



Bharti AXA General Insurance Company Limited
First Floor, The Ferns Icon, Survey No. 28, Next to Akme Ballet, Doddanekundi,
Off Outer Ring Road, Bangalore- 560037. **Toll Free Helpline:** 1800-103-2292
Email: customer.service@bharti-axagi.co.in. **SMS**<SERVICE> TO 5667700. **Website:** www.bharti-axagi.co.in

POLICY WORDINGS

ERRORS & OMISSION INSURANCE POLICY (Software Development and Information Technology Enabled Services)

The **Insured** is requested to read the entire document carefully to understand the coverage, exceptions, rights and duties. Please note that:

1. Several provisions in this **Policy** confine the coverage;
2. Certain words and phrases that appear in **italics type** have special meaning and have been defined in Section III: DEFINITIONS;
3. This is a "claims-made" **Policy**. Coverage is limited generally to claims first made against the **Insured** and reported in writing to the Company during the **Policy period**;
4. The limits of coverage available to pay judgements or settlements will be reduced by amounts incurred for defence expense;
5. The retention applies to defence expense and defence expense forms a part of the limits of liability.

Relying upon the completeness and accuracy of the statements and disclosures in the **Proposal** and in consideration of the payment of premium as due by the **Insured**, and the subject to the terms, provisions, limitations, conditions and exclusions of this **Policy**, Bharti AXA General Insurance Company Ltd. (hereinafter referred to as "the Company") agrees to indemnify the **Insured** in excess of the amount of the Retention and subject to the Limits of Liability, against such loss as is herein provided.

SECTION I: SCOPE OF COVER - ERRORS & OMISSIONS

The Company will pay sums the **Insured** is legally obligated to pay to recompense others for loss consequent from the **Insured's wrongful act** or that of another for whom the **Insured** is legally liable.

As a condition precedent to the availability of coverage the **wrongful act** must be exclusively in the **Insured's** performance of Software Development and/or **Information Technology Enabled Services** for others for a fee, and the **wrongful act** must take place on or after the **retroactive date** and before the end of the **Policy period**. A **claim** for such **wrongful act** must be first made against the **Insured** during the **Policy period**, and reported to the **Company** in writing in accordance with Section VIII A.

SECTION II: DEFENDING & SETTLING LAWSUITS

The **Company** has the right to defend any **claim** brought against the **Insured** covered under this **Policy**, even if the **claim** is unfounded or fraudulent. **Defence expenses** are included in and subject to the **Company's** Limits of Liability. These limits are described in Section VI. The **Company's** shall not make payments for any **defence expenses** for any **claim** after the

applicable limit of coverage has been used up in payment of **defence expenses**, settlements, judgments, awards, and interest accruing on judgments and awards prior to entry of judgment or issuance of an award.

The **Company** has the right to investigate any **claim** and, with the **Insured's** written consent, settle any **claim** if the **Company** believes that is appropriate. The **Company's** responsibility to defend any **claim** against the **Insured** ends if the **Insured** refuses to consent to a settlement the **Company** recommends and the claimant has agreed in writing to accept. In this event the **Insured** must then defend the **claim** at the **Insured's** own cost and negotiate any settlement. The **Company's** liability for any settlement, judgment or award will not exceed the amount for which the **Company** could have settled had the **Insured** consented, plus **defence expenses** up to the date the **Insured** refused to consent.

POST-JUDGEMENT

The **Company** will pay all interest on that amount of any judgment within the **Company's** limit of coverage:

- a) which accrues after entry of judgment, and
- b) before the **Company** has paid, offered to pay or deposited in the Court that part of the judgment that is within the **Company's** applicable limit of coverage.

SECTION III: DEFINITIONS

In this Policy words in italics have special meaning and are defined.

1. **Bodily injury** means bodily harm, sickness, or disease, including death, resulting therefrom, and includes mental anguish, emotional distress or any other form of psychological injury.
2. **Claim** means a demand for monetary compensation, a legal proceeding in a Court seeking monetary damages, and includes an arbitration proceeding.
3. **Company** means the Bharti AXA General Insurance Company Limited.
4. **Computer attack** means **unauthorised access, unauthorised use or transmission of a computer virus** which alters, copies, misappropriates, corrupts, destroys, disrupts, deletes or damages the **Insured's computer system** whether intentional or unintentional, hostile or otherwise and regardless of whether the perpetrator is motivated for profit.
5. **Computer system** means any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real time clock system, or similar device or any computer software (including but not limited to applications software, operating systems, runtime environments or compilers), firmware or microcode.
6. **Computer virus** means any program or code that causes loss or damage to any **computer system** and/or prevents or impairs any **computer system** from performing and/or functioning accurately and properly.
7. **Damages** means any amount that the **Insured** shall be legally liable to pay in respect of judgments rendered against the **Insured**, or for settlements negotiated by the **Company** with the written consent of the **Insured**, provided that such **damages** shall not arise from any guarantee, penalty clause, taxes, fines, or any matters which may be deemed uninsurable under the law, and shall not include non-pecuniary relief or any amount for which an **Insured** is not financially liable, or any penalty, or which is without legal recourse to an **Insured**.
8. **Defence expenses** means all expenses incurred by the **Company** in any claim defended by the **Company** or incurred by the **Insured** with the **Company's** prior written consent as well as all reasonable costs levied against the **Insured** in any such **claim** which does not exceed the **Company's** Limit of Liability. **Defence expenses** shall also include all reasonable expenses, other than loss of earning, incurred by the **Insured** at the **Company's** request. **Defence expenses** shall not include post-judgment interest.
9. **Extortion claim** means any **claim** in the form of a threat or connected series of threats to commit an intentional **computer attack** against the **Insured's computer system**, including, without limitation, a threat to intentionally introduce, implant or spread a **computer virus** into or from the **Insured's computer system** and/or releasing sensitive information gained from unauthorized access to the **Insured's** computer system to others who may misuse the data, for the purpose of demanding extortion monies.

10. **Extortion monies** means any monies paid by the **Insured**, with the **Company's** written consent, to a person(s) or entity reasonably believed by the **Company** to be responsible for the **extortion claim**, to bring that **extortion claim** to an end, but not exceeding what the **Company** reasonably believes to be the amount of **loss** that would have been covered under this **Policy** had the **extortion monies** not been paid.
11. **Failure of security** means failure of the **Insured's** hardware, software or firmware (including firewalls, filters, **computer virus** protection software, intrusion detection and the electronic use of passwords or similar identification of authorised users) whose purpose is to prevent a **computer attack, unauthorised access, unauthorised use** and/or disclosure of confidential or private information and/or the transmission of a **computer virus** into or from the **Insured's computer system** to actually prevent any of the foregoing events. **Failure of security** shall also mean the theft of a password or access code by non-electronic means in violation of the **Insured's** written security policies and procedures which theft actually results in a **computer attack, unauthorised access, unauthorised use** and/or disclosure of confidential or private information and/or the transmission of a **computer virus** into or from the **Insured's computer system**. For the avoidance of doubt, unintentional programming and/or operational errors shall, in no event, constitute **failure of security**.
12. **Information Technology Enabled Services** means a written agreement between the Insured and a third party to perform services as specified within such agreement for a fee for any of the following services:
- (a) system analysis, integration, designing, programming, data processing; and/or
 - (b) consulting on the development of data processing systems, which means the performance of feasibility studies and rendering of opinions regarding Electronic Data Processing; and/or
 - (c) outsourcing of Electronic Data Processing Systems which means the management or operation of a third party's information service department; and/or
 - (d) marketing, selling, servicing, distributing, installing and maintaining computer hardware and/or software and training in the use of such hardware and/ or software;
13. **Insured** means the individual, partnership, corporation, joint venture or other entity named in Item 1 of the Schedule and any **subsidiary** and any partner, director, officer or employee thereof while acting solely within the scope of his or her duties as such.
14. **Internet advertising** means publicity or promotion on the **Insured's** own behalf or for others on the **internet** by the **Insured**.
15. **Internet media** means webcasting, electronic publishing, transmission, republication, retransmission, utterance, dissemination, distribution, serialization, creation, production, organization, exhibition or displaying, of the **Insured's** material over the **internet**.
16. **Loss** means **defence expenses**, monetary sums payable pursuant to judgements, awards and/or settlements negotiated by or on behalf of the **Company** arising out of a **wrongful act** provided, however, that **loss** shall not include fines, penalties, punitive or exemplary damages, non pecuniary relief, taxes, or any amount for which an **Insured** is not financially liable, or which is without legal recourse to an **Insured**, or any matter which may be deemed uninsurable under Indian law.
17. **Policy** means
- a) the schedule, insuring clause(s), definitions, exclusions, conditions, and other terms contained herein; and
 - b) any endorsement attaching to and forming part of the **Policy** either at inception or during the **Policy period**; and
 - c) the **proposal**.
18. **Policy period** means the period commencing on the effective date shown in the Schedule. This period ends on the earlier of the expiration date shown in Item 2 of the Schedule or the effective date of termination or cancellation of coverage and specifically excludes any Extended Reporting Period hereunder.

19. **Pollutants** means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals, asbestos, asbestos containing materials, lead, lead containing materials and waste. "Waste" includes material to be recycled, reconditioned or reclaimed, as well as medical waste.
20. **Property damage** means physical injury to, or destruction of tangible property including the loss of it, or loss of the use of tangible property which has not been physically injured or destroyed.
21. **Proposal** means the application for insurance completed by **Insured** and any ancillary information and documentation supplied by the **Insured** in connection with this insurance.
22. **Retroactive date** means the date specified as such in Item 7 of the Schedule.
23. **Subsidiary** means any corporation of which the entity named in Item 1 of the Declarations owns more than 50% of the issued and outstanding voting stock either directly or indirectly through one or more of its **subsidiaries**. **Subsidiary** includes any corporation which becomes a **subsidiary** during the **Policy period** provided that within 90 days of its becoming a **subsidiary**:
- a) the **Company** is provided full particulars of the **new subsidiary** and
 - b) subject to review and acceptance by the **Company**, any additional premium or amendment of the provisions of this **Policy** required by the **Company** relating to such **new subsidiary** is agreed to and
 - c) any additional premium required by the **Company** is paid when due.
- This **Policy** does not cover any **claim** against a **subsidiary** or any partner, director, officer or employee thereof for any wrongful act when the entity named in Item 1 of the Schedule did not own more than 50% of the issued and outstanding voting stock of such **subsidiary**, either directly or indirectly through one or more of its **subsidiaries**.
24. **Unauthorised access** means access to the **Insured's computer system** without authorisation or exceeding authorisation. **Unauthorised access** shall also include **computer attacks**.
25. **Unauthorised use** means use of the **Insured's computer system** without authorisation or exceeding authorisation. **Unauthorised use** shall also include **computer attacks**.
26. **Wrongful act** means any actual or alleged negligent act, error or omission in the performance of **Information Technology Enabled Services** for others for a fee.

Note: Where the context so permits, references in this **Policy** to the singular shall also include references to the plural and references to the male gender shall also include references to the female gender, and vice versa in both cases.

SECTION IV: EXTENSIONS/ADD ON COVERS

1. Automatic Acquisitions Extension

The **Company** agrees to provide cover for up to 3 acquisitions made by the **Insured** during the **Policy period** insurance, provided that such additional acquired entity does not represent more than a 5 per cent increase in the total assets or gross turnover of the **Insured** as at the date of the acquisition.

Where such acquired entity exceeds 5 per cent of the total assets or gross turnover, or where the **Insured** has already made 3 new acquisitions as provided for above, such entity shall be included as an **Additional Insured** under the **Policy** but only upon the condition that within 90 days of the acquisition, the **Company** shall have been provided with full particulars of the acquired company and any amendment to the **Policy** has been agreed by the **Insured** and any additional premium has been paid by the **Insured**.

Such cover as is afforded by this **Policy** in respect of such acquisition shall only be effective in respect of **wrongful acts** occurring after the date of the acquisition.

2. Consequential Damages Extension

The **Company** agrees indemnify the **Insured** lost profit, lost savings and lost business opportunities, indirectly resulting from any **claim** which is both first made against the **Insured** during the **Policy period** and reported to the **Company** in

accordance with Section VIII A of this **Policy** for any **wrongful act** of the **Insured** out of the **Insured's** performance of Software Development and/or **Information Technology Enabled Services** for others for a fee.

3. **Cyber-Extortion Protection Extension**

The **Company** agrees to indemnify the **Insured** for amounts which the **Insured** shall, with the **Company's** prior written consent, pay as extortion monies resulting from an **extortion claim** first made against the Insured and reported to the **Company** during the **Policy period** in accordance with Section VIII A of this **Policy**.

4. **Intellectual Property Rights Infringement Extension**

The **Company** agrees to pay on behalf of the **Insured** all damages which the **Insured** shall become legally liable to pay as a result of any claim or claims first made against the Insured and reported to the **Company** during the **Policy period**, arising out of the **Insured's** performance of Software Development and/or **Information Technology Enabled Services** for others for a fee for a breach or infringement of or unauthorised use of confidential information, trademarks (including trademarks protected by common law rights of passing off), copyrights, moral rights, data base rights; provided that the **Insured** shall establish to the **Company's** reasonable satisfaction that such breach, infringement and/or unauthorised use was unintentional.

5. **Internet Security Liability Extension**

The **Company** agrees to pay on behalf of the **Insured** all **damages** resulting from any **claim** which is both first made against the **Insured** during the Policy period and reported to the **Company** in accordance with Section VIII A of this Policy for any **wrongful act** of the **Insured** resulting in a **failure of security** of the Insured's **computer system**.

6. **Internet Content Liability Extension**

The **Company** agrees to pay on behalf of the **Insured** all **damages** resulting from any **claim** which is both first made against the **Insured** during the **Policy period** and reported to the **Company** in accordance with Section VIII A of this **Policy** for any **wrongful act** of the **Insured** arising from **internet advertising** and/or **internet media**.

The **Company** is under no obligation to indemnify the **Insured** unless the **wrongful act** which is the subject of the **claim** first takes place on or after the **retroactive date** and solely in the performance of the **Insured's internet advertising** and/or **internet media**, as shown in the **proposal**.

7. **Employee Fidelity**

The Insurer will pay on behalf of any Insured, who is not the actual perpetrator, all Damages resulting from any claim for Fraud/Dishonesty of any Employee

SECTION V: EXCLUSIONS

This **Policy** will not act in response to any **claim** directly or indirectly caused by, based on, for or arising out of:

1. the **Insured's** dishonest, fraudulent, criminal, reckless, or malicious act, error or omission;
2. **bodily injury** or **property damage**;
3. false arrest, detention or imprisonment, libel, slander or defamation of character, assault or battery, wrongful entry or eviction, or invasion of any right of privacy;
4. delay in performance or failure to perform any contract unless such **claim** is arising out of a **wrongful act**;
5. the actual or alleged intentional non-performance or default of any of the **Insured's** contractual obligations;
6. liability the **Insured** assumed under any contract or agreement, by way of guarantee, warranty, penalty clause or any obligation deemed uninsurable under law. This exclusion does not apply to liability the **Insured** would have in the absence of such contract or agreement;
7. any guarantee of or the exceeding of cost estimates;
8. the gaining in fact of any improper personal profit or advantage to which the **Insured** is not legally entitled, or out of any disputes or differences regarding the **Insured's** fees, charges, commissions or for the return of money paid to **Insured**;

9. any costs and expenses incurred by the **Insured** to comply with any warranties, guaranties, representations or promises made in respect of the **Insured's** services, software or electronic products. This includes, but is not limited to the **Insured's** costs of repair or replacement of defective material, workmanship or products error correction, system modification, product recall, withdrawal or inspection, delivery time, completion time, financial savings or of any property of which such products or work form a part;
10. electrical failure, including any electrical power interruption, surge, brownout or blackout;
11. the failure to prevent unauthorised access to or use of any electronic data processing system or program, unless such unauthorised access is the result of a malfunction of the **Insured's** software products;
12. any infringement of patent, copyright, trademark, service mark or other intellectual property right;
13. any violation of any securities, anti-trust, restraint of trade, unfair trade practices;
14. the performance of or failure to perform professional services for any person or organization:
 - a) which is or was owned, managed, operated or controlled directly or indirectly, in whole or in part, by the **Insured**; or
 - b) which does or did own, manage, operate or control the **Insured** directly or indirectly; or
 - c) which is or was affiliated with the **Insured** through common majority ownership or control; or
 - d) in which the **Insured** is or was a director, officer, partner or principal stockholder;
15. a) any notice, **claim** or legal proceeding which is known or pending prior to the **Policy period**; and / or
 - b) any fact or circumstance of which written notice has been given by the **Insured**, or ought reasonably to have been given, under any previous policy (whether issued by the **Company** or not) or of which the Insured first became aware prior to the **Policy period** and which the **Insured** knew or ought reasonably to have known had the potential to give rise to a **claim** or loss;
16. a) the presence of or the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**, or
 - b) any direction or request to test for, monitor clean up, remove, contain, treat, detoxify or neutralize **pollutants**, or in any way respond to or detoxify or neutralize pollutants, or in any way respond to or assess the effects of **pollutants**; by any other person or organization covered under this Policy;
17. unlawful discrimination on any basis whatsoever;
18. injury or damage to:
 - a) the **Insured's** employee or an independent contractor working for the **Insured**; or
 - b) the spouse or relative of such employee or independent contractor, as a consequence of injury or damage to the employee or independent contractor.

This exclusion applies:

- i. whether the **Insured** is liable as an employer or in any other capacity; and
 - ii. to any obligation to share damages with or repay someone else who must pay damages because of injuries or damage.
19. **claims** for which the **Insured**, or any carrier as the **Insured's** company, may be held liable under any worker's or unemployment compensation law, or disability benefits law, or any similar law;
 20. any form of relief other than the payment of money damages;
 21. the bankruptcy or insolvency of the **Insured**.

SECTION VI: LIMITS OF LIABILITY

The limits shown in Item 3 of the Schedule to this **Policy** and the information contained in this Section state the most the **Company** will pay regardless of the number of:

- a) persons or organization(s) covered by this **Policy**, or
- b) claimants or **claims** made.

Each wrongful act Limit: This is the most the **Company** will pay for all **claims** first made and reported to the **Company** in writing that result from a single **wrongful act**.

Aggregate Limit: This is the most the **Company** will pay for all **claims** first made and reported to the **Company** in writing while this **Policy** is in effect.

Defence expenses are a part of and not in addition to, the applicable limit of coverage.

Multiple Professional Liability Policies:

More than one professional liability policies may be issued to the **Insured** by other insurers. These policies may provide coverage for:

- a) **claims** arising from the same or related **wrongful acts**,
- b) for which persons or organizations covered in those policies are jointly and severally liable.

In such a case, the **Company** will not be liable under this **Policy** for an amount greater than the proportion of the loss that this **Policy's** applicable limit of coverage bears to the total applicable limits of coverage under all such policies.

In addition, the total amount payable under all such policies is the highest applicable limit of coverage among all such policies.

The **Company** shall not be obligated to pay any judgments or settlements or to undertake or continue the defence of any **claim** after the applicable Limit of Liability has been exhausted by payment of judgments, settlements or **defence expenses**.

SECTION VIII: RETENTION

The **Company** will only pay for loss in excess of the Retention stated in Item 4 of the Schedule. The **Insured's** payment of the Retention is a condition precedent to the **Company's** obligation to pay any defence expense or loss. All **claims** arising out of the same **wrongful act** or continuous or related **wrongful acts** shall be subject to one Retention.

SECTION X: OTHER PROVISIONS AFFECTING COVERAGE

A. NOTICE PROVISION:

- (a) It is a condition precedent to the liability of the **Company** hereunder that the Insured shall give the **Company** written notice as soon as is reasonably practicable and in any event within 21 days of:
 - (1) any **claim** made against any **Insured** during the **Policy period** or Extended Reporting Period;
 - (2) any circumstances occurring during the **Policy period** which might reasonably be expected to give rise to a claim.
- (b) The **Insured** may give written notice by facsimile transmission or by hand, but if notice is given by such means then this must be confirmed by registered post and, subject to the **Insured** providing proof if requested to do so by **Company**, the date of posting shall be deemed to be the date upon which such notice was given. Written notice is to be given to the following address:

Bharti AXA General Insurance Company Limited
First Floor, The Ferns Icon, Survey No. 28,
Next to Akme Ballet, Doddanekundi,
Off Outer Ring Road, Bangalore- 560037.

- (c) Upon written notice having been given under (a) and (b) above, any **claim** which is notified under (a)(1) above and any subsequent **claim** arising out of circumstances notified under (a)(2) above shall in each case be deemed to have been made during the **Policy period**.
- (d) In the event of notification under either (a)(1) or (a)(2) above, the **Insured** shall disclose to the **Company** all relevant information and documentation and, in addition, shall provide assistance to the **Company** to enable the **Company** or their agents to investigate any **claim** and/or to enable the **Company** to determine their liability under this **Policy**. Specifically in the case of a notification under (a)(2) above, the **Insured** shall additionally give reasons for the anticipation of a **claim(s)**, in each case with full particulars including the circumstances, dates and persons involved.

B. REPORTED ACTS

Notice of suspected **wrongful act(s)** which might give rise to a **claim** must include:

1. How, when and where the **wrongful act** took place;
2. Names and addresses of any witnesses;
3. Nature and location of any injury or damage;
4. Potential **claim** amount;
5. Date when the **Insured** first became aware of this potential loss.

The **Insured** shall send to the **Company** copies of all demands, suit papers or other legal documents they receive, as soon as possible.

The **Company** will cover **claims** first made against the **Insured** after the **Policy period**, but only if:

- a) The **Insured** reasonably believes a **wrongful act** has taken place and **claim** might be made, and
- b) The **Insured** reports the suspected **wrongful act** to the **Company** or the **Company's** authorised agent, in writing, during the **Policy period**.

C. COVERAGE TERRITORY AND CLAIMS-MADE PROVISIONS

This **Policy** applies to **wrongful acts** occurring in India subject to the terms, conditions and exclusions of the **Policy** and provided that:

- a) the **claim** is brought in India; and
- b) the **claim** for such **wrongful act** is first made against the **Insured** during the **Policy period** or any applicable discovery period; and
- c) the **claim** is reported in writing to the **Company** during the **Policy period** or any applicable extended reporting period; and
- d) the claim alleges a wrongful act that occurred on or after the **retroactive date** and the **Insured** did not know or could not have reasonably foreseen, prior to the **retroactive date**, that such a **wrongful act** could lead to a claim against the **Insured**; and
- e) the same **wrongful act** or continuous, repeated or related wrongful acts were not contained in any **claim** which has been reported, and such **wrongful acts** were not the subject of notice, to an **insurer** under any **policy** of which this **Policy** is a renewal, replacement or which it may succeed in time.
- f) For the avoidance of doubt, this **Policy** will not respond to the actual or attempted enforcement against the **Insured** within India of a judgment or award or any other order obtained outside of India whether or not such judgment or

award or any other order is subsequently deemed enforceable by a Court within India. It is acknowledged and agreed by the **Insured** that the premium for this **Policy** has been calculated accordingly and no consideration has been paid in respect of liabilities arising under any other law or the jurisdiction of any other Courts.

D. EXTENDED REPORTING PERIOD

If the **Company** cancels or does not renew this **Policy**, the Insured has the right to a period of 30 days following the effective date of cancellation to report to the **Company** any claim made against the **Insured** during that 30 day period. That **claim** must be for a **wrongful act** after the **retroactive date** and before the end of the **Policy period**.

After the end of that 30 day extended reporting period, the **Insured** has the right, upon payment of an additional premium of 65% of the full **Policy** premium, to buy a twelve (12) month Extended Reporting Period Endorsement. The endorsement applies only to covered **claims** arising from a **wrongful act** after the **retroactive date** and before the end of the **Policy period**. The **claim** must first be made against **Insured** and reported to the **Company** in writing during the twelve (12) month period after the end of the 30 day extended reporting period.

To obtain this reporting endorsement the **Insured** must request it in writing and pay the additional premium during the 30 day extended reporting period after the **Policy** ends. If the **Insured** does so, the **Company** cannot cancel the Extended Reporting Period Endorsement, but all of the other terms, conditions and exclusions of this **Policy** (save for this clause) shall remain in force. If the **Company** does not receive the written request and payment as required, the **Insured** shall not exercise this right to obtain an Extended Reporting Period Endorsement at a later date. If the **Insured** cancels the endorsement, there will be no return of premium.

Any change in premium or terms from this **Policy** shall not be considered a refusal of the **Company** to renew.

The provision of an extended reporting period does not increase the aggregate limit of coverage described in the Limits of Liability section of this **Policy**.

E. INSURED'S ASSISTANCE AND CO-OPERATION

It is a condition precedent to **Company's** liability that:

- (a) The **Company** shall have the right to conduct, in the name of and with the co-operation of the **Insured** and whether directly or through the **Company's** agents, the investigation, defence or settlement of any claim and to represent the **Insured** in any legal or other forum in respect of that **claim**. Any amount incurred by or on behalf of the **Company** on behalf of the **Insured** shall form part of the **defence expenses**.
- (b) The **Insured** does not incur any **defence expenses**, admit liability for or attempt to settle, make any admission, offer any payment or otherwise assume any contractual obligation with respect to any **claim** without the **Company's** prior written consent, such consent not to be unreasonably withheld. The **Company** shall not be liable for any **defence expenses**, settlement, admission, offer, payment, or assumed obligation to which they have not previously consented in writing.
- (c) The **Insured** shall use due diligence and ensure that all reasonable and practicable steps are taken to avoid or diminish any liability which may give rise to or has given rise to a **claim**.

The **Company** will not settle any **claim** without the **Insured's** consent, but if the Insured refuses to consent to any settlement or compromise recommended by the **Company** or its agents and acceptable to the claimant and elects by its conduct or otherwise to contest the **claim** then the **Company's** liability shall not exceed the amount for which the **Company** would have been liable if the **claim** had been so settled or compromised when and as so recommended, and the **Company** shall have the right to withdraw from the **claim** by tendering control of it to the **Insured**.

The **Company** shall not be obliged to make any payments under this Policy or to undertake or continue with the **defence** or settlement of any **claim** once the **Company's** Limits of Liability have been exhausted by the making of any earlier payments in respect of damages or **defence expenses**, and in such a case the **Company** shall have the right to withdraw from the claim by tendering control of it to the Insured.

F. OTHER INSURANCE

Coverage for loss under this **Policy** shall apply only in excess of any other coverage which may apply. This clause will apply whether that other coverage is insurance, self-insurance, or indemnification or similar agreement, or whether such other coverage is stated to be primary, pro rata, contributory, excess, contingent or otherwise.

G. RECOVERING DAMAGES FROM A THIRD PARTY

In the event of any payment under this **Policy**, the **Company** shall be subrogated to all of the **Insured's** rights of recovery to the extent of such payments against any person or organization and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights and ensure that nothing is done to prejudice such rights and provide the **Company** with whatever reasonable co-operation and assistance they might require.

However, it is specifically agreed that the Company will not exercise its rights of subrogation against an employee of the Insured unless the aforesaid payment has been caused by or contributed to in any way by the fraud or dishonesty of any such employee. In the event of any recovery being made, it is specifically understood that the recovered funds shall be applied in the following order:

- (a) The **Company** shall be reimbursed to the extent of any payment they have made under this **Policy**.
- (b) The **Company** shall be reimbursed the actual costs and expenses they have incurred in pursuing the recovery.
- (c) The **Insured** shall be entitled to reimbursement in respect of its **losses** only after the payment of (a) and (b) and only to the extent of any recovered funds that might remain.

H. POLICY CHANGES

This **Policy** contains all the agreements between the **Insured** and the **Company** concerning this insurance. The first named Insured in the Declarations is authorised to make changes in this **Policy** with the **Company's** consent. This **Policy** can only be changed by a written endorsement that the **Company** issues and makes a part of this **Policy**.

I. ASSIGNMENT

The interest hereunder of any **Insured** is not assignable. If the Insured shall die or be adjudged incompetent, this **Policy** shall cover the **Insured's** legal representative as the **Insured** with respect to liability previously incurred and covered by this **Policy**.

J. SPECIAL RIGHTS AND DUTIES OF THE FIRST NAMED INSURED

The **Insured** agrees that when there is more than one person or organization covered under this **Policy**, the first named **Insured** in the Declaration shall act on behalf of all of the **Insured** as to:

- a) giving and receiving notice of cancellation;
- b) payment of premiums and receipt of return premiums;
- c) acceptance of any endorsements to this **Policy**.

K. FRAUDULENT DECLARATIONS OR CLAIMS

The **Insured** agrees that this **Policy** is issued in reliance upon the truth of representations made to the **Company**. This **Policy** includes all of the agreements between the **Insured** and the **Company** concerning this insurance. If the **Insured** shall make any **claim** for indemnity knowing the same to be false or fraudulent, as regards amount or otherwise, this **Policy** shall be voidable at the option of the **Company** and if **Company** elects to avoid then the **Policy** shall be avoided in its entirety and be of no effect whatsoever and all **claims** for indemnity hereunder shall be forfeited.

L. ENTIRE CONTRACT

By acceptance of this **Policy** the **Insured** agrees that the statements in the **Proposal** are their statements and representations, that this **Policy** is issued in reliance upon the truth of such statements and representations and that this **Policy** embodies all agreements existing between the **Insured** and the **Company** or any of its agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this **Policy** or stop 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 to **form** a part of this **Policy**.

M. CANCELLATION

- a) The **Company** may cancel this **Policy** by giving 30 days written notice of such cancellation to the last known address of the Insured and in such event the **Company** will return a pro-rata portion of the premium for the unexpired **Policy period**.
- b) This **Policy** may also be cancelled by the **Insured** by giving 30 days written notice to the **Company** in which event the **Company** will retain premium at the customary short period scale, provided that there has been no **claim** under the Policy during the **Policy period** in which case no refund of premium shall be allowed.
- c) The payment or tender of any unearned premium by the **Company** shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

N. DUE OBSERVANCE

The due observance of and compliance with the terms, provisions, warranties and conditions of this **Policy** insofar as they relate to anything to be done or complied with by the Insured shall be a condition precedent to any liability of the **Company**.

O. INNOCENT NON-DISCLOSURE

In the event of the **Company** being entitled to avoid this **Policy** ab initio, the **Company** may at its sole determination instead give notice in writing to the **Insured** that they regard this **Policy** as of full force and effect save that there shall be excluded from any insurance afforded hereunder any **claim** which has arisen or which may arise and which is related to the circumstances which entitle the **Company** to avoid this **Policy**. This **Policy** shall then continue in full force and effect but shall be deemed to exclude the particular **claim** referred to in the said notice (as if the same had been specifically endorsed ab initio).

P. ARBITRATION

- (a) Any and all disputes or differences which may arise under, out of, in connection with or in relation to this **Policy**, or to its existence, validity or termination, or to the determination of the amount or any amounts payable under this **Policy**, shall be referred to a sole arbitrator to be appointed by the parties to the dispute within 30 days of any party giving notice of arbitration to the other(s).
- (b) In the event that the parties are unable to agree upon the identity of a sole arbitrator, the disputes or differences shall be referred to the decision of three arbitrators of whom one shall be appointed in writing by each of the parties within a period of 30 days after the failure to appoint a sole arbitrator and the third (who shall serve as Chairman) shall be appointed by the nominated arbitrators. In case either party shall refuse or fail to appoint an arbitrator within the aforesaid 30 days after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint a sole arbitrator who shall thereafter be empowered to conduct the arbitration and determine the disputes or differences referred to him as if he had been appointed a sole arbitrator with the consent of both parties.
- (c) The parties shall share the expenses of the arbitrator or arbitral tribunal equally and such expenses, along with the reasonable costs of the parties in the arbitration, shall be awarded by the arbitrator or arbitral tribunal in favour of the successful party in the arbitration or, where no party can be said to have been wholly successful, to the party who has substantially succeeded.
- (d) The place of arbitration shall be India, the language of the arbitration shall be English, the law applicable to and in the arbitration shall be Indian law and the arbitration process will be in accordance with the provisions of the Arbitration & Conciliation Act 1996, as amended from time to time.
- (e) It is a condition precedent to any right of action or suit upon this **Policy** that the award by such arbitrator or arbitrators shall be first obtained.
- (f) In the event that these arbitration provisions shall be held to be invalid then all such disputes shall be referred to the exclusive jurisdiction of the Indian courts.

Insurance is the subject matter of the solicitation.



general insurance

Bharti AXA General Insurance Company Limited

First Floor, The Ferns Icon, Survey No. 28, Next to Akme Ballet, Doddanekundi,
Off Outer Ring Road, Bangalore- 560037. **Toll Free Helpline:** 1800-103-2292

Email: customer.service@bharti-axagi.co.in. **SMS**<SERVICE> TO 5667700. **Website:** www.bharti-axagi.co.in