the Insured Closing Warranties.

“**Closing**” has the meaning given in the [Purchase Agreement].

“**Closing Date**” has the meaning given in the [Purchase Agreement].

“**Data Room**” has the meaning given in the [Purchase Agreement].

“**Defence Costs**” means those reasonable costs, expenses and fees incurred by or on behalf of the Insured [or the Target Group][Buyer Group]<sup>1</sup> in the investigation, negotiation, settlement, defence or appeal of a Third Party Claim which are consented to by the Insurer in writing (such consent not to be unreasonably withheld or delayed) prior to the same being so incurred; provided that if the written consent of the Insurer cannot reasonably be obtained prior to any such costs, expenses and fees being so incurred, the Insurer shall give retrospective consent to any such fees up to the amount of INR 10,50,000.

“**De Minimis**” means the amount set out in Item 10 of the Schedule.

“**Disclosure Letter**” has the meaning given in the [Purchase Agreement].

“**Due Diligence Materials**” has the meaning given in Appendix6.

[“**Effective Date**”][“**Commencement Date**”] means the commencement date of this Policy as set out in Item ‘f’ of the Schedule.

[“**Excess**”][**Retention**] **Amount**” means the amount set out in Item 11 of the Schedule.

[“**Excess Policies**” means any insurance policies or programmes of insurance policies which is or are expressly written only as excess insurance to this Policy and the Limit of Liability.]

“**Excluded Limitations**” means [Sections][clauses][paragraphs] [##], [##] and [##] of the [Purchase Agreement] which shall be disregarded for the purposes of this Policy.

[“**Existing Policies**” has the meaning set out in Appendix7.]

“**Expense Agreement**” means the [expense] agreement dated [\_] and made between the Insured and the Insurer (including any appendices, exhibits, schedules, or other documents attached to such agreement), an executed copy of which is attached to this Policy as Appendix8, as such agreement (including any such appendices, exhibits, schedules, or other documents) may be amended, modified, supplemented or otherwise changed in accordance with its terms from time to time.

[“**Expiry Date**” means, with respect to an applicable Insured Warranty, the final day of the relevant period set out in Item 9 of the Schedule.]

“**Fairly Disclosed**” has the meaning given in the [Purchase Agreement].

**OR**

“**Fairly Disclosed**” means [any event, fact, matter or circumstance] disclosed with sufficient detail to enable the [Insured][a reasonable buyer] and/or its professional advisors, acting reasonably, to [identify

the nature and scope] **OR** [to assess the impact on the Target] of the event, fact, matter or circumstance disclosed.

“**Fundamental Warranties**” has the meaning set out in Item 9(a) of the Schedule.

“**General Warranties**” has the meaning set out in Item 9(b) of the Schedule.

“**Group**” and “**Group Company**” [has the meaning given in the Purchase Agreement].

**OR**

“**Group**” means, in relation to any entity, any entity that, directly or indirectly and by reason of ownership or management controls or is controlled by or is under common control with that entity and “**Group Company**” shall be construed accordingly.

“**Insured**” means the person identified in Item 1 of the Schedule.

“**Insured Closing Warranties**” means the warranties set out in [Section][clause][paragraph][Schedule] [###] of the [Purchase Agreement] and referred to in the Warranty Spreadsheet as “Closing Covered”, “Closing Partial Cover” or “Closing As Amended”, in each case, [to the extent covered by this Policy][subject to the terms, conditions and limitations of this Policy] which given at Closing.

“**Insured Signing Warranties**” means the Fundamental Warranties, the Tax Warranties and the General Warranties referred to in the Warranty Spreadsheet as “Covered”, “Partial Cover” or “Covered As Amended”, in each case, [to the extent covered by this Policy][subject to the terms, conditions and limitations of this Policy] which are given at Signing.

“**Insured Warranties**” means the Insured Signing Warranties and the Insured Closing Warranties.

“**Insurer**” means HDFC ERGO General Insurance Company Limited.

“**Limit of Liability**” means the amount set out in Item 11 of the Schedule.

[“**Long-Stop Date**” has the meaning given in the [Purchase Agreement].]

“**Loss**” has the meaning set out in Clause 0 of this Policy.

“**Party**” means a party to this Policy.

“**Policy**” means this insurance policy including the Schedule, these Terms and Conditions and the Appendices hereto.

“**Policy Period**” means, with respect to an applicable Insured Warranty, the relevant period set out in Item 9 of the Schedule.

“**Pollutants**” means any material, organism or substance which alone or in combination with others is capable of (i) causing harm to the environment, (ii) exhibiting any characteristic hazardous to the environment or (iii) having an adverse impact on the environment, including solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals and waste materials, air emissions, odour, waste water, oil, oil products, infectious or medical waste, asbestos, asbestos products or products containing asbestos, lead-based paint, polychlorinated biphenyls and any noise.

“**Pollution**” means (i) any actual, alleged or threatened exposure to, or generation, storage, transportation, controlled use, discharge, emission, release, dispersal, escape, spill, mis-use treatment, removal or disposal of, any Pollutants; or (ii) any law, regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any Pollutants, or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

“**Premium**” means the premium as set out in Item 13 of the Schedule.

“**Purchase Agreement**” means the [sale and purchase][###] agreement identified in Item 6 of the Schedule (including any appendices, exhibits, schedules, or other documents attached to such agreement), an executed copy of which is attached to this Policy as Appendix [9], as such agreement (including any such appendices, exhibits, schedules, or other documents) may be amended, modified, supplemented or otherwise changed in accordance with the terms of this Policy from time to time.

“**Purchase Price**” has the meaning given in the [Purchase Agreement].

“**Schedule**” means, collectively, those items set out or identified as Item 1 to Item 14 on the pages identified as “Schedule.”

“**Secondary Tax Liability**” means any tax liability which is primarily the liability of a party other than [the Target][a member of the Target Group], whether as a result of an election or otherwise, or which arises by virtue of [the Target][a member of the Target Group] being a member of a tax group or ceasing to be a member of a tax group, but which is not referable to supplies, income or profits made by [the Target][a member of the Target Group].

“**Seller[s]**” has the meaning given in the [Purchase Agreement].

“**Signing Date**” has the meaning given in the [Purchase Agreement].

“**Signing No Claims Declaration**” means the no claims declaration (in substantially the form attached hereto as Appendix 3) executed and submitted to the Insurer in connection with the underwriting of this Policy with respect to the Insured Signing Warranties.

“**Target**” has the meaning given in the [Purchase Agreement].

“**Target Group**” has the meaning given in the [Purchase Agreement].

“**Tax**” or “**Taxation**” has the meaning given in the [Purchase Agreement].

[“**Tax [Covenant][Deed]**” has the meaning given in the [Purchase Agreement].]

“**Tax Warranties**” has the meaning set forth in Item 7(c) of the Schedule.

“**Third Party Claim**” means any written demand, claim, [investigation (other than investigations, inspections and audits carried out in the ordinary course),] civil proceeding or legal action brought or made against the [Target Group][Buyer Group] or the Insured by any person (other than a Group Company of the Insured, the Target Group or the Insurer) (i) the making of which shows that a circumstance or event has occurred which amounts to a Breach or (ii) containing any allegation which, if substantiated, would constitute a circumstance or event which amounts to a Breach, in each case, in respect of which the resulting liability would constitute Loss.

“**Warranty Spreadsheet**” means the warranty spreadsheet attached to this Policy as Appendix 1.

11.2 In this Policy:

this Policy shall be deemed to include the Schedule and all of the Appendices;

the Schedule is a summary of the cover provided by this Policy. If there is any inconsistency between the terms, conditions, exclusions and

limitations of the Policy and the Schedule, the terms, conditions, exclusions and limitations of this Policy shall prevail;

all capitalised terms used but not defined in this Policy shall have the respective meanings given to them in the [Purchase Agreement];

the headings of this Policy are for convenience only and form no part of the interpretation of the terms and conditions of this Policy;

references in this Policy to the Schedule, a clause or an Appendix shall mean the Schedule, a clause or an Appendix of or to this Policy, unless otherwise stated;

words importing the singular include the plural and vice versa, as required in the context of the sentence using such word, and words importing a gender include every gender and references to persons means natural or legal persons including companies, corporations, partnerships, trusts, unincorporated associations and other entities;

the word "including" or similar expression in this Policy shall be deemed to mean "including without limitation";

the words and phrases "other", "including" and "in particular" or similar words shall not restrict the generality of any preceding words or be construed as being limited to the same class, acts, things or matters as the preceding words where a wider construction is possible;

all references to legislation or regulations include amendments to, modifications, consolidations or re-enactments of such legislation or regulations [but exclude any amendment, modification, consolidation or re-enactment after the date of this Agreement to the extent they make any party's obligations more onerous or otherwise adversely affect the rights of any party], and any reference to legislation or statutes include references to the regulations promulgated there under. [This Policy shall be interpreted in accordance with legislation in force as at the date of this Policy.];

this Policy is a joint draft of the Parties and any rule of interpretation interpreting agreements against a party primarily responsible for drafting the agreement shall not be applicable to this Policy; and

## 2. Conditions Precedent

- 2.1 The Insurer's obligations under this Policy shall be conditional upon the following conditions precedent ("**Conditions Precedent**") being satisfied or waived in writing by the Insurer:
- Closing occurring in accordance with [clause/Section] [ ] of the [Purchase Agreement], without any waiver of, or amendment to, the parties' obligations in the Purchase Agreement [(other than any waivers or amendments which are wholly immaterial)], unless the Insurer has given its prior written consent to such waiver or amendment ("**Closing Condition**");
  - the payment of the Premium to the Insurer by the Insured shall be received prior to Commencement of risk (As per provisions of Section 64VB of the Insurance Act, 1938)
  - the delivery to the Insurer of a true and accurate PDF copy of the Signing No Claims Declaration [in a form reasonably acceptable to the Insurer] within [ten (10)] Business Days from the Effective Date;
  - the delivery to the Insurer of a set of USBs, CD-ROMs or DVDs containing digital copies of the entire contents of the Data Room as of the Effective Date within twenty (20) Business Days of the Effective Date; and
- 2.2 If the Closing Condition is not met [by [the Long-Stop Date]] or the Purchase Agreement is terminated each of the Insurer and the Insured shall be entitled to terminate and render void from the Effective Date of this Policy by written notice to the other Party, in which case the Insurer shall have no liability under this Policy in respect of any Loss or otherwise [and the Insured shall pay to the Insurer such amounts to which the Insurer is entitled under the Expense Agreement][and the Insurer shall refund any Premium paid by the Insured within thirty (30)

Business Days' of the date of termination less any amounts to which the Insurer is entitled under the Expense Agreement].

- 2.3 If the Closing Condition is met but one or more of the other Conditions Precedent is not met, the Insurer shall be entitled to terminate (upon thirty (30) Business Days' prior written notice and with opportunity to cure) and render void from the Effective Date this Policy by written notice to the Insured, in which case the Insurer shall have no liability under this Policy in respect of any Loss or otherwise, and whereupon:
- if the Premium has been paid to the Insurer by the Insured, the Insurer shall refund 90% of the Premium to the Insured within thirty (30) Business Days' of the date of termination but shall be entitled to retain 10% of the Premium for its own account; and
- if the Premium has not been paid to the Insurer, the Insured shall pay to the Insurer 10% of the Premium within thirty (30) Business Days' of the date of termination, together with, in each case, any amounts to which the Insurer is entitled under the Expense Agreement.
- 2.4 Subject to Clause 2, the Insurer's obligations under this Policy with respect to a Loss arising out of the Insured Closing Warranties (in whole or in part) shall be conditional upon delivery to the Insurer of a true and accurate PDF copy of the Closing No Claims Declaration [in a form reasonably acceptable to the Insurer] within thirty (30) Business Days of the Closing Date].

## 3. Insuring Agreement

- 3.1 Subject to all of the terms, conditions, limitations and exclusions of this Policy, the Insurer shall, in excess of the Retention Amount and subject to the Limit of Liability, indemnify the Insured for, or pay on the Insured's behalf, any Loss.
- 3.2 This is a *claims made* policy of insurance. The Insurer shall not be liable for any Loss unless such Loss is discovered and reported to the Insurer in accordance with Clause 9 on or prior to the relevant Expiry Date with respect to the Insured Warranty to which the Loss relates.

## 4. Premium

- 4.1 The Insured shall pay the Premium to the Insurer by way of electronic transfer of funds Commencement of risk (As per provisions of Section 64VB of the Insurance Act, 1938)
- 4.2 Subject to Clause 0 of this Policy, the Premium is non-refundable and shall be fully earned at the Effective Date.

## 5. Loss, De Minimis, Retention Amount and Limit of Liability

- 5.1 For the purposes of this Policy, "**Loss**" shall mean, subject to the other provisions of this Policy, the amount of monetary damages that the Insured is contractually entitled to claim (or would be entitled to claim by disregarding the Excluded Limitations) against the Seller[s] pursuant to the [Purchase Agreement] as the result of a Breach, plus Defence Costs; provided that "Loss" shall not include consequential, special or indirect loss or damage [except if reasonably foreseeable], or punitive, aggravated, multiple or exemplary damages.
- 5.2 The Insurer shall have no liability under this Policy in respect of a Loss unless the amount of that Loss exceeds the De Minimis, in which case the whole amount shall be considered a Loss and not only the amount in excess of the De Minimis.
- 5.3 Any amount of Loss that does not exceed the De Minimis shall be disregarded, provided that this limitation shall not apply to a series of connected Losses that arise from substantially the same set of facts, matters or circumstances, where each Loss individually is less than the De Minimis but the aggregate of such Losses exceeds the De Minimis.

**Warranty and Indemnity Insurance Policy**

- 5.4 The Insurer shall only be liable for Loss in excess of the Retention Amount. The Retention Amount shall only be eroded by Loss for which the Insurer would be liable under this Policy but for the Retention Amount. The Retention Amount is a single, aggregate amount, regardless of the number of distinct Breaches and/or Losses.
- 5.5 Subject to Clause 16.4, the maximum liability of the Insurer for all [Loss][payments under this Policy] shall be the Limit of Liability set out in Item 12 of the Schedule.
- 5.6 Any Loss shall be calculated net of any amounts actually recovered by the Insured or the [Target Group][Buyer Group] or other benefits actually accrued to the Insured or the [Target Group][Buyer Group] (including under any other valid insurance policies) and that reduce the amount of Loss actually suffered by the Insured or the [Target Group][Buyer Group] in direct consequence of the matter which gives rise to such Breach and/or Loss, including any amount of tax relief actually obtained by the Insured or the [Target Group][Buyer Group] (provided that the obtaining of such tax relief shall only be treated as an amount which has been actually recovered as and when the obtaining of such relief has resulted in a reduction in a cash liability to Tax which would have otherwise been paid) and any amount by which any tax (for which the Insured or the [Target Group][Buyer Group] would otherwise be liable) is reduced or extinguished, to the extent that such tax relief or reduction or extinguishment of tax has not already been taken into account so as to reduce any amount that the Insured is entitled to claim against any Seller pursuant to the Purchase Agreement.

**6. Matters revealed by the No Claims Declarations**

- 6.1 If the Signing No Claims Declaration identifies Actual Knowledge of any Breach or Loss[, or of any fact, matter or circumstance that [could][is] reasonably [to] be expected to give rise to any Breach or Loss, in each case,] of any Insured Signing Warranties the Insurer shall not be entitled to terminate this Policy and, subject to the remaining Conditions Precedent set out in Clause 2 being satisfied, the Policy will continue in full force and effect but the Policy will not cover any Loss based upon, arising from [or in consequence of] **OR** [or in any way connected with] or to the extent increased by such Breach or Loss[, or of any fact, matter or circumstance that [could][is] reasonably [to] be expected to give rise to any Breach or Loss]
- 6.2 If the Closing No Claims Declaration identifies Actual Knowledge of any Breach or Loss[, or of any fact, matter or circumstance that [could][is] reasonably [to] be expected to give rise to any Breach or Loss, in each case,] of any Insured Closing Warranties the Insurer shall not be entitled to terminate this Policy and, subject to the remaining Conditions Precedent set out in Clause 2 being satisfied, the Policy will continue in full force and effect but the Policy will not cover any Loss based upon, arising from [or in consequence of] **OR** [or in any way connected with] or to the extent increased by such Breach or Loss[, or of any fact, matter or circumstance that [could][is] reasonably [to] be expected to give rise to any Breach or Loss].
- 6.3 No matter disclosed in the Closing No Claims Declaration [or Actual Knowledge obtained, in each case,] after the Effective Date shall affect the Insured's rights under this Policy in respect of the Insured Signing Warranties.

**7. Exclusions**

The Insurer shall not be liable for Loss based upon, arising from [or in consequence of] **OR**[or in any way connected with] or to the extent increased by any of the matters referred to in Appendix 2(*Exclusions*), provided that if only part of any Loss is excluded under this Clause 7 and Appendix 2 (*Exclusions*) the Insurer shall remain liable for that portion of any Loss that is not so excluded.

**8. Gross-up**

- 8.1 All payments of Loss made by the Insurer under this Policy shall be paid free and clear of all deductions or withholdings, save only as may be required by any applicable law, regulation or regulatory requirement law.
- 8.2 If, at any time, any applicable law, regulation or regulatory requirement requires the Insurer to make any deduction or withholding from any payments of Loss under this Policy, the amount so due shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Insured receives, on the due date for such payment, a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made, provided that this Clause 8.1 shall not apply if the requirement to make such deduction or withholding would not have arisen but for a voluntary act of the Insured.
- 8.3 If the Insured is required to make any deduction or withholding as referred to in Clause 8.1, the Insured shall:
- (a) make such deduction or withholding; and
  - (b) pay the full amount deducted or withheld to the relevant taxation authority in accordance with applicable law, regulation or regulatory requirement.
- 8.4 [If, at any time after any increased payment is made by the Insured as a consequence of the application of Clause 8.2, the Insured receives or is granted a credit against or remission from any taxation payable by it which it would not otherwise have received or been granted, the Insured shall, to the extent that it can do so without prejudicing the retention of the amount of such credit or remission, reimburse the Insurer with such amount as shall leave the payee (after such reimbursement) in no worse a position than it would have been in had the circumstances giving rise to the increased payment not in fact arisen. Such reimbursement shall be made not later than thirty(30) Business Days after the Insured receives or is granted such credit].
- 8.5 If any amount of Loss paid or due to the Insured hereunder is subject to taxation, or would (but for the availability of any relief) be subject to taxation, in the hands of the Insured, the Insurer shall increase the amount of the payment of Loss (subject always to the Limit of Liability) to the extent necessary to ensure that the net amount received by the Insured (after taking into account such deduction or withholding or, as the case may be, such taxation) is equal to the amount that it would have received had the payment not been subject to any such taxation, provided that the Insured shall provide the Insurer with copies of any legal or accounting advice with respect to any such deduction or withholding and shall use its reasonable endeavours to mitigate any such liability.<sup>2</sup>

**9. Claims Notification**

- 9.1 In the event loss of an insured event the company must be informed immediately -

Our contact details are as follows:  
 Relationship officer / channel partner  
 Call Centre - 022-6234 6234  
 E-mail at care@hdfcergo.com

HDFC ERGO General Insurance Co. Ltd.  
 Corporate Claims Department  
 6th Floor, Leela Business Park,  
 Andheri Kurla Road, Andheri(E), Mumbai – 400059  
 Call Centre - 022-6234 6234



Warranty and Indemnity Insurance Policy

Subject to the Insured's obligations with respect to the subrogation right of the Insurer to the extent set forth in Clause 18, the Insured shall not be required to proceed against the Seller[s] or any other person for recovery under the Purchase Agreement prior to bringing a claim under this Policy for any Loss.

9.2 To bring a claim under this Policy for any Loss the Insured shall provide a written notice to the Insurer in accordance with this Clause 9 (any such written notice fulfilling the requirements of this Clause 9, a "Claim Notice") as soon as reasonably practicable (and in any event within the applicable Policy Period relating to the relevant Breach) after a director or executive officer of the Insured (or person with functionally equivalent position) or a Buyer Team Member becomes aware of any:

(a) Breach or any fact, matter or circumstance that is reasonably likely to give rise to a Breach;

Third Party Claim;

Loss; or Material change or development with respect to any previous Claim Notice, including in relation to any changes in the facts, matters circumstances and issues underlying any such Claim Notice.

9.3 A Claim Notice shall:

(a) contain a reasonably full description of the facts, matters, circumstances and issues leading up to the submission of the Claim Notice, including a reference to the relevant Insured Warranties; and

(b) attach any supporting or associated documents, all to the extent reasonably practicable under the circumstances.

9.4 To the extent a valid Claim Notice is provided to the Insurer during the Policy Period, any subsequent Loss arising out of the facts or circumstances of such Breach or Third-Party Claim detailed in such Claim Notice shall be deemed reported at the time such Claim Notice was received by the Insurer.

9.5 Subject to the relevant Claim Notice being provided to the Insurer within the applicable Policy Period relating to the relevant Breach or Third Party Claim, a delay in delivering notice to the Insurer will not affect the Insurer's obligations hereunder unless, and to the extent, such delay actually prejudices the Insurer's interests.

9.6 After a Claim Notice is submitted, the Insured shall provide the Insurer with copies of any material written correspondence between, and any pleading or other material document delivered or filed by or on behalf of, the Insured, its representatives, and any other person or entity relating to the Breach, Third Party Claim or Loss referred to in such Claim Notice; provided, however, that nothing in this clause shall require the Insured to take any action that is in contravention of applicable law or regulation or the provisions of the Purchase Agreement, or that would reasonably be expected to result in a waiver or deemed waiver of any applicable legal privilege.

9.7 A Claim Notice shall be submitted to the Insurer by the Insured regardless of whether the matters detailed in such Claim Notice will, or are reasonably likely to, give rise to Loss that is within the Retention Amount.

9.8 As soon as reasonably practicable after the Insurer receives a Claim Notice, the Insurer shall respond by acknowledging or denying cover under this Policy for the Loss claimed for or, if the Insurer is not in a position to determine whether (or the extent to which) the Loss is covered by this Policy, by requesting such additional information as it may reasonably require from the Insured.

9.9 The Insured shall:

(a) not settle, compromise or discharge any Breach or Third-Party Claim without prior consultation with and the prior written consent of the Insurer (such consent not to be unreasonably withheld or delayed);

to the extent reasonably practicable, provide the Insurer with copies of all correspondence, pleadings and other documents or information received or made by the Insured and to extent practicable afford the Insurer sufficient time in which to review and comment on such documentation;

permit the Insurer to examine and take extracts from the books, records, data and other information of the Insured and the [Target Group][Buyer's Group] relevant to the Breach or Third Party Claim and grant the Insurer access to the Insured's and the [Target Group's][Buyer's Group's] representatives for interviews and witness statements during normal business hours and in reasonable locations;

keep the Insurer informed of proposed meetings with [the Seller or] any [other] relevant third parties in connection with any Breach or Third Party Claim and allow the Insurer to attend such meetings, and, where the Insurer so requests, provide a detailed written description to the Insurer of the outcome of the meetings and discussions to which any such observer was not present;

conduct all negotiations and proceedings in respect of any Breach or Third Party Claim with advisers consented to by the Insurer in writing (such consent not to be unreasonably withheld or delayed) and take such action as the Insurer may reasonably request to contest, mitigate, avoid, resist, compromise or otherwise defend such Breach or Third Party Claim; and

provide the Insurer with such other information and assistance in connection with any Breach or Loss as the Insurer may reasonably request.

9.10 Any Loss paid by the Insurer pursuant to this Policy shall be paid to the Insured as representative of any other person or entity as the Insured instructs the Insurer in writing.

9.11 The Insurer shall have no duty to defend any Third-Party Claim.

9.12 The Insurer, at its sole cost and expense, shall at all times have the right, but not the duty, to associate with the Insured in the investigation, defence, negotiation and settlement of any Third-Party Claim or any matter that may implicate coverage under this Policy.

9.13 With respect to any Third Party Claim, in addition to applicable Defence Costs, only Losses resulting from settlements, awards or stipulated judgments consented to by the Insurer in writing or resulting from an order of a governmental or regulatory agency or other similar entity, a final judgment by a court of competent jurisdiction or an award from an arbitrator, arbitral panel or similar adjudicative body, shall deplete the Retention Amount or be recoverable as Loss.

9.14 If the Insured receives a written offer to settle, compromise, discharge or otherwise resolve a Breach or Third Party Claim from or on behalf of the relevant third party claimant (including the Seller) ("Settlement"), then the Insured shall promptly (and in any event [within ten (10) Business Days][in sufficient time to allow the Insurer a reasonable opportunity to consider the Settlement ahead of any deadline by which the Settlement must be accepted or rejected]) send a copy of such Settlement to the Insurer for its review and consideration. If the Insured elects not to accept or consent to any such Settlement which, after consultation with the Insurer, is acceptable to the Insurer, acting reasonably, then (subject to the other terms, conditions, limitations and exclusions of this Policy) the Insurer's liability under this Policy with respect to such Breach or Third Party Claim shall be limited to the amount of Loss reflected by such Settlement.

**10. Defence Costs**

- 10.1 Defence Costs shall be part of, and not in addition to, the Limit of Liability stated in Item 12 of the Schedule and such Defence Costs shall reduce the Limit of Liability. The Insurer shall not be obligated to reimburse the Insured for any unreasonable Defence Costs.
- 10.2 After the Retention Amount is exhausted, and subject to the De Minimis, if the Insured requests in writing, the Insurer shall, within sixty (60) Business Days of its receipt of an itemised invoice, reimburse the Insured for Defence Costs incurred as detailed in such invoice.
- 10.3 Defence Costs shall not include any overheads or any other internal expenses of the Insured or the [Target][Target Group][Buyer Group] (including any directors, officers, employees or consultant's salaries, costs or expenses).

**11. Delivery of Notice**

- 11.1 All Claims Notices and any other notice or communication under this Policy shall be made in writing and signed on behalf of the Party giving it. Any such Claims Notice or notice shall be served either by hand, by fax, by email or by post and shall be deemed served:
  - (a) if by hand, when delivered;
  - if by fax, at the time of transmission (provided a successful transmission confirmation is obtained and a subsequent copy is sent by registered post within 48 hours of the fax);
  - if by e-mail, at the time of transmission (provided no delivery failure or equivalent message is received); and
  - if by registered post, 48 hours after posting.
- 11.2 Each such notice or communication to the Insured shall be given in writing to the Insured at the address set forth in Item 1 of the Schedule and each such notice or communication to the Insurer concerning shall be given in writing to the Insurer at the address set forth in clause 9.1 of the policy wordings above.
- 11.3 For purposes of convenience only, and not as a condition precedent to any rights under this Policy, a copy of any such notice or other communication shall be sent simultaneously to the Insurance Broker at its address set forth in Item 3 of the Schedule.

**12. Covenants of the Insured**

The Insured shall not, and shall use reasonable efforts to cause its Group Companies (including the [Target][Target Group]) not to:

- (a) amend, supplement, terminate (in whole or in part) or rescind the Purchase Agreement or any agreements or documents referred to or reasonably contemplated there under;
  - give any consent or waiver under the Purchase Agreement or any agreements or documents referred to or reasonably contemplated there under;
  - grant any authority to take any of the actions in Clauses 12(a) or (b) or enter into any agreement or arrangement that would have an equivalent effect;

[others?]

without the prior written consent of the Insurer (such consent not to be unreasonably withheld, conditioned or delayed), in each case, if such amendment, supplement, termination, rescission, agreement, arrangement, consent, waiver or grant could adversely affect the Insurer or its rights or liability under this Policy.

**13. Cooperation**

The Insured shall and shall use reasonable efforts to cause its Group Companies (including the [Target][Target Group]) to reasonably cooperate with the Insurer and, in a reasonably timely manner, provide Insurer with as much detailed information as reasonably practicable in connection with any Claims Notice or other matter relating to this Policy. Such cooperation shall include permitting the Insurer to examine, photocopy and take extracts from the books, records, data, files and information of the Insured and its Group Companies (including the [Target][Target Group]) and access to the Insured and its personnel for interviews during normal business hours and at reasonable locations, in each such case, upon reasonable advance notice.

**14. Diligence Records**

The Insured shall and shall use reasonable efforts to cause its Group Companies (including the [Target][Target Group]) to maintain all material documentation in its possession relating to the due diligence conducted in connection with the Purchase Agreement and the transactions contemplated thereby until the later of sixty (60) Business Days after:

- (a) the Expiry Date; or

the final resolution of all claims or disputes relating to this Policy.

**15. Mitigation**

- 15.1 The Insured shall and shall use reasonable efforts to cause its Group Companies (including the [Target][Target Group]) to act at all times as if uninsured and take all action which is reasonably necessary or advisable to mitigate any Loss or potential Loss which shall include using reasonable efforts to recover under any Existing Policy or other insurance policy or policies pursuant to which any Loss may be recovered.
- 15.2 Notwithstanding anything in this Clause 15, the Insured shall be under no obligation to recover, or attempt to recover, Loss from the Sellers.

**16. Reimbursements**

- 16.1 The Insured shall reimburse to the Insurer any amount paid by the Insurer in connection with this Policy that is agreed or that an arbitrator or court determines did not constitute Loss or should not otherwise have been paid under this Policy within twenty (20) Business Days of such award or judgement being given.
- 16.2 The Insured shall reimburse to the Insurer any amount paid by the Insurer in connection with this Policy that the Insured or its Group Companies (including the [Target][Target Group]) subsequently recover (directly or indirectly) from any insurance (excluding, for the avoidance of doubt, under the Policy) or other source that related to the same underlying facts, matters or circumstances and that reduces the amount of Loss actually suffered.
- 16.3 Any reimbursement made pursuant to Clause 16.2 shall be paid promptly but in any event within twenty (20) Business Days of such recovery, and shall be applied in the following order:
  - (a) firstly, to reimburse the Insured and the Insurer for any reasonable costs, charges or expenses actually incurred (including legal expenses

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and applicable VAT but excluding any overheads, staff costs or any other internal expenses of the Insured or the [Target Group][Buyer Group] incurred in making such recovery) and, solely in respect of the Insured or the [Target Group][Buyer Group], any Tax incurred on any such amount actually recovered;

second, to reimburse the Insured for any Loss suffered in excess of the Limit of Liability of the Excess Policies;

[third, to reimburse other insurers in excess of this Policy in the Programme of Insurance for any payments made under their policies (which shall be in reverse order corresponding to their respective excess positions);]

fourth, to reimburse the Insurer for any amount paid by the Insurer in connection with this Policy; and

finally, to reimburse the Insured for any Loss that is less than the Retention Amount.

16.4 Upon payment of any such reimbursement to the Insurer the unexhausted corresponding Limit of Liability and Retention Amount shall be restored accordingly.

**17. Other Insurance**

17.1 The cover provided under this Policy for Loss is excess over any other applicable insurance cover (including the Existing Policies), unless such other insurance is written as specific excess insurance over the Limit of Liability provided by this Policy.

17.2 Notwithstanding Clause 17.1, whilst the Insured shall use reasonable endeavours to pursue recourse for Loss under any other applicable insurance cover, the inability, through no fault of the Insured, to secure recourse under any other applicable insurance cover shall not preclude the ability of the Insured to claim for Loss under this Policy.

17.3 The Insured shall procure to the extent reasonably possible that the [Target Group][Buyer Group] maintains the Existing Policies and any other such insurance cover for the operations of its [and their] business[es] that it had maintained in the three years preceding Closing. The Insurer shall not be liable in respect of any Loss to the extent that it would be recoverable under such insurance policies.

**18. Subrogation and Preservation of Rights**

18.1 The Insured shall and shall use reasonable efforts to cause its Group Companies (including the [Target][Target Group]) to do all acts or things (including omissions) reasonable or necessary to preserve all rights against any other person in respect of any Loss and to preserve the Insurer's subrogation rights with respect thereto.

18.2 If the Insurer makes any payment to or on behalf of the Insured under this Policy then, subject to the other provisions of this Clause 18:

(a) the Insurer shall be subrogated to (or may require the Insured to assign to the Insurer) the Insured's rights of recovery against any person (other than any member of the [Target Group][Buyer Group]) arising out of or relating to such payment; and

the Insurer may require the Insured to procure that the Insurer is subrogated to (or that the Insurer has assigned to it) the rights of recovery of the [Target Group][Buyer Group] against any person (other than any member of the [Target Group][Buyer Group]) arising out of or relating to such payment.

18.3 The Insurer shall only be entitled to subrogate against the Seller if the Loss or payment under the Policy arose in whole or part out of that

Seller's fraud, fraudulent misrepresentation or wilful misconduct or the fraud, fraudulent misrepresentation or wilful misconduct of any representative of the Seller.

18.4 The Insured shall and shall use reasonable efforts to cause its Group Companies (including the [Target][Target Group]) to execute all documentation required and take all reasonable steps to secure and further any subrogation or assignment rights under this Clause 18.

18.5 In no event shall the Insured waive any rights that could affect any such subrogation or assignment, provided that this shall not require the Insured to breach any legal obligation (including any such obligation which may arise pursuant to any rule or dispute resolution procedure, or any obligation which may arise under the [Purchase Agreement]).

18.6 Any amounts recovered by the Insurer in connection with the exercise of its subrogation or assignment rights shall be applied first to reimburse the Insurer for any Loss paid by the Insurer pursuant to this Policy and for any costs or expenses incurred in connection with such recovery and then the remainder of such recovered amounts shall be paid to the Insured.

18.7 The Insurer's obligations with respect to any Loss under this Policy shall be reduced to the extent that the Insurer is prejudiced with respect to any such Loss by any breach of Clauses 12 to 15 and 17 to 18.

**19. Cancellation and Renewal**

19.1 Subject to Clauses 0 and 19.1, this Policy is non-cancellable.

19.2 The Insurer may cancel and render void from the Effective Date this Policy upon non receipt of payment as per clause 4.1 above.

19.3 This Policy is non-renewable.

**20. Acknowledgements**

20.1 By acceptance of this Policy, the Insured acknowledges that:

(a) the Insured was represented by competent and experienced legal counsel of its choice in connection with this Policy; and

(b) the Insured is purchasing the coverage described in the Policy with full knowledge and acceptance of its terms, conditions and exclusions without any reliance on any representation, warranty, advice or other statement by the Insurer or any of its representatives or advisors regarding any legal, tax or accounting implications or requirements of the coverage described in this Policy.

**21. Entire Agreement**

This Policy (including the Schedule and the Appendices) constitutes the entire agreement and understanding concerning the subject matter of this Policy and supersedes any prior written and prior and contemporaneous oral agreements, discussions or other communications entered into between the Insurer or its representatives, on the one hand, and the Insured or its representatives, on the other hand, concerning the subject matter of this Policy.

**22. Counterparts**

This Policy may be executed in any number of counterparts. Each of the executed counterparts, when exchanged or delivered, shall be deemed to be an original but, taken together, shall constitute one

agreement. This Policy shall not come into effect until it has been executed by the Insurer and the Insured.

### 23. Assignment

23.1 This Policy is issued for the benefit of the Insured and its successors (immediate or otherwise) and permitted assigns in accordance with this Clause 23.

23.2 The Insured may without the prior written consent of the Insurer:

- (a) assign any or all of its interest in the proceeds of this Policy to a Group Company of the Insured; and
- (b) assign any or all of its interest in the proceeds of this Policy to any bank(s) and/or holders of debt securities and/or financial institution(s) and/or any other person lending money or making other banking facilities available to any Group Company of the Insured in connection with the proposed transaction to which the [Purchase Agreement] relates,

provided that in the event of any such assignment the Insured shall deliver an assignment notice in the substance of the form set out in Appendix 5 as soon as reasonably practicable and in any event within twenty (20) Business Days.

23.3 Subject to Clause 23.2, the Insured may not assign any of its rights or interest nor transfer its obligations under this Policy without the prior written consent of the Insurer (such consent not to be unreasonably withheld or delayed).

23.4 The Insurer may assign any of its rights or interests or transfer its obligations under this Policy to another insurer that is a Group Company of the Insurer without consent provided that such other insurer's financial strength rating (Moody's or Standard & Poor's) is equal to or better than that of the Insurer at the time of such assignment.

### 24. Compliance with Applicable Trade and Economic Sanction Laws

24.1 The Insurer 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 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 or United States of America..

### 25. Third party rights

Save for the rights of the Target Group arising under Clauses 18.1 (a) and (b), which are for the benefit of and shall be enforceable by the Target Group, no term of this Policy is enforceable under the Contracts (Rights of Third Parties) Act Chapter 53B of Singapore by any person other than the Insured and the Insurer.

### 26. Currency & Valuations:

All Premiums, limits, Deductibles, Loss and other amounts under this Policy are expressed and payable in Indian Rupees (INR). If judgment is rendered, settlement is denominated or another element of Loss is stated in a currency other than Indian Rupees (INR), then payment under this policy shall be made in Indian Rupees (INR) at the cash rate of exchange published by the Reserve Bank of India, on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of Loss is due respectively.

### 27. Invalidity

If at any time any provision of this Policy shall be held to be illegal, void, invalid or unenforceable in whole or in part for any reason, then such provision shall (i) to the extent that it is illegal, void, invalid or unenforceable be given no effect and shall be deemed not to be included in this Policy and (ii) not affect or impair the legality, validity or enforceability of any other provision of this Policy. Each of the Insurer and the Insured shall use all reasonable endeavours to replace such provision with a valid and enforceable substitute provision which carries out, as closely as possible, the intentions of the Insurer and the Insured under this Policy.

### 28. Confidentiality

28.1 Each Party shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Policy which relates to the subject matter and provisions of this Policy.

28.2 A party may disclose information which would otherwise be confidential if and to the extent:

- (a) required by applicable law, regulation or regulatory requirement;
- (b) required by any regulatory authority or taxation authority to which the Party making the disclosure is subject, whether or not such requirement has the force of law;
- (c) disclosure is made to its auditors, reinsurers or Group Companies, provided that any such Group Company is first informed of the confidential nature of the information and such Group Company acts in accordance with the provisions of Clause 28.1 as if it were a party hereto;
- (d) the information has come into the public domain through no fault of that party; or
- (e) the other Party,

provided that any disclosure shall, so far as is practicable, be made only after consultation with the other Party.

### 29. Amendment and waiver

29.1 No purported alteration of this Policy shall be effective unless it is in the form of a written endorsement, refers to this Policy and is duly executed by each Party to this Policy.

29.2 No neglect, delay or indulgence by the Insurer in enforcing any provision of this Policy shall be construed as a waiver and no single or partial exercise of any rights or remedy of the Insurer under this Policy will affect or restrict the further exercise or enforcement of any such right or remedy.

### 30. Choice of Law

In the event that the Arbitration provisions in this policy shall be held to be invalid in whole or in part all disputes arising under out of or in connection with or in relation to this policy shall be subject to the exclusive jurisdiction of the Courts of India and the law applicable to the construction and interpretation of the policy and governing all such disputes shall in any event be the law of India

### 31. Dispute Resolution

31.1 **Arbitration** - As a condition precedent to any right of action hereunder, any dispute arising out of the interpretation, performance or breach of



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this policy, including the formation or validity thereof, shall be submitted for decision to a panel of three arbitrators. Notice requesting arbitration will be in writing and sent certified or registered mail, return receipt requested.

[Signature page of the Policy]

Each party shall choose one arbitrator and the two arbitrators shall, before instituting the hearing, choose an impartial third arbitrator who shall preside the hearing. If either party fails to appoint its arbitrator within thirty (30) days after being requested to do so

For and on behalf of  
**HDFC ERGO General Insurance Company Limited**

By the other party, the latter, after ten (10) days notice by certified or registered mail of its intention to do so, may appoint the second arbitrator.

\_\_\_\_\_  
Name Signature

If the two arbitrators are unable to agree upon a third arbitrator within thirty (30) days of their appointment, the arbitrators shall implement the appointment procedure according to the Arbitration Act of India to select the final arbitrator.

\_\_\_\_\_  
Title

All arbitrators shall have at least ten (10) years of insurance or reinsurance experience, be disinterested and active or former officers of insurance or reinsurance companies with knowledge about the lines of business at issue.

\_\_\_\_\_  
Date

Within thirty (30) days after notice of appointment of all arbitrators, the panel shall meet and determine timely periods for briefs, discovery procedure and schedules of hearings.

For and on behalf of  
**[Insured]**

\_\_\_\_\_  
Name Signature

The panel shall be relieved of all judicial formality and shall not be bound by the strict rules of procedure and evidence. Unless the panel agrees otherwise, arbitration shall take place in India, but the venue may be changed when deemed by the panel to be in the best interest of the arbitration proceeding. Insofar as the arbitration panel looks to the substantive law, it shall follow the laws of India. The decision of any two arbitrators when rendered in writing shall be final and binding. The panel is empowered to grant interim relief as it may deem appropriate.

\_\_\_\_\_  
Title

The panel shall interpret this policy as an honourable engagement rather than as merely a legal obligation and shall make its decision considering the custom and the practice of the applicable insurance and reinsurance business as promptly as possible following the termination of the hearings

\_\_\_\_\_  
Date

31.2 The place of any such arbitration proceedings shall be India, and the language of the arbitration shall be English.

**32. Fraud Warning**

This **policy** shall be voidable at the option of the **Company** in the event of mis-representation, mis-description or non-disclosure of any material particulars by the Proposer. Any person who, knowingly and with intent to defraud the insurance company or any other person, files a proposal for insurance containing any false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which will render the policy voidable at the sole discretion of the insurance company and result in a denial of insurance benefits

**IN WITNESS** of which the Insurer and the Insured have executed this Policy by their duly authorised representatives.