

COMPREHENSIVE GENERAL LIABILITY POLICY

(OCCURRENCE FORM)

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Company's Registration No. PB5179

COMPREHENSIVE GENERAL LIABILITY POLICY

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COMPREHENSIVE GENERAL LIABILITY POLICY

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the word "Company" refers to the insurer named in the policy schedule. The word "Insured" means any person or organization qualifying as an **Insured** under DEFINITIONS section of the policy.

Words and phrases that appear in bold face have the special meanings set forth in DEFINITIONS section of the policy. Words that appear in the singular include the plural and words that appear in the plural include the singular.

1 COVERAGE

1.1 Insuring Agreements

Subject to all the terms contained herein and endorsed hereon, the Company will pay to or on behalf of the **Insured Loss** which the **Insured** shall become legally liable to pay as damages in respect of **Personal Injury** or **Property Damage** occurring within the **Geographical Limits** during the **Policy Period** as a result of an **Occurrence** happening in connection with the **Insured Business** described in the policy schedule.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under LIMITS OF INSURANCE section of this policy or any endorsement which forms part of this policy.

This insurance applies only to damages for **Personal Injury** or **Property Damage**, which are determined in a suit on the merits taking place in the **Jurisdiction Limits**, or in a settlement to which the Company agrees.

2 EXCLUSIONS

This insurance does not apply to any:

2.1 Aircraft Products

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** or **Property Damage** arising out of or in connection with or related to **Insured's Products**, which is manufactured, designed or intended for use in any **Aircraft** and which control, monitor or in any way affect the flying capabilities of any **Aircraft**.

2.2 Asbestos

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** or **Property Damage** arising out of or in connection with or related to asbestos, asbestos products or use of any materials containing asbestos in whatever form or quantity.

2.3 Construction, Demolition, Alteration, Addition Works

Loss for which the **Insured** shall become legally liable to pay in respect of any liability arising out of or in connection with or related to any project involving the construction of, demolition of, alteration of and/or addition to any building, structure or infrastructure by or on behalf of the **Insured** where the total cost of the project is US\$200,000 or greater.

2.4 Contractual Liability

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** or **Property Damage** for which the **Insured** is obligated to pay by reason of the assumption, in a contract or agreement, of liability which would otherwise not attach. This exclusion does not apply to liability which would have been imposed by law in the absence of such contract or agreement.

2.5 Damage to Impaired Property

Property Damage to Impaired Property, arising out of or in connection with or related to:

- a) a defect, deficiency, inadequacy, or dangerous condition in **Insured's Products** or work performed by or on behalf of the **Insured** to meet the level of performance, quality, fitness, or durability warranted or represented by the **Insured**; or
- b) a delay or failure by the **Insured** or anyone acting on behalf of the **Insured** to perform a contract of agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **Insured's Products** or work performed by or on behalf of the **Insured** after **Insured's Products** or works has been put to its intended use.

2.6 Damage to Property

Property Damage or **Loss** for which the **Insured** shall become legally liable to pay in respect of **Property Damage** to:

- a) property the **Insured** owns, rents, or occupies;
- b) premises the **Insured** sells, gives away or abandons, if the **Property Damage** arises out of any part of those premises;
- c) property loaned to the **Insured**;
- d) personal property in the **Insured's** care, custody or control;
- e) property being loaded or unloaded by the **Insured** onto or from any **Aircraft, Watercraft** or **Licensed Motor Vehicle** if the **Property Damage** arises out of the loading or unloading;
- f) that particular part of any property on, at or with which the **Insured** or any contractors or subcontractors working directly or indirectly on the **Insured's** behalf are performing operations, if the **Property Damage** arises out of those operations;
- g) that particular part of any property that must be restored, repaired or replaced because the **Insured's** work was incorrectly performed on it;
- h) **Insured's Products.**

2.7 Employer's Liability

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** to an employee of the **Insured** or other person under contract of service or apprenticeship with the **Insured** arising out of and in the course of the employment of the employee by the **Insured** or out of such service or apprenticeship, as well as **Personal Injury** to the spouse, child, parent, brother or sister of that employee or other person as a consequence of such **Personal Injury** to that employee or other person. This exclusion applies whether the **Insured** may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the **Personal Injury**.

2.8 Employment Practices

Loss for which the **Insured** shall become legally liable to pay in respect of any liability relating to **Employment Practices**.

2.9 Expected or Intended Damage or Injury

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** or **Property Damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **Personal Injury** resulting from the use of reasonable force to protect any persons or property.

2.10 Failure to Perform, Efficacy

Loss for which the **Insured** shall become legally liable to pay in respect of any liability arising out of or in connection with or related to the failure of **Insured's Products** or part thereof to perform its intended function or meet the performance requirements.

2.11 Fines, Penalties, Punitive Damages, Exemplary Damages etc.

Fines, penalties (whether civil, criminal or contractual), punitive damages, exemplary damages, treble damages or any other damages resulting from the multiplication of, or in excess of compensatory damages.

2.12 Human T-Cell Lymphotropic Virus, Lymphadenopathy Associated Virus, etc

Loss for which the **Insured** shall become legally liable to pay in respect of any liability arising out of or in connection with or related to any condition directly or indirectly caused by or associated with Human T-Cell Lymphotropic Virus type III (HTLV III) or Lymphadenopathy Associated Virus (LAV) or the mutants derivatives or variations thereof or any way related to Acquired Immune Deficiency Syndrome or any syndrome or condition of a similar kind howsoever it maybe named.

2.13 Infringement of Patent, Copyright, Trademark, Trade Dress etc

Loss for which the **Insured** shall become legally liable to pay in respect of any liability arising out of or in connection with or related to infringement of any patent, copyright, trademark, trade dress, trade name, service mark, misappropriation of a trade secret or other intellectual property.

2.14 Nuclear, Radioactive Contamination

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** or **Property Damage** directly or indirectly caused by, contributed to by, or arising out of or in connection with or related to:

- a) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or any nuclear component thereof;
- c) any nuclear reactor, nuclear power station or plant, premises or facilities whatsoever related to or concerned with the production of nuclear energy or the production or storage or handling of nuclear fuel or nuclear waste;

- d) any other premises or facilities eligible for insurance by any local nuclear pool and/or association

2.15 Offshore

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** or **Property Damage** arising out of or in connection with or related to operational risks of **Offshore Operations**.

2.16 Ownership, Maintenance, Use, Operation etc of Watercraft, Aircraft

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** or **Property Damage** arising out of or in connection with or related to the ownership, maintenance, use, operation, loading, unloading or entrustment to others of any **Watercraft** exceeding 8 meters in length or any **Aircraft** owned or operated by or loaned or rented to any **Insured**.

2.17 Pathogenic Organisms

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** or **Property Damage** arising out of or in connection with or related to any **Pathogenic Organisms**, regardless of any other cause or event that contributed concurrently or in any sequence to that injury or damage.

2.18 Pollution

Loss for which the **Insured** shall become legally liable to pay in respect of any liability arising out of or in connection with or related to directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release, seepage or escape of **Pollutants**, or any **Loss**, cost or expense arising out of any direction or request, whether governmental or otherwise, that the **Insured** evaluate, test for, monitor, clean up, remove, control, contain, treat, detoxify or neutralize **Pollutants**.

2.19 Product Guarantee, Product Warranty

Loss for which the **Insured** shall become legally liable to pay in respect of any liability arising out of, in connection with or related to any **Product Guarantee** or **Product Warranty** given by or on behalf of the **Insured**.

2.20 Product Recall

Damages claimed for any **Loss**, cost or expense incurred by **Insured** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- a) **Insured's Products**; or
- b) **Impaired Property**; or
- c) work performed by or on behalf of the **Insured**;

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

2.21 Professional Liability

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** or **Property Damage** arising out of or in connection with or related to the rendering of or failure to render any professional advice or service by **Insured** or any error or omission connected therewith. This exclusion does not apply to liability arising out of the rendering or failure to render medical advice at the **Insured's** premises by **Medical Persons** employed by the **Insured** to provide first aid and ancillary medical services.

2.22 Terrorism

Loss for which the **Insured** shall become legally liable to pay in respect of any liability directly or indirectly caused by, resulting from, happening through or in connection with any act of **Terrorism**, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage or expense.

2.23 Tobacco

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** arising out of or in connection with or related to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

2.24 Trailer, Licensed Motor Vehicles

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** or **Property Damage** caused by or in connection with or arising out of the ownership or possession or use by or on behalf of the **Insured** of any trailer or **Licensed Motor Vehicle**. However, this exclusion does not apply to liability in respect of the loading, unloading or collection of goods onto or from such trailer or **Licensed Motor Vehicle**.

2.25 Vibration, Pile Driving, Subsidence, Demolition etc

Loss for which the **Insured** shall become legally liable to pay in respect of **Property Damage** to land, buildings, or other structures caused by vibration, pile driving, subsidence or demolition or resulting from the removal or weakening of support, and any **Loss** arising in consequence of such **Property Damage**.

2.26 War, Invasion, Act of Foreign Enemy and etc

Loss for which the **Insured** shall become legally liable to pay in respect of **Personal Injury** or **Property Damage** due to war, invasion, act of foreign enemy, hostilities, civil war, insurrection, rebellion, revolution, mutiny, military or usurped power, riot, strike, lockout, military or popular uprising, civil commotion, martial law, or loot, sack or pillage in connection therewith, confiscation or destruction by any government or public authority or any act or condition incident to any of the above, whether war be declared or not.

2.27 Worker's Compensation or Similar Law

Loss for which the **Insured** shall become legally liable to pay in respect of any obligation of the **Insured** under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

3 LIMITS OF INSURANCE AND DEDUCTIBLE

3.1 LIMITS OF INSURANCE

3.1.1 The **Limits of Insurance** shown in the policy schedule and the rules below specify the maximum the Company will pay for **Loss** for any one **Occurrence**, where applicable, regardless of the number of:

- a) **Insureds**; or
- b) **Claims** made; or
- c) claimants

for all **Personal Injury** and **Property Damage** arising out of any one **Occurrence** during each **Policy Year**.

Notwithstanding the above, the total aggregate **Limits of Insurance** during any one **Policy Period** for **Loss** which the **Insured** shall become legally liable to pay as damages arising out of **Product Hazard** shall not exceed the **Limits of Insurance** stated in the policy schedule.

The maximum payment by the Company shall in no case exceed the **Limits of Insurance** less **Deductible**.

3.1.2 The Company will pay **Claims Expenses** in addition to **Limits of Insurance** subject to the following conditions:

- a) All **Claims Expenses** incurred by the Company and/or by the **Insured** with the Company written consent in the settlement or defence of any **Claim** for compensation in respect of which the **Insured** is or would be entitled under this policy.
- b) All **Claims Expenses** recoverable from the **Insured** by claimants in connection with the said **Claims**.
- c) The Company is not obliged to pay any **Claim** or judgments or defend any suit after the **Limits of Insurance** are exhausted by payment of judgments or settlements.
- d) If a payment exceeding the **Limits of Insurance** has to be made to dispose of a **Claim**, the liability of the Company for **Claims Expenses** will be limited to the proportion of the Company's liability under this policy to that payment.
- e) All sums payable under this policy for **Loss** will be paid by the Company in the order that such sums are presented to the Company for indemnification.

3.1.3 Notwithstanding 3.1.2, the **Limits of Insurance** are inclusive of **Claims Expenses** for:

- a) any **Occurrence** in United States of America or Canada and all its territories, possessions and any state of political subdivision thereof; or
- b) any **Claim** brought in a court of law in the United States of America or Canada and all its territories, possessions and any state of political subdivision thereof.

and the **Limits of Insurance** available for damages shall be reduced by any amount that the Company pays on behalf of the **Insured** for **Claims Expenses** or that the Company incurs on behalf of the **Insured** as **Claims Expenses**.

3.2 DEDUCTIBLE

The amount of **Deductible** shall be borne by **Insured**. The Company will only be liable under this policy for **Loss** that exceeds the amount of **Deductible** stated in the policy schedule. In the event that the Company pays part or all of the **Deductible** in settlement of a **Claim**, the **Insured** will promptly reimburse the Company upon notification.

4 CONDITIONS

The due observance and fulfillment of the terms of this policy in so far as they relate to anything to be done or not to be done by the **Insured**, and the truth and completeness of all statements and information supplied to the Company by the **Insured** are conditions precedent to any liability of the Company to make any payment under this policy.

4.1 Arbitration

If any difference shall arise to the quantum payable for any loss or damage under this Policy, such difference shall independently of all other questions be referred to arbitration by notice in writing as provided for herein;

- i. The party who seeks to refer such dispute or difference to arbitration ("the First Party") shall name the arbitrator appointed by him ("the first arbitrator") in the notice in writing and send to the other party ("the Other Party") making such reference and request the Other Party to appoint another arbitrator;
- ii. In the event of the Other, Party fails to appoint another arbitrator ("the second arbitrator") within thirty (30) days from the date of dispatch of the said notice, the first arbitrator shall act as the sole arbitrator and make a final award as if the parties hereto have jointly appointed him to act as such sole arbitrator.
- iii. The date of dispatch shall mean the date on which such notice is dispatched by registered post and the postal frank or postal receipt shall be the conclusive evidence of proof thereof;
- iv. If the Other Party appoints the second arbitrator, the two arbitrators shall within twenty (20) days of the appointment of the second arbitrator, appoint a Chairman as provided for in section 6 (3) of the Arbitration Act. No 11 of 1995 of Sri Lanka (the Act) shall sit with the first and second arbitrators and preside at their meetings.
- v. In the event of a vacancy of an arbitrator due to resignation or death or otherwise, the party appointed the arbitrator whose position became vacant shall appoint another arbitrator within 21 days from the date on such position became vacant or within 21 days from a written notice by the other party requesting to appoint an arbitrator for the position of vacant arbitrator whichever is later. The failure of such party to appoint an arbitrator after the said notice by the other party to fill the vacancy, the remaining arbitrator and the Chairman shall terminate the arbitration proceedings and the party who failed to appoint an arbitrator in the place of the vacant arbitrator shall not thereafter contest the matter in dispute and or difference which was originally referred to the arbitration. In the event of the position of Chairman becomes vacant, the two arbitrators shall appoint a new Chairman within 21 days from the date on which the position of Chairman became vacant.
- vi. In the event of such dispute or difference arising in respect of any quantum payable under this Policy as aforesaid has not been referred to Arbitration within twelve (12) calendar months from the date of arising of such dispute or difference, the quantum decided by the insurer shall prevail.

vii. The Arbitration proceedings shall be held in the city of Colombo, the language of the proceedings shall be in English, and unless otherwise agreed between the parties the procedure for the arbitration shall be the procedure stipulated in the Act as far as such procedure is not conflicting with this arbitration agreement. If there is a conflict between the Act and this arbitration agreement, provisions in this arbitration agreement shall prevail over the provisions of the Act.

viii. The award made at an arbitration held as provided herein shall be final, conclusive, and binding on the parties hereto;

The cost of the arbitrator appointed by each party shall be borne by the party who appointed the respective arbitrator and the cost of the Chairman and any other administrative costs shall be borne by the parties in equal shares. In the event of a sole arbitrator, the cost of the sole arbitrator shall be borne by the parties in equal shares.

4.2 Bankruptcy

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate will not relieve the Company of the Company's obligations under this policy.

4.3 Cancellation

The first named **Insured** shown in the policy schedule or the Company may cancel this policy by mailing or delivering written notice of cancellation to the other, at least thirty (30) days before the effective date of cancellation. Notice of cancellation will state the effective date of cancellation. The **Policy Period** and **Policy Year** then in effect will end on that date. If this policy is cancelled, the Company will send the first named **Insured** any premium refund due. If the Company cancels this policy, the refund will be pro rata. If the first named **Insured** cancels this policy, premium for the **Policy Year** will be refunded in accordance with the short rate premium table of the Company, a copy of which is available at the request of the **Insured**. The cancellation will be effective even if the Company has not made or offered a refund of premium.

However, no premium refund is applicable if there is a **Claim** or notification of any occurrence which may give rise to a **Claim** prior to the above cancellation date.

4.4 Condition Precedent

It is condition precedent to any liability under this policy that:

- a) for the risk insured, the **Insured** has never had any insurance terminated in the last twelve (12) months due solely or in part to a breach of any premium payment condition; or
- b) if the **Insured** has declared that it has breached any premium payment condition in respect of a previous policy taken up with another insurer in the last twelve (12) months:
 - (i) the Insured has fully paid all outstanding premium for time on risk calculated by the previous insurer based on the customary short period rate in respect of the previous policy; and

- (ii) a copy of the written confirmation from the previous insurer to this effect is first provided by the Insured to the Company before cover incept.

4.5 Cross Liability

Each of the parties comprising the **Insured** as stated in the policy schedule is considered a separate legal entity and the word "Insured" applies to each party as if a separate policy has been issued to each of the said parties but nothing contained in this clause will operate to increase the Company's liability under this policy.

4.6 Defense and Settlements

With respect to the coverage afforded by this policy, the Company will defend in the name of and on behalf of the **Insured** any **Claim** against the **Insured** alleging such **Personal Injury** or **Property Damage** and seeking damages on account thereof even if such **Claim** is groundless, false or fraudulent, and the Company may make such investigation, negotiation and settlement of any **Claim** as the Company may deem expedient.

Provided that:

- (i) the Company shall not be obliged to pay any **Claim** or judgement or to defend any suit after the **Limit of Insurance** has been exhausted by payment of judgements or settlements,
- (ii) if a payment exceeding the **Limit of Insurance** has to be made to dispose of a **Claim**, the Company's liability to pay any law costs and expenses in connection therewith shall be limited to such proportion of the law costs and expenses as the **Limit of Insurance** bears to the amount paid to dispose of the **Claim**,
- (iii) the Company does not have the duty to defend the **Insured** against any **Claim** to which this insurance does not apply.

The Company shall have the right to recommend that the **Insured** settle such **Claim** for an amount for which the **Claim** can be settled. The **Insured** may decline to settle any **Claim** which the Company so recommends that it settle; provided, however, that in the event the **Insured** shall elect to contest or continue to contest such **Claim** after the Company has recommended it be settled, the Company may withdraw from the matter, and the liability of the Company shall not exceed the sum of the amount of damages for which the **Claim** could have been settled and the amount of **Claims Expenses** incurred with the Company's consent prior to the date on which the Company first recommended settlement.

The Company may in the case of any **Claim** pay to the first Named **Insured** the amount of the Company's applicable **Limits of Insurance** or any lesser sum for which the **Claim** can be settled and the Company will thereafter have no further liability in respect of such **Claim**.

4.7 Duties in the Event of Occurrence, Claim or Suit

The **Insured** must notify the Company in writing immediately and in any event not later than 30 days, of any **Occurrence**, which may result in a **Claim**. Such notice must include:

- a) how, when and where the **Occurrence** took place;
- b) the names and addresses of any injured persons and witnesses;

- c) the nature and location of any injury or damage arising out of the **Occurrence**; and
- d) any other relevant details;

The **Insured** must notify the Company immediately and not later than 30 days of :

- a) any impending prosecution, inquest or fatal accident inquiry; or
- b) any **Claim** made against the **Insured**.

The **Insured** must :

- a) immediately send the Company a copy of any demand, letter, writ, claim, notice of arbitration, process, notice, summons or legal paper received in connection with the **Claim**; and
- b) retain unaltered and unrepaired any machinery, plant, appliances or things in any way causing or connected with any event which might give rise to a **Claim** under this policy for such time as the Company may reasonably require.

Upon the Company's request the **Insured** must :

- a) authorize the Company to obtain records and other information, cooperate with the Company in the investigation, settlement or defense of the **Claim**; and
- b) assist the Company in the enforcement of any right against any person or organization which may be liable to the **Insured** because of **Personal Injury** or **Property Damage** to which this insurance may also apply.

No **Insured(s)** will, except at their own cost, voluntarily make any payment, assume any obligation, or incur any expense without the Company's consent.

4.8 Examination of the Insured's Books and Records

The Company may examine and audit the **Insured's** books and records as they relate to this policy at any time during the **Policy Period** and until the later of three years after termination of this policy or one year after final disposition of all **Claims** arising out of any **Occurrence** notice of which has been given under this policy.

4.9 Fraud or Dishonesty

If any **Claim** under this policy is in any respect fraudulent, or if any false declaration is made or used in support of such **Claim**, or if any fraudulent means or devices are used by the **Insured** or anyone acting on behalf of the **Insured** to obtain any benefit under this policy; or, if the **Loss** or damage is occasioned by the wilful act, or with the connivance of the **Insured**, this policy shall become void and all benefits under this policy shall be forfeited.

4.10 Inspections and Surveys

The Company has the right but is not obligated to:

- a) make inspections and/or surveys, at any time;
- b) give the **Insured** reports on the conditions that the Company finds; and
- c) recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums charged. The Company does not make safety or compliance inspections. The Company does not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public, nor does the Company warrant that conditions are safe or healthful or comply with laws, regulations, codes and standards.

4.11 Legal Action against the Company

No person or organization has a right under this policy to join the Company as a party or otherwise bring the Company into a suit asking for damages from an **Insured**.

4.12 Non-assignment of Policy

This Policy and any rights hereunder shall not be assigned without the written consent of the Company.

4.13 Notice

Any notice required to be given under this policy by:

- a) the **Insured** will be given to the Company by mailing or delivering such notice to the Company at the address shown in the policy cover. Notice to the Company's or the **Insured's** agent will not constitute notice to the Company.
- b) the Company will be given by mailing or delivering such notice to the **Insured** first shown in the policy schedule at the address shown therein.

Notice to any agent or knowledge possessed by any agent or any other person shall not effect a waiver or a change in any part of this policy or prevent the Company from asserting any right under the terms of this policy, nor shall the terms of this policy be waived or changed, except by endorsement issued by the Company and made a part of this policy. If notice is mailed, proof of mailing will be sufficient proof of notice.

4.14 Other Insurance

If other valid and collectible insurance is available to the **Insured** for **Personal Injury** or **Property Damage** the Company covers under this policy, other than insurance that is issued specifically as insurance in excess of the insurance afforded by this policy, and irrespective of:

- a) when such other insurance incepts or terminates;
- b) which insurer provides such other insurance;
- c) basis on which such other insurance applies or is triggered;

this policy shall be excess of and shall not contribute with such other insurance. Nothing in this policy shall be construed to make this policy subject to any of the terms of other insurance.

4.15 Policy Modifications

This policy contains all the agreements between the **Insured** and the Company concerning the insurance afforded. This policy's terms can be amended or waived only by endorsement issued by the Company and made a part of this policy.

4.16 Premium Adjustment

If the policy schedule specifies that the premium is an annual advance premium, it is a deposit premium only, and after the close of each **Policy Year**, the Company will adjust the premium by computing the earned premium for that period. If the annual advance premium paid for the **Policy Year** is greater than the earned premium, the Company will return the excess premium to the first named **Insured**, subject to the minimum premium set forth in the policy schedule. If the earned premium for the **Policy Year** is greater than the annual advance premium, the first named **Insured** will pay the difference, the "adjustment premium", to the Company. Adjustment premiums are due and payable on notice to the first named **Insured**.

If the policy schedule specifies that the premium is a flat premium, such premium will not be subject to adjustment.

4.17 Reasonable Care

The **Insured** shall:

- a) Exercise reasonable care that only competent workers are employed and take reasonable measures to maintain all premises (including fittings and plant) owned or occupied by it, in sound condition;
- b) Take reasonable precautions to:
 - (i) prevent **Personal Injury** and/or **Property Damage**;
 - (ii) prevent the manufacture, sale or supply of defective products;

- (iii) comply and ensure that the workers, servants and agents of the **Insured** comply with all statutory obligations, by-laws or regulations which provide for the safety of persons and property.
- c) At the expense of the **Insured** take reasonable action to trace, recall or modify any products containing any defect or deficiency which defect or deficiency the **Insured** has knowledge of or has reason to suspect.

4.18 Renewal

If the **Policy Period** set forth in the policy schedule is at least one (1) year, at the end of such period and on each anniversary thereof, upon prior submission of any underwriting information requested by the Company and payment of the applicable premium, the **Policy Period** may be continued for a period of one (1) year by issuance by the Company of a renewal policy. The Company, however, has no obligation to offer any such renewal or any extension of this policy.

4.19 Risk Alterations

The **Insured** must give immediate notice or in any event not later than 30 days to the Company of any alterations which may materially affect the risk covered by this policy.

4.20 Sanctions / Embargoes

The Company 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 Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United States of America and/or any other applicable national economic or trade sanction law or regulations.

4.21 Sole Agent

The first named **Insured** shown in the policy schedule shall be the sole agent of all **Insured** under this policy for the purposes of:

- a) ascertaining all information requested in the proposal for this policy;
- b) submitting the proposal and any other underwriting information for this policy or any renewal hereof;
- c) giving and receiving any required notice under this policy;
- d) effecting or accepting any amendment to, or cancellation of this policy;

- e) paying all premiums and receiving any return premiums that may become due under this policy;
- f) keeping records of the information that the Company needs for premium adjustment and sending the Company copies of such records at such times as the Company may request;
- g) accepting any sums paid by the Company to the **Insured** in connection with the Company's liability under this policy; and
- h) submission of a dispute to arbitration.

4.22 Statutory Requirements

The Insured must take reasonable measures to comply with all statutory obligations and regulations imposed by any statutory or governmental authority.

4.23 Terms

All statements made in the proposal for this policy and any material submitted therewith, as a supplement thereto, or required thereby, are the basis of this policy and, together with the policy schedule and any endorsements to this policy, are hereby deemed material and are incorporated into and made a part of this policy and this policy is issued in reliance upon such proposal and other material.

4.24 Transfer of Rights of Recovery against Others to the Company

In the event of any payment under this policy, if the **Insured** has rights to recover all or part of any payment the Company has made under this policy, those rights are transferred to the Company to the extent of its payment. The **Insured** must do nothing to impair such rights. At the Company's request, the **Insured** will bring suit or transfer those rights to the Company and help the Company enforce them.

4.25 Transfer of the Insured's Rights and Duties under this Policy

The **Insured's** rights and duties under this policy may not be transferred without the Company's written consent except in the case of the death of an individual who is an **Insured**.

5 DEFINITIONS

5.1 Aircraft

means any vehicle, craft, device or thing made or intended to fly or move in or through the atmosphere or space.

5.2 Claim

means:

- a) written demand or written allegation against an **Insured**;
- b) civil or arbitral proceeding for monetary or non-monetary relief against an **Insured**, including but not limited to any mediation or similar proceeding.

A **Claim** is first made against an **Insured** when the demand is received by the **Insured** or the proceeding commencing is first served on the **Insured**.

5.3 Claims Expenses

means:

- a) all reasonable and necessary legal fees and other expenses incurred by the **Insured** in accordance with the policy conditions or with the consent of the Company in the investigation, settlement or defense of any **Claim** excluding all salaries of the **Insured's** employees, officers and directors and office expenses, and any such fees and expenses incurred by the Company on behalf of the **Insured** shall be deemed incurred by the **Insured**;
- b) all costs taxed against the **Insured** in the suit;
- c) pre-judgment interest awarded against the **Insured** on that part of any judgment the Company pays; provided that, if the Company makes an offer to pay the applicable **Limits of Insurance**, the Company will not pay any pre-judgment interest based on that period of time after such offer; and
- d) all interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable **Limits of Insurance**.

5.4 Deductible

means the amount stated as **Deductible** in the policy schedule.

5.5 Employment Practices

means:

- a) unfair or wrongful dismissal, termination or discharge of employment, either actual or constructive;
- b) harassment including bullying;
- c) discrimination;
- d) retaliation, including lockouts;
- e) employment related misrepresentations to an employee or applicant for employment;
- f) employment related humiliation, defamation or invasion of privacy, denial of natural justice;
- g) wrongful failure to employ or promote;
- h) wrongful deprivation of career opportunity;
- i) wrongful failure to grant tenure;
- j) negligent evaluation or unfair discipline;
- k) failure to provide accurate references;
- l) failure to comply with employment policies or procedures;

solely relating to an employee or prospective employee of the Company.

5.6 Geographical Limits

means the country or countries stated as **Geographical Limits** in the policy schedule.

5.7 Impaired Property

means any tangible property not physically injured, other than **Insured's Products**, that cannot be used or is less useful because:

- a) it incorporates **Insured's Products** that is known or thought to be defective, deficient, inadequate or dangerous; or
- b) **Insured** has failed to fulfill the terms of a contract agreement;

If such property can be restored to use by:

- a) the repair, replacement, adjustment or removal of **Insured's Product**; or
- b) **Insured** fulfilling the terms of the contract or agreement.

5.8 Insured

means:

- a) the **Insured** named in the policy schedule;
- b) any subsidiary company (including subsidiaries thereof) of the **Insured** and any other organisation under the control of the **Insured** and over which it is exercising active management;
- c) any new organisation acquired by the **Insured** during the **Policy Period** through consolidation, merger, purchase of the assets of or assumption of control and active management, provided that:
 - (i) such acquisition or assumption is notified to the Company in writing within ninety (90) days; and
 - (ii) the Company gives notice in writing to the **Insured** that such new organisation shall be covered by the policy; and
 - (iii) the **Insured** pays any additional premium that may be required by the Company in respect of such new organization.
- d) any director, officer, employee, partner or shareholder of the **Insured**, but only whilst acting within the scope of their duties in such capacity;
- e) any principal in respect of that principal's vicarious liability for the acts or omissions of the **Insured** in the **Insured's** performance of work for that principal;
- f) any social and/or sporting clubs, first aid, fire and ambulance services formed with the consent of the **Insured** including any office bearer or member thereof in their respective capacities as such; and person
- g) any director or senior executive of the **Insured** in respect of private work undertaken by the **Insured's** employees for such director or senior executive.

5.9 Insured Business

means operations of the **Insured** which are stated as **Insured Business** in the policy schedule including related activities.

5.10 Insured's Products

means:

- a) any goods or products, stated as **Insured's Products** in the policy schedule, designed, manufactured, supplied, sold, handled, distributed, erected, installed, repaired, serviced, treated, assembled, dispatched, delivered or disposed of by the **Insured** or under the **Insured's** name;

- b) containers (other than **Licensed Motor Vehicles**), materials, parts or equipment furnished in connection with such goods or products;
- c) does not include vending machines, other property rented to or located for the use of others but not sold, and goods or products that are still in **Insured's** physical possession.

5.11 Jurisdiction Limits

means the country or countries stated as **Jurisdiction Limits** in the policy schedule where the Company will have a duty to defend the **Insured** against any **Claim** seeking damages. However, the Company will have no duty to defend the **Insured** against any **Claim** seeking damages in any country not designated in the policy schedule.

5.12 Licensed Motor Vehicle

means any type of machine designed to travel on wheels or on self-laid tracks and to be propelled by other than manual or animal power, and which is subject to licensing by a public authority and/or compulsory motor insurance.

5.13 Limits of Insurance

means the amount stated as **Limits of Insurance** in the policy schedule.

5.14 Loss

means damages, interest, settlements and judgments and **Claims Expenses**.

5.15 Medical Persons

means qualified medical practitioners, ancillary medical workers and dentists.

5.16 Occurrence

means a fortuitous event, including continuous, intermittent or repeated exposure to substantially the same general harmful conditions.

For the purposes of this policy, where a series of, and/or several **Personal Injuries** or **Property Damages** arise out of, are a result of or are attributable directly or indirectly to the same actual or alleged defect, hazard, failure to warn, event, condition or cause, all such **Personal Injuries** and/or **Property Damages** shall be deemed to have been caused by the same single **Occurrence**, irrespective of the period or area over which the **Personal Injuries** or **Property Damages** occur.

All **Personal Injury** or **Property Damage** arising out of the same single **Occurrence** will be deemed to have taken place wholly during the **Policy Year** in effect at the time of the commencement of the first of such **Personal Injury** or **Property Damage** arising out of such **Occurrence**. In the event of any **Personal Injury** or **Property Damage** arising from continuous, intermittent or repeated exposure to substantially the same general harmful conditions including but not limited to continuous, intermittent or repeated inhalation, ingestion or application of any substance and/or where the **Insured** and the Company cannot agree when the **Personal Injury** or **Property Damage** took place, then:

- a) **Personal Injury** will be deemed to have taken place when the claimant first consulted a medical practitioner in respect of such injury; and
- b) **Property Damage** will be deemed to have taken place when it first became evident to the claimant even if the cause is unknown.

5.17 Offshore Operations

means:

- a) fixed or mobile production facilities for the production of oil and gas; or
- b) offshore drilling installations

5.18 Pathogen Organisms

means any bacteria, yeasts, mildew, virus, fungi, mould or their spores, mycotoxins or other metabolic products.

5.19 Personal Injury

means:

- a) bodily injury, death, illness, disability, shock, fright, mental anguish or mental injury;
- b) false arrest, detention, false imprisonment, malicious prosecution or humiliation;
- c) wrongful entry or wrongful eviction or other invasion of the right to private occupancy;
- d) assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing or eliminating danger to persons or property;

- e) the publication or utterance of libel or slander, or of other defamatory or derogatory material, or a publication or utterance in violation of any individual's rights of privacy except:
 - (i) when the first such publication or utterance is related to any publication or utterance made prior to the commencement of this Policy; or
 - (ii) when any of such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the **Insured**.

5.20 Policy Period

means the period of time commencing on the inception date and terminating on the expiration date shown in the policy schedule, both days at 12:01 standard time at the address of the **Insured**, provided, however, that such expiration date may be modified in accordance with the condition of the policy.

5.21 Policy Year

means the period of one (1) year, within the **Policy Period**, ending each year on the day and month shown in the expiration date in the policy schedule. If the period between the inception date and the expiration date shown in the policy schedule is less than one (1) year, then such period shall be deemed to be the only **Policy Year**.

If the period between the inception date and the expiration date is greater than one (1) year, then such period shall be deemed to be the initial **Policy Year** of the **Policy Period** and if this policy is renewed, a new **Policy Year** (of one (1) year's duration) shall commence on the first day after the expiration date shown in the policy schedule.

5.22 Pollutants

means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. The term "waste" as used in this definition includes materials, which are to be or are being disposed of, recycled, reconditioned or reclaimed.

5.23 Product Hazard

means a defect, deficiency, inadequacy, or dangerous condition in **Insured's Products**, but only where such **Personal Injury** or **Property Damage** occurred:

- a) away from premises owned or occupied by the **Insured**; and
- b) after physical possession of the **Insured's Product** has been relinquished to others.

5.24 Property Damage

means physical injury to tangible property, including all resulting notification of use of that property; or loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by physical damage of other tangible property.

5.25 Terrorism

means an act of violence or an act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear.

5.26 Watercraft

means any ship or vessel of whatever type, whether self-propelled or not, including but not limited to cargo vessels, passenger vessels, other vessels used for transport, towboats, barges, storage vessels, tanker vessels, drill ships and offshore drilling platforms.

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