



# THE NEW INDIA ASSURANCE CO. LTD.

(Regd. & Head Office : New India Assurance Bldg., 87, M. G. Road, Fort, Mumbai - 400 001.)

## PROFESSIONAL INDEMNITY INSURANCE-ARCHITECTS & ENGINEERS POLICY WORDINGS

*(Note 1: Please read and check the details of this Policy carefully to ensure its accuracy and see that it meets your requirements)*

*Note 2: This is a "Claims Made" Policy, which means it, covers only claims reported during the Period of Insurance*

*Note 3: The Limit of Indemnity applies to all damages and costs and expenses, including those incurred both by the Insured and the Company.)*

The New India Assurance Company Limited (hereinafter called the "**Company**") and the Insured agree that

This Policy, the Schedule (including any Schedule issued in substitution) and any Clauses thereon shall be considered one document and any word or expression to which a specific meaning has been attached in any of them shall bear such meaning wherever it appears throughout

The **Proposal** or any information supplied by the Insured shall be incorporated in and be the basis of the contract.

The **Company** will provide the insurance subject to the Terms and Conditions of this Policy, during the Period of Insurance shown in the Schedule and any subsequent period for which the **Company** has agreed to accept and the Insured has paid the premium.

The following shall be conditions precedent to any liability of the **Company**

- a) The truth of the Proposal
- b) Observance of the terms of this Policy relating to anything to be done or complied with by the Insured

### 1. **Insurance Cover**

This policy covers **Claims** made against the **Insured** for Loss arising due to actual or alleged legal liability provided that the **Claim**

- arises out of an actual or alleged negligent act, error or omission in the rendering of or failure to render **Professional Services** by the **Insured** or any person or entity for whom the **Insured** is legally liable, within the Geographical Territory specified in the Schedule; and
- is made during the **Period of Insurance** and reported to the **Company** in writing during the **Period of Insurance** or any applicable Extended Reporting Period and the negligent act, error or omission in the rendering of or failure to render **Professional Services** first takes place on or after the **Retroactive Date** but before the expiration of the policy.

The **Company** shall not be liable under this Policy in respect of any **Claims** or **Circumstances** known to the **Insured** prior to inception of this Policy or that in the **Company's** reasonable opinion ought to have been known to the **Insured** or notified by the **Insured** under any other insurance prior to inception of this Policy or disclosed in the latest **Proposal** made to the **Company**.

### 2. **Definitions**

The bold printed terms in this policy whether in the singular or in the plural are defined as follows:

**2.1. Bodily Injury**

**Bodily Injury** means physical injury, mental injury, mental anguish, shock, sickness, disease or death.

**2.2. Company**

The **Company** shall mean The New India Assurance Company Limited as specified in the Schedule.

**2.3. Circumstances**

**Circumstances** shall mean an incident, occurrence, fact, matter, act or omission, which may give rise to a **Claim**.

**2.4. Claim**

**Claim** shall mean any written demand received by the **Insured** for **Damages**, including but not limited to, a civil proceeding commenced by the service of a complaint or similar pleading, or arbitration or other alternative dispute resolution proceeding, alleging a negligent act, error or omission in the **Professional Services** rendered by the **Insured**.

**2.5. Claim Expenses**

**Claim Expenses** shall mean all legal costs and expenses reasonably incurred in the investigation, defense and settlement of any **Claim**, except any internal or overhead expenses or costs incurred by the **Insured** and any salaries of employees of the **Insured** or the **Company**.

All **Claim Expenses** shall be included in the **Limit of Liability** and **Deductibles**, shall not be considered as sums payable in addition thereto.

**2.6. Damages**

**Damages** shall mean a monetary judgment or award the **Insured** are legally liable to pay, or a settlement negotiated with the **Insured** and with the **Company's** prior written consent, but does not include **Claim Expenses**.

**2.7. Deductibles**

**Deductibles** shall mean the amount stated in the schedule of the policy, which the **Insured** shall have to bear, in respect of each **Claim** under the Policy.

**2.8. Directors or Officers**

**Director or Officer** shall mean any natural person who was or now is a director or officer of the **Policyholder** or any **Subsidiary** of the **Policyholder** (or the equivalent position in any jurisdiction) or who becomes a director or officer of the **Policyholder** or any **Subsidiary** of the **Policyholder** (or the equivalent position in any jurisdiction) during the **Period of Insurance**, including de jure, de facto and shadow directors.

**2.9. Document**

**Document** includes all documents whether in soft or hard copy form (including computer records, stamps, currency coins, bank notes and bullion, travellers cheques, cheques, postal orders, money orders, securities and the like) belonging to the **Insured** or for which the **Insured** is legally responsible, whilst in custody of the **Insured**, or in the custody of any person to or with whom they have been entrusted, lodged or deposited by the **Insured** in the ordinary course of the **Professional Services** rendered by the **Insured**.

**2.10. Employee**

**Employee** means any person, other than a director or partner of the **Insured**, who is or has been under a contract of employment or apprenticeship or any work experience or similar scheme with the **Insured**, in connection with the **Professional Services** rendered by the **Insured**. This definition does not include sub-contractors.

**2.11. Insured**

**Insured** shall mean the following:

- the **Policyholder** and any Subsidiary of the **Policyholder** as stated in the Schedule of the Policy; or
- any current or former **Employee**, but only whilst rendering **Professional Services** on behalf of the **Policyholder** or any Subsidiary of the **Insured** named in the Schedule.
- any past or present principal, partner, officer, director, member, stockholder, employee, contract employee or leased personnel under the direct supervision of the **Insured** but only while acting within the scope of their duties for the **Policyholder**
- any retired principal, partner, officer, director, member, stockholder, employee of the **Insured** while acting within the scope of his or her duties as a consultant for the
- All subsidiaries created or acquired during the policy year, subject to the provisions contained in the Policy

**2.12. Limit of Liability**

**Limit of Liability** shall mean the maximum amount payable in any one **Claim** referred to as the Any one Accident limit of indemnity specified in the schedule and where an aggregate limit of liability be separately stated, the Any one Year limit specified in the schedule in respect of all **Claims** during the currency of the policy which the **Company** may be liable to pay to the **Insured** as per the terms and conditions contained herein.

**2.13. Named Parent**

**Named Parent** if stated in the Schedule would mean the entity designated therein.

**2.14. Policyholder**

**Policyholder** shall mean the legal entity designated in the Schedule

**2.15. Period of Insurance**

**Period of Insurance** shall mean that period of time shown the schedule to this policy.

**2.16. Pollutants**

**Pollutants** shall mean any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**2.17. Professional Services**

**Professional Services** shall mean those professional services specifically described under business description in the schedule that the **Insured** is legally qualified to perform for others on behalf of the **Policyholder**, including but not limited to:

1. architect or engineer;
2. landscape architect, land surveyor or planner;
3. construction manager;
4. interior designer or space planner;
5. scientist;
6. technical consultant;
7. and in conjunction with the Insured's delivery of Professional Services.

**2.18. Property Damage**

**Property Damage** shall mean any damage to or destruction of any tangible property including loss of use thereof and any consequential loss directly resulting there from.

### 2.19. **Proposal**

**Proposal** shall mean any information and/or statements or materials supplied to the **Company** (either before or during the **Period of Insurance**), any **proposal** form completed and signed by the **Policyholder** for this policy and any previous policy issued by the **Company** or which is a replacement or renewal (including any attachments thereto, information included therewith or incorporated therein), and the financial statements and annual reports of the **Company** and the **Named Parent**.

### 2.20. **Retroactive Date**

**Retroactive Date** is the date when the risk is first incepted under a Claims made Policy and thereafter renewed without break in the period of cover. **Claims** arising out of damage or injury which occurred prior to this date are not covered

### 2.21. **Sub-contractors**

**Sub-contractors** mean independent consultants or sub-contractors who provide services to the **Insured**. This definition does not include any **Employee**.

### 2.22. **Subsidiary**

**Subsidiary** shall mean any entity in which the Policyholder holds directly or indirectly (through another **Subsidiary**) more than 50% of the voting rights.

## 3. **Exclusions**

This policy will not indemnify the **Insured** in respect of any of the following:

### 3.1 **Property Damage and Bodily Injury**

Any **Claim** arising out of:

- any liability for death, bodily injury, disease or sickness sustained by any person and/or for any loss of or damage to property other than that in connection with which Professional Services have been or are being rendered by or on behalf of the **Insured**.
- **Property damage** to any property that is owned, leased to, rented by or otherwise in the care, custody or control of the **Insured**.

### 3.2 **Contractual Liability**

Any **Claim** arising out of liability of others assumed by an **Insured** under a contract or agreement, unless such liability arises from a negligent act, error or omission performed by the **Policyholder** or its sub consultants in the rendering of or failure to render **Professional Services**

### 3.3 **Electrical or Telecommunications Failure and Malfunction**

Any **Claim** arising out of any failure or malfunction of electrical, internet or telecommunications infrastructure or services, unless directly attributable to and under the organizational control of the **Policyholder**.

### 3.4 **Directors and Officers and Employment Liabilities**

Any **Claim**

- brought against a **Director or Officer** of the **Insured**, in their capacity as such.
- arising from any obligation owed by the **Insured** as an employer or potential employer to any **Employee**, including Claims for wrongful dismissal, unfair dismissal or under any contract of employment or under any retainer with any consultant or under any training contract.
- whether from any **Employee** or not, alleging sexual, racial or other harassment and/or sexual molestation and/or sexual and/or racial and/or disability and/or sexual orientation and/or religious and/or age discrimination or victimization, or discrimination or victimization of any other kind.

### 3.5 **Faulty workmanship**

The cost to repair or replace faulty workmanship in any construction, erection, fabrication, installation, assembly or manufacturing process performed or provided by an **Insured**, including materials, parts or equipment furnished in connection therewith.

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### 3.6 **Fines, Penalties or Punitive Damages**

Any **Claim** arising out of, based upon, attributable to or as a consequence of:

- fines, taxes, penalties, treble or other multiple compensatory **Damages**; or punitive or exemplary **Damages**; or
- the return, restitution, or offset of fees, expenses or costs paid to the **Insured**; or any other **Damages** deemed uninsurable in law.

### 3.7 **Insurance and Suretyship**

The advising, requiring, obtaining or maintaining of any form of insurance, suretyship or bond, or the failure to do so.

### 3.8 **Insured vs. Insured**

Any **Claim** made against the **Insured** by any other **Insured**.

### 3.9 **Intentional/Dishonest Acts/Criminal Act with Innocent Insured Exception**

Any dishonest, fraudulent, criminal or malicious act, error or omission, or those of a knowingly wrongful nature or the intentional, wilful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body by or at the direction of the Insured, except that this exclusion will not apply to an Insured who did not commit, participate in, or have knowledge of any of the acts described.

### 3.10 **Nuclear**

Any nuclear reaction, or contamination, under any circumstances and regardless of cause, within or originating from a nuclear facility.

### 3.11 **Related Entities and Individuals**

Any **Claim** made against the **Insured** by any entity or individual:

- That an **Insured** operates, manages, or controls;
- That operates, manages or wholly or partly owns an **Insured**;
- In which an **Insured** has an ownership interest in excess of 49%; or
- In which an **Insured** is an officer, director or member.

**Claim** arising out of directly or indirectly, based upon, attributable to or in any way connected with a **Claim** for any actual or alleged misappropriation, infringement or violation of any confidential information, copyright, patent, trademark, trade name, trade secret, customer information, database rights or any other intellectual property rights.

### 3.12 **War**

any Whether caused directly or indirectly by:

- War, including undeclared or civil war;
- Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel

or other agents; or

- Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

### 3.13 **Warranty, guaranty or promise**

Any Warranty, guaranty or promise, unless such liability would have attached to the **Insured** in the absence of such warranty, guaranty or promise.

### 3.14 **Project subject to Project specific insurance**

Any project that is insured under a project specific insurance policy; provided, however, that this exclusion shall not apply and this policy shall apply as an excess insurance policy where the Insured's liability is determined to be in excess of the limits available under the project specific insurance policy.

### 3.15 **Intellectual Property Rights**

Any **Claim** arising out of directly or indirectly, based upon, attributable to or in any way connected with a **Claim** for any actual or alleged misappropriation, infringement or violation of any confidential information, copyright, patent, trademark, trade name, trade secret, customer information, database rights or any other intellectual property rights.

### 3.16 **Asbestos**

Any **Claim** directly or indirectly, arising out of, or resulting from, asbestos or any actual or alleged asbestos related loss injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos.

### 3.17 **Pollution**

Any **Claim** arising out of, based upon, attributable to, as a consequence or in any way involving, directly or indirectly the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**.

### 3.18 **Terrorism**

**Terrorism** shall mean **Loss** of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of **terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

- For the purpose of this Exclusion an act of **terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purpose including the intention to influence any government and/or to put the public, or any section of the public in fear.
- This Exclusion also excludes **loss** of whatsoever nature directly or indirectly caused by resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to action taken in respect of any act of **terrorism**.

If the **Company** alleges that by reason of this Exclusion, any **loss** is not covered by this insurance the burden of proving the contrary shall be upon the **Insured**

## 4 **General Conditions**

### 4.1 **Premium Adjustment**

If any part of the Premium or renewal Premium is based on estimates furnished by the **Insured** the **Insured** shall keep an accurate record containing all relative particulars and shall allow the **Company** to inspect such record. The **Insured** shall within one month from the expiry of each Period of Insurance furnish such information as the **Company** may require. The Premium or

Renewal Premium shall thereupon be adjusted and the difference paid by or allowed to the **Insured**.

#### 4.2 **Cancellation Provision**

The **Company** may cancel this Policy by giving thirty days' notice in writing of such cancellation to the Insured's last known address and in such an event the **Company** will return a pro-rata portion of the premium (subject to a minimum retention of 25 per cent of the annual premium) for the unexpired part of the Insurance.

The Policy may also be cancelled by the **Insured** by giving thirty days' notice in writing to the **Company**, in which event the **Company** will retain premium at short-period scale provided there is no claim under the Policy during the Period of Insurance.

In case of any claim under the Policy no refund of premium shall be allowed.

#### 4.3 **Subrogation**

The **Insured** shall at the expense of the **Company** do and concur in doing and permit to be done all such acts and things as may be necessary or required by the **Company** in the interest of any rights or remedies or of obtaining relief or indemnity from parties (other than those insured under this policy) to which the **Company** shall be or would become entitled or subrogated upon their paying for or making good any loss or damage under this Policy whether such acts and things shall be or become necessary or required before or after the Insured's indemnification by the **Company**.

#### 4.4 **Other Insurances**

If at the time of any claim there is or but for the existence of this Policy there would be other insurances covering the same liability, the indemnity provided by this Policy will not apply except in respect of any amount beyond that which would have been payable under such other insurance had this Policy not been effected.

#### 4.5 **Alteration and assignment**

No change in, modification of, or assignment of interest and rights under this policy shall be effective under any circumstances except when made by a written endorsement to this policy which is signed by an authorized representative of the **Company**.

#### 4.6 **Audit and Inspection**

The **Company** may audit or inspect and have copies of any of the **Insured's** books, records, information and operations at any time upon reasonable notice to the **Insured** as far as such books, records, information and operations relate to any **Claim** or **Circumstance**.

#### 4.7 **Fraudulent Claims**

If the **Insured** make any request for payment or indemnity knowing the same to be false or fraudulent as regards amount, or otherwise, this policy will be void and all payment and indemnity under this policy shall be forfeited.

#### 4.8 **Disclaimer**

If the **Company** disclaims liability to the Insured for any **claim** hereunder and such **claim** is not a subject matter of a suit in a court of law within 12 calendar months from the date of disclaimer then the **claim** shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable.

#### 4.9 **Policy disputes clause**

Any dispute concerning the interpretation of the terms, Conditions, limitations and/or Exceptions contained herein is understood and agreed by both the Insured and the **Company** to be subjected to Indian Law. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within India and to comply with all requirements necessary to give such Court the jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such

Court.

#### 4.10 **More than one Named Insured**

The first named Insured shall act on behalf of self/itself and all other persons or legal entities named as the Insured for all purposes of this Policy. If the first named Insured ceases to be covered under this Policy the next named Insured shall thereafter be regarded as the "first named Insured"

#### 4.11 **Change in Exposure**

If during the **Period of Insurance** any of the below occurs, the **Insured** must give written notice to the **Company**:

- a major change in the **Professional Services** provided
- a change in the **Professional Services** provided geographically.
- If the insured's turnover increases by more than 20%
- if the **Insured** is a subject of a merger or acquisition.

The **Company** is then entitled to impose additional premium, terms and conditions that it deems necessary.

#### 4.12 **Avoidance**

The **Company** will not seek to void this policy where it is alleged that there has been non-disclosure or mis-representation of facts or untrue statements in the written proposal provided to the **Company** upon which this policy is based including any information supplied for renewal or in renewal application forms provided that the **Insured** shall establish to the reasonable satisfaction of the **Company** that such alleged non-disclosure mis-representation or untrue statements were made innocently and free of any fraudulent conduct or intent to deceive.

### 5 **Claims Conditions**

#### 5.1 **Reporting of any Incident to the Company**

When the **Insured** becomes aware of any event or circumstance which may give rise to a **claim** (regardless of any Deductible] the Insured must notify the **Company** immediately in writing with full particulars.

The notification of any such event or circumstance does not constitute notice of a **claim**.

#### 5.2 **Claims Correspondence**

Every letter claim writ summons and process shall be forwarded to the **Company** on receipt. Written notice shall also be given to the **Company** immediately the Insured shall have knowledge of any prosecution or inquest in connection with any event for which there may be liability under this Policy.

#### 5.3 **Conduct of Claim**

No admission offer promise payment or indemnity shall be made or given by or on behalf of the **Insured** without the written consent of the **Company** which shall be entitled to take over and conduct in the name of the Insured the defense or settlement of any **claim** or to prosecute in the name of the Insured for its own benefit any **claim** and shall have full discretion in the conduct of any proceedings and in the settlement of any **claim**. The **Insured** shall give all such assistance as the **Company** may require.

#### 5.4 **Claims series**

Two or more **Claims** arising out of a single negligent act, error or omission or a series of related negligent acts, errors or omissions shall be treated as a single **Claim** and shall be subject to one **Limit of Liability** and one **Deductible**.

#### 5.5 **Company's Option**



In connection with any **claim** or series of **claims** made against the Insured consequent on or attributable to one source or original cause the **Company** may at any time after the deduction of any **Deductible** pay to the **Insured** the Limit of Indemnity (after deduction of Loss amount already paid] or any less amount for which such **claims** can be settled and thereupon the **Company** shall relinquish the control of such **claims** and be under no further liability in connection therewith.

**5.6 Limit of Company's Liability**

The Limit of Indemnity together with all other limits of the **Company's** liability stated in the Policy the Schedule or any Memoranda attached to the Policy shall be the maximum amount payable by the **Company** in the circumstances described irrespective of the number of persons or legal entities named as the **Insured** and any other persons or legal entities which may be entitled to indemnity under this Policy

For the purposes of the Limit of Indemnity and all other limits of **the Company's** liability all persons or legal entities named as the **Insured** together with any other persons or legal entities which may be entitled to indemnity under this Policy shall be treated as one party.