

Fidelity Guard

INSURING AGREEMENT

The Insurer shall indemnify the *Insured* for their direct financial loss which occurs during the Policy Period and within the *Geographical Limits* specified in the Schedule following

A Employee Dishonesty

Loss of *Money, Securities* or other property, to the amount specified under Item 4 of the Schedule resulting directly from one or more fraudulent or dishonest acts committed by an *Employee* acting alone or in collusion with others, provided always that:-

- 1 such fraudulent or dishonest acts are (a) committed during the Policy Period specified in Item 3 of the Schedule and (b) are discovered in accordance with Condition 9 of this Policy and,
- 2 such fraudulent or dishonest acts as *insured* under this section shall mean only fraudulent or dishonest acts committed by an *Employee* with the manifest intent (a) to cause the *Insured* to sustain such loss and (b) to obtain financial benefit for the *Employee*, or for any other person or organization intended by the *Employee* to receive such benefit, other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment

LOSSES CAUSED BY UNIDENTIFIABLE EMPLOYEES

If a loss is alleged to have been caused by the fraud or dishonesty of any one or more of the *Employees* and the *Insured* shall be unable to identify the specific *Employee* or *Employees* causing such loss, the *Insured* shall nevertheless have the benefit of this Section, subject to the provisions of this Policy, provided the evidence submitted proves beyond reasonable doubt that the loss was due to the fraud or dishonesty of one or more of the said *Employees*, and provided, further, that the aggregated liability of the Insurer for such loss shall not exceed the *Limit of Liability* applicable to a single loss as specified in Item 4 of the Schedule

B. Third Party Computer and Funds Transfer Fraud

The *Theft of Money, Securities* or other property by *Computer Fraud*; or the *Theft* of any of the *Insured's* funds from their *Transfer Account* as communicated to such *Financial Institution* In each case up to the amount specified under Item 4 of the Schedule.

Definitions

Associated Company (ies) means company(ies) in which the *Insured* owns more than twenty percent of the share capital and retains management control

Computer Fraud means, the wrongful conversion of assets under the direct or indirect control of the *Insured's* computer system by means of the direct fraudulent accessing of such computer system by persons other than *Employees* and (a) the insertion of fraudulent data or instructions into such computer system; or (b) fraudulent alteration of data, programs or routines in such computer system

Employee means any person or persons while in the regular service or engaged in the service of the *Insured* in the ordinary course of the *Insured's* business during the Policy Period specified in Item 3 of the Schedule and whom the *Insured* (a) compensates by salary, wages and / or commissions, (b) has the right to govern and direct in the performance of such service and subject to the same provisions shall also mean any (i) *ex-Employee* for a period not exceeding thirty-one days following termination of such person's services;

(ii) part-time or temporary *Employees*; (iii) students gaining work experience with the *Insured*, (iv) a director or trustee of the *Insured* while performing acts coming within the scope of the usual duties of an *Employee* and who is also employed as an officer or *Employee* of the *Insured* in some other

capacity, (v) any individual or individuals assigned to perform *Employee* duties for the *Insured* by any agency furnishing temporary personnel on a contingent or part-time basis; provided however, that this Policy does not cover any loss caused by such individual if such loss is also covered by an insurance or suretyship held by the agency furnishing such temporary personnel to the *Insured*

Financial Institution means (a) banking or savings institution or (b) a stockbroker, fund manager or similar investment institution at which the *Insured* maintains a *Transfer Account*

Fraudulent transfer Instructions means (a) electronic instructions: namely fraudulent electronic, telegraphic, cable, teletype *Tested* telex, *Tested* facsimile or telephone instructions to a *Financial Institution* to debit a *Transfer Account* and to transfer pay or deliver funds from such account, which instructions purport to have been transmitted by the *Insured* or by a person duly authorised by the *Insured* to issue such instructions but which have been fraudulently transmitted by another, and (b) written instructions: namely, fraudulent written instructions to a *Financial Institution* to debit a *Transfer Account* and to transfer pay or deliver funds for such account through an electronic funds transfer system at specified times or under specified conditions, which written instructions purport to have been duly issued by the *Insured* but which have been fraudulently issued, forged or altered by another.

Insured means the Policyholder as stated in the Schedule

Money means currency, coins bank notes and bullion and travellers cheques, register cheques and money orders held for sale to the public.

Securities means all negotiable and non-negotiable instruments or contracts representing either money or property and includes revenue and other stamps in current use, tokens and tickets but does not include *Money*.

Subsidiary Company means a company in which the *Insured* directly or indirectly;

- (i) controls the composition of the board of directors; or
- (ii) controls more than half of the voting power; or
- (iii) holds more than half of the issued share capital

Tested means a method of authenticating the contents of a communication by affixing thereto a valid test key which has been exchanged between the *Insured* and a *Financial Institution* for the purpose of protecting the integrity of the communication in the ordinary course of business

Theft means the intentional and unlawful taking of insured property to the deprivation of the *Insured*

Transfer Account means an account, maintained by the *Insured* at a *Financial Institution*, from which the *Insured* or the *Insured's* authorised representatives may cause the transfer, payment or delivery of funds (a) by means of electronic, telegraphic, cable, teletype, *Tested* telex, *Tested* facsimile or telephone instructions (communicated directly or through a cash management service or funds transfer system), or (b) by means of written instructions establishing the conditions under which such transfers are to be initiated by such *Financial Institution* through an electronic funds transfer system

Exclusions

(applicable to Cover A and B unless stated)

The insurance provided by this Policy excludes :-

- 1 loss due to loss of potential income, including but not limited to interest and dividends and loss of computer time, not realised by the *Insured* because of loss covered under this Policy;
- 2 costs, fees and other expenses incurred by the *Insured* in establishing the existence of or amount of loss covered under this Policy, except as may be specially stated to the contrary under Condition 3 of this Policy;
- 3 damages of any type for which the *Insured* is legally liable, except direct compensatory damages for which the *Insured* is legally liable and arising from a loss covered under this Policy ;

- 4 the costs of defending any legal proceeding brought against the *Insured* or the fees, costs or expenses incurred or paid by the *Insured* in prosecuting or defending any legal proceeding whether or not such proceeding results or would result in a loss to the *Insured* covered by this Policy;
- 5 loss under Cover B due to any fraudulent dishonest or criminal act by an *Employee*, director, trustee or authorised representative of any *Insured* while working or otherwise and whether acting alone or in collusion with others;
- 6 loss, or that part of any loss, as the case may be the proof of which either as to its existence or as to its amount is dependent upon an inventory computation or profit and loss computation alone;
- 7 loss under Cover A caused by any *Employee* who, at the time of committing any fraudulent or dishonest acts (as *Insured* hereunder) controls more than five percent of the issued share capital of the *Insured* company or of any Subsidiary of the *Insured* company;
- 8 loss under Cover A caused by any broker, factor commission, consignee, contractor or other agent or representative of the same general character;
- 9 loss under Cover A caused by any *Employee* from and after the time that the *Insured* or any partner or officer thereof not in collusion with such *Employee* shall have knowledge or information that such *Employee* has committed any dishonest or fraudulent act whether such act be committed any (a) after the date of employment by the *Insured* or, (b) prior to the date of employment by the *Insured*
- 10 any liability in respect of any loss or claim (a) arising out of or in connection with any circumstances or occurrences which have been notified to any insurer on any other policy of insurance effected prior to the inception of this Policy; (b) arising out of or in connection with any circumstances or occurrences known to the *Insured* prior to the inception of this Policy; and
- 11 loss due to loss of and /or damage to proprietary information, trade secrets, confidential processing methods or other confidential information of any kind. In any claim, and in any action, suit or other proceeding to enforce a claim under this Policy for loss, the burden of proving that such loss does not fall within this Exclusion shall be upon the *Insured*.

Conditions

(applicable to Cover A and B unless stated)

1. Alteration

No change in or modification of this Policy will be effective unless made by written endorsement signed by an authorised representative of the Insurer

2. 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 3 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

3 *Auditors Fees*

This Policy is extended to indemnify the *Insured* in respect of auditors' fees reasonably and necessarily incurred by the *Insured* and with the consent of the Insurer in respect of loss falling under the terms of this Policy. The amount payable by reason of this extension will be part of the Limit of Liability stated in Item 4 of the Schedule. This extension shall not apply in respect of losses falling within the Deductible stated under Item 5 of the Schedule

4 *Automatic Acquisitions, Consolidation or Merger Cover*

If the total number of *Employees* of the *Insured* increases by more than 10% through the acquisition of assets or shares, or consolidation or merger with some other concern then the insurance provided by this Policy shall also apply in respect of such *Employees* provided the *Insured* shall (a) give the Insurer written notice of the transaction within 90 days thereafter, and (b) give the Insurer such other additional information as the Insurer may reasonable require, and (c) pay the Insurer an additional premium calculated pro-rata from the date of the transaction to the end of the Policy Period

5 *Basis of Valuation*

In no event shall the Insurer be liable under this Policy for more than (a) as regards *Securities*, the actual cash value thereof at the close of business on the business day next preceding the day on which the loss was discovered, or for the actual costs of replacing the *Securities* whichever is less; (b) the cost of blank books, pages, tapes or other blank materials to replace lost or damaged books of account or other records; (c) the reasonable cost of re-writing or amending the software programs or systems where such re-writing or amending is necessary to correct the programs or amend the security codes following an insured claim for which liability is admitted under the Policy (d) the Indian Rupee value of foreign currency based on the rate of exchange published in the financial times on or nearest the day any loss involving foreign currency is discovered; (e) the actual cash value at the time of loss of other property (not included in the above) or more than the actual cost of repairing or replacing the property with property of similar quality and value, whichever is less.

6 *Cancellation*

Notwithstanding the Policy Period as specified in Item 3 of the Schedule, the insurance shall be cancelled or deemed cancelled in respect of: (a) any *Employee, as under Cover A* immediately upon discovery by the *Insured*, or by any partner or officer thereof not in collusion with such *Employee*, of any dishonest or fraudulent act on the part of such *Employee* and further dishonest or fraudulent acts committed by such *Employee* are excluded; (b) Cover A and B, upon the effective date and at the time specified in a written notice posted to the *Insured* by the Insurer. Such effective date shall not be less than thirty days after the date of posting. The posting by the Insurer of notice as aforesaid to the *Insured* at the address shown in the Schedule shall be sufficient proof of notice. Delivery of such written notice by the Insurer shall be equivalent to posting; and (c) Cover A and B, upon receipt by the Insurer of a written request from the *Insured* to terminate this Policy. The Insurer shall refund any unearned premium

pro rata to the *Insured* forthwith upon cancellation of the Policy provided that there has been no Claim under the Policy during the Policy Period in which case no refund of premium shall be allowed

7 Notice

(a) It is a condition precedent to the liability of the Insurers hereunder that the *Insured* shall give the Insurers 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 Period of Insurance 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 Insurers, 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:

The Claims Department
Tata AIG General Insurance Company Ltd

(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 Insurers all relevant information and documentation and, in addition, shall provide assistance to the Insurers to enable the Insurers or their agents to investigate any Claim and/or to enable the Insurers 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

8 Deductible and other insurance

Coverage under this policy will be excess of the greater of the following amounts with respect to each and every loss, (a) the deductible amounts (s) set out in Item 5 of the Schedule, or (b) the amount of any other valid and collectible insurance or suretyship available to the *Insureds* on account of such other insurance or suretyship whether stated to be primary, excess, contributing contingent or otherwise, unless such other insurance or suretyship is written only as specific excess insurance over the limits of liability provided under this Policy.

All loss caused by acts committed by any person or in which such person is concerned or implicated and /or arising from any one occurrence (as set forth under Condition 15 of this Policy) will be considered a single loss for the purpose of this endorsement. If a loss is covered in part under this Policy and in part under a prior similar policy or bond superseded by this policy, the deductible amount(s) applicable to such loss under this Policy will be reduced by the amount of any deductible (s) actually applied to such under this Policy.

9 Discovery Period

Loss is covered under this Policy only if discovered during the Policy Period or not later than twelve months following the termination of this Policy or of the coverage under this Policy which applies to such loss, or cancellation or termination of this Policy as to any *Insured*

10 Fraudulent Claims

If the *Insured* shall make any claim knowing the same to false or fraudulent, as regards amount or otherwise, this Policy shall be void and all claims hereunder shall be forfeited.

11 Interpretation

The construction, interpretation and meaning of the terms, exclusions limitation and conditions of this Policy shall be determined under the jurisdiction of and in accordance with the law(s) of India and in accordance with the English text as it appears in this Policy

12 Joint Insured

a) First Named Insured

- 1) If more than one *Insured* is covered under this Policy, the *Insured* first named shall act for itself and for every other *Insured* for all purposes of this Policy
- 2) Payment of any loss under this Policy by the Insurer to the *Insured* first named shall fully release the Insurer insureron account of such loss.
- 3) If the *Insured* first named ceases for any reason to be covered under this Policy, then the *Insured* next named shall thereafter be considered as the *Insured* first named for all purposes of this Policy

b) Knowledge or Discovery by Insured

Knowledge possessed or discovery made by any *Insured* or by any partner, director or officer thereof shall for the purposes of Exclusion 9, Condition 6 and Conditions 13,14,15, and 16 of this Policy constitute knowledge possessed or discovery made by every *Insured*

c) Cancellation- *Insured*

If, prior to the cancellation or termination of this Policy, this Policy or any section hereof is cancelled or terminated as to any *Insured*, there shall be no liability for any loss sustained by such *Insured* unless discovered within the terms of Condition 9.

13 Knowledge or Discovery of Loss

Knowledge or discovery of loss occurs when the *Insured* becomes aware of facts which would cause a reasonable person to assume that a loss covered by this Policy has been or will be incurred, even though the exact amount or details of the loss may not then be known

14 Limit of Liability

The Insurer's total liability for all loss or losses paid during the Policy Period shall not cumulatively exceed the aggregate Limit of Liability (in respect of Cover A and B combined) as set forth in Item 4 of the Schedule applicable to:

Cover A

For all loss in respect of any act or series of acts involving any *Employee* or in which such *Employee* is concerned or implicated, regardless of when, during the period of this Policy prior thereto, such acts occurred

Cover B

For all loss or losses resulting from one occurrence or event. All acts committed by one person or in which such person is involved or implicated will be considered as one occurrence or event

15. Limit of Liability - prior Insurance

Loss that occurs partly during this Policy Period and partly during the period of any previous policy issued by the Insurer, but for which the discovery period has not expired, shall be limited to the larger amount of insurance under the previous policy or this Policy

16. Loss Under Prior Policy

If this Policy replaced a prior policy carried by the *Insured* which has expired and the time within which to discover such loss has also expired cover under this Policy will apply to loss which would have been recoverable by the *Insured*, provided always that (a) the coverage offered shall be part of and not in addition to the amount of coverage offered by this Policy; (b) the loss would have been covered had this Policy been in force when the acts or events causing the loss occurred or were committed; and (c) recovery under this Policy shall not exceed the amount which would have been recoverable under the prior policy, if the prior policy had been in force when the acts or events occurred or were committed or the amount which would have been covered under a prior policy had continued to be in force until the discovery of the loss, if this amount be smaller

17. Non-Accumulation of Liability

Regardless of the number of years this Policy shall continue in force and the number of premiums which shall be payable or paid, the limit of the Insurer's liability as specified in Item 4 of the Schedule shall not be cumulative from year to year or period to period

18. Ownership

The *Insured* property (including *Money* and *Securities*) may be owned by the *Insured*, or held by the *Insured* in any capacity whether or not the *Insured* is liable for the loss thereof, or may be property in respect of which the *Insured* is legally liable

19. Subrogation

In the event of any payment under this Policy, the Insurer 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 Insurers with whatever reasonable co-operation and assistance they might require.

In the event of any recovery being made, it is specifically understood that the recovered funds shall be applied in the following order:

- (a) Insurers shall be reimbursed to the extent of any payment they have made under this Policy
- (b) Insurers 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.

20. Settlement of loss

The Insurer may, with the consent of the *Insured* settle any claim for loss of property with the owner thereof. Any property for which the Insurer has made an indemnification shall become the property of the Insurer.

The Insurer may, at its discretion, pay the actual cash value or make repairs to or replacements of such property. If the Insurer and the *Insured* cannot agree upon such cash value or such cost of repairs or replacements, such cash value or such cost shall be determined by arbitration.