

# LIBERTY SELLER WARRANTY AND INDEMNITY INSURANCE POLICY

## LIBERTY SELLER WARRANTY AND INDEMNITY INSURANCE POLICY

WHEREAS the **Insured** named in the **Schedule** hereto by a **Proposal** and declaration, which shall be the basis of this contract and is deemed to be incorporated herein, has applied to the **Liberty Videocon General Insurance Company Limited** (hereafter referred to as the “**Insurer**”) for the insurance hereinafter contained and has paid the **Premium** as consideration for such Insurance.

In consideration of payment of the **Premium** by the **Insured** and subject to all the terms, conditions and exclusions, including all definitions, of this **Policy**, **Insurer** agrees as follows:

### 1.1 Definitions

<b>Actual Knowledge</b>	means actual personal knowledge and does not include constructive or imputed knowledge nor does it include any actual, constructive or imputed knowledge of any adviser or agents of the Insured.
<b>Amount Payable</b>	means the amount stated in Item 6 of the Policy Schedule.
<b>Breach</b>	means any of the following: <ol style="list-style-type: none"> <li>a) breach of clause _____ of the Sale Agreement in respect of the [General Warranties];</li> <li>b) breach of clause _____ of the Sale Agreement in respect of the [Title and Capacity Warranties];</li> <li>c) breach of clause _____ of the Sale Agreement in respect of the [Tax Warranties];</li> <li>d) any circumstance giving rise to a Policy Claim under the General Indemnity (so far as it relates to the [General Warranties, Title and Capacity Warranties or the Tax Warranties only]); or</li> <li>e) any circumstance giving rise to a Policy Claim under the [Tax Deed],</li> </ol> and in each case in respect of any of the Insured Warranties and Indemnities.
<b>Business Day</b>	has the meaning attributed to it in the Sale Agreement.
<b>Buyer</b>	mean the Buyer stated in Item 2 of the Policy Schedule.
<b>Claim Notice</b>	means a written notice delivered in accordance with Clause 7.2 of this Policy.
<b>Closing</b>	has the meaning attributed to the term _____ in the Sale Agreement.
<b>Closing Date</b>	has the meaning attributed to the term _____ in the Sale Agreement.

<b>Closing No Claims Declaration</b>	means the Closing No Claims Declaration executed by a Deal Team Member on behalf of the Insured on the Closing Date, an executed copy of which will be attached as <b>Error! Reference source not found.</b> on Closing.
<b>Commencement Date</b>	means the commencement date of the Policy stated in Item 3 of the Policy Schedule.
<b>Commencement No Claims Declaration</b>	means the Commencement No Claims Declaration executed by a Deal Team Member on behalf of the Insured on the Commencement Date, an executed copy of which is attached as <b>Error! Reference source not found.</b>
<b>Closing Warranties</b>	means the Insured Warranties and Indemnities which are given by the Insured at Closing.
<b>Data Room</b>	has the meaning attributed to it in the Sale Agreement.
<b>De Minimis</b>	means the de minimis amount stated in Item 5 of the Policy Schedule.
<b>Deal Team Members</b>	means _____.
<b>Defence Costs</b>	means that part of Loss which constitutes reasonable fees, costs and expenses incurred in accordance with Clause 8.1b) or consented to by the Insurer in writing prior to being incurred by the Insured in the investigation, settlement, defence or appeal of a Third Party Demand (such consent not to be unreasonably withheld, conditioned or delayed). Defence Costs do not include internal or overhead expenses or costs incurred by the Insured or any remuneration or compensation for directors, officers or employees of the Insured or the Target Group.
<b>Disclosed</b>	means disclosed in such a manner so that if, on review of the relevant document or material, a sophisticated purchaser could or should reasonably be aware of the fact, matter or information and be in a position to make a reasonably informed assessment of the fact, matter or information.
<b>Disclosure Information</b>	<i>[Drafting Note: to be matched with the public searches and any additional disclosure information under the Sale Agreement not included in the definition of 'Disclosure Materials' (if any)].</i>
<b>Disclosure Letter</b>	has the meaning attributed to it in the Sale Agreement.
<b>Disclosure Materials</b>	has the meaning attributed to it in the Sale Agreement.
<b>Expense Agreement</b>	means the letter agreement dated _____ between Insurer and _____ in respect of payment for underwriting expenses in relation to this Policy.
<b>Expiry Date</b>	means the relevant expiry date of this Policy stated in Item 3 of the Policy Schedule.

<b>General Indemnity</b>	means the General Indemnity identified in Part D of the Warranty and Indemnity Table.
<b>General Warranties</b>	means the general warranties given by the Seller on the Signing Date identified in Part A of the Warranty and Indemnity Table.
<b>Group Company</b>	means any entity that, directly or indirectly, and by reason of ownership or management, controls, is controlled by or is under common control with, the indicated entity.
<b>Hazardous Substance</b>	means any substance exhibiting any characteristic hazardous to, or having an adverse impact on, the environment, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals and waste materials, air emissions, odour, waste water, oil, oil products, infectious or medical waste, asbestos products and any noise.
<b>Insured Group</b>	means the Insured and any Group Company of the Insured (including the Target Group immediately after Closing).
<b>Insured Warranties and Indemnities</b>	means the [General Warranties, General Indemnity, Title and Capacity Warranties, Tax Warranties and the Tax Deed] to the extent referred to in columns 2 and 4 of the Warranty and Indemnity Table .
<b>Law</b>	means any law, statues, legislation, by-laws, regulations, directive, rules, codes, circulars, guidance, common law, notices, judgements, orders and decisions and their respective interpretations by any authority in any jurisdiction.
<b>Limitation Provisions</b>	means clauses _____ of the Sale Agreement.
<b>Limit of Liability</b>	means the amount set out in Item 4 of the Policy Schedule.
<b>Loss</b>	has the meaning attributed to it in Clause 4 of this Policy.
<b>No Claims Declarations</b>	means the Commencement No Claims Declaration and the Closing No Claims Declaration, executed copies of which are attached as <b>Error! Reference source not found.</b> on Closing.
<b>Policy</b>	means this seller's warranty and indemnity insurance policy including all schedules and appendices.
<b>Policy Claim</b>	means a claim for Breach made under this Policy.
<b>Policy Period</b>	means the relevant period of time stated in Item 3 of the Policy Schedule, commencing on the Commencement Date and ending on the relevant Expiry Date.
<b>Pollution</b>	means: <ul style="list-style-type: none"> <li>a) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal,</li> </ul>

escape, treatment, removal or disposal of, any Hazardous Substance; or

- b) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any Hazardous Substance, or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

**Premium** means the amount of premium stated in Item 6 of the Policy Schedule.

**Recovered Amounts** means, in respect of a given Loss, the amount actually recovered or realised by any Insured or any member of the Insured Group and/or any other benefits, credit or payment made or accruing to any Insured or any member of the Insured Group, including but not limited to recoveries or benefits resulting from any:

- a) tax relief or tax reduction;
- b) other insurance policies; or
- c) action taken by the Insured or any member of the Insured Group to recover Loss,

provided such recoveries or benefits have arisen directly or indirectly as a result of the matter giving rise to the Loss.

**Retention** means the retention amount stated in Item 5 of the Policy Schedule.

**Sale Agreement** means the agreement described in Item 2 of the Policy Schedule (as such agreement may be amended from time to time in accordance with this Policy), an executed copy of which is attached as 0.

**Secondary Tax Liabilities** any Tax which is primarily the liability of a party other than a member of the Target Group, whether as a result of an election or otherwise, or which arises by virtue of a member of the Target Group being a member of a different tax group, but which is not referable to supplies, income or profits made by a member of the Target Group when it was a member of the Target Group.

**Sellers** means the parties identified in Item 2 of the Policy Schedule.

**Signing Date** means the date of the Sale Agreement.

**Supplemental Disclosure Letter** has the meaning attributed to it in the Sale Agreement.

**Target** means \_\_\_\_\_ and whose registered office is at \_\_\_\_\_.

**Target Group** means the Target and any of its respective Group Companies that are being acquired by the Buyer pursuant to the Sale Agreement and any of them as the case requires.

**Tax** means all past and present taxes of any name, kind or description imposed by a Tax Authority in any jurisdiction.

<b>Tax Authority</b>	means any governmental agency, any person, agency or office having the administration of any Tax.
<b>Tax Indemnity</b>	means the tax indemnity identified in Part E of the Warranty and Indemnity Table.
<b>Tax Warranties</b>	means the tax warranties identified in Part C of the Warranty and Indemnity Table.
<b>Third Party Demand</b>	means any written demand made or civil legal action brought against the Target Group by any person (other than a Group Company of (a) the Insured, (b) the Target Group or (c) the Insurer ) in respect of which the resulting payment would constitute Loss in respect of a Breach.
<b>Title and Capacity Warranties</b>	means the title and capacity warranties identified in Part B of Appendix A.
<b>Insurer</b>	means the Insurer stated in Item 7 of the Policy Schedule together with their permitted assigns.
<b>Warranty and Indemnity Table</b>	means the table attached to this Policy as Appendix A.

## 1.2 Interpretation

- a) The headings of this Policy do not affect its interpretation.
- b) No party to this Policy shall have the benefit of any presumption regarding the interpretation or construction of the terms of this Policy based on which party drafted it.
- c) Words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include corporations, partnerships and other unincorporated associations.
- d) The word “including” or similar expression in this Policy shall be deemed to mean “including without limitation”.
- e) References in this Policy to the “Schedule”, a “Clause” or an “Appendix” shall mean the Policy Schedule, a Clause or an Appendix of or to this Policy unless otherwise stated.
- f) “INR”, all refer to the Indian Rupees and “USD”, and “\$” all refer to the United States Dollar.
- g) This Policy shall be interpreted in accordance with legislation in force as at the date of this Policy.

## 2 CONDITIONS

### 2.1 Conditions Precedent

The Insurer liability for Loss shall be conditional on the following conditions precedent being first met, unless waived or conditioned in writing by the Insurer as follows:

- a) Closing occurring in accordance with the terms of the Sale Agreement without any waiver or amendment of the parties' rights or obligations in the Sale Agreement unless either: (i) the Insurer have given their prior written consent (such consent not to be unreasonably withheld, conditioned or delayed); or (ii) such waiver or amendment would not be reasonably likely to adversely affect the Insurer rights or liabilities under this Policy;
- b) delivery to the Insurer of the Disclosure Materials on a non-password protected USB, or CD Rom, the contents of which do not expire prior to the last Expiry Date, within 20 Business Days of the Completion Date; and

## **2.2 Termination**

This Policy is strictly underwritten on the basis that the above conditions precedent in Clause 2.1 will be fully met. If any such conditions are not fully met, the Insurer shall be entitled to terminate this Policy by written notice to the Insured.

## **3 INSURANCE AGREEMENT**

### **3.1 Insuring Clause**

Subject to the terms, conditions and limitations of this Policy, the Insurer shall, in excess of the Retention and in the aggregate up to the Limit of Liability, indemnify the Insured against, or pay on its behalf, all Loss covered by this Policy and which is notified in accordance with Clause 7.2 by the Insured to the Insurer during the Policy Period.

### **3.2 Claims made policy**

This is a claims made and notified policy. The Insurer shall not be liable for any Loss unless a Claim Notice in respect of that Loss has been received by the Insurer in accordance with Clause 7.2 on or prior to the relevant Expiry Date for the Insured Warranties and Indemnities to which the Claim Notice relates.

### **3.3 Aggregate limit of liability**

The Limit of Liability is the limit of the Insurer aggregate liability for all Loss under this Policy. The Retention is not part of the Limit of Liability.

## **4 CALCULATION OF LOSS**

### **4.1 Definition of Loss**

Subject to the other provisions of this Clause 4, Loss means:

- a) the amount which the Insured is contractually obligated to pay to the Buyer under the Sale Agreement for a Breach of an Insured Warranty and Indemnity; plus
- b) any Defence Costs; less
- c) any Recovered Amounts; and

in each case disregarding the effect of the Limitation Provisions on those amounts.

#### 4.2 Recovered Amounts

- a) If any Recovered Amounts are actually recovered or realised by the Insured after the Insurer have made a payment under a Policy Claim, the Insured shall notify the Insurer in writing within 15 Business Days of such recovery and reimburse any amounts paid by the Insurer in accordance with the procedure outlined in Clause 9.3 of this Policy.
- b) To the extent the Insurer pay any Loss to any Insured, the Insured shall keep the Insurer informed of any potential rights of recovery of any Recovered Amounts.

#### 4.3 Non-monetary remedies

Any Loss payable by the Insurer shall only be in the form of a monetary payment and the Insurer shall not be obliged to seek, pursue or satisfy on behalf of the Insured any non-monetary remedies or any injunctive, equitable or other non-monetary relief.

#### 4.4 Exchange rate

Subject to the terms of this Policy, Loss which is not in the currency stated in Clause **Error! Reference source not found.** shall, for the purposes of determining the extent to which the Retention or Limit of Liability is eroded by such Loss, be converted into INR based upon the rate of exchange published on the Reserve Bank of India website ([www.rbi.org.in](http://www.rbi.org.in)) on the date such Loss amount is agreed between the Insured and the Insurer or determined by a final judgment by a competent court or arbitration panel. If such day is not a Business Day, the date of Loss will be deemed to be the Business Day immediately preceding such day.

### 5 RETENTION AND DE MINIMIS

#### 5.1 Liability in excess of the Retention

The Insurer shall only be liable for Loss to the extent such loss exceeds the Retention. For the avoidance of doubt, the Retention shall be uninsured throughout the Policy Period.

#### 5.2 Erosion of the Retention

Subject to Clause 5.3:

- a) the Retention shall be eroded by Loss (or the aggregate of all individual Losses) for which the Insurer would be liable under this Policy but for the Retention;
- b) in the event a Loss (or the aggregate amount of all individual Losses) exceeds the Retention, the Insurer shall then be liable for the amount of Loss which exceeds the Retention; and
- c) the Retention under this Policy is taken to be the same as and not in addition to the aggregate claims specified threshold in \_\_\_\_\_ and \_\_\_\_\_ of the Sale Agreement and shall not separately apply to any claims under this Policy.

#### 5.3 De Minimis

The Insurer shall have no liability under this Policy in respect of Loss unless the amount of that Loss is in excess of the De Minimis. Any liability the amount of which does not exceed the De Minimis shall be disregarded in calculating the aggregate amount of liabilities in respect of Loss, provided that this limitation



shall not limit the Insured from bringing a number of Policy Claims which all arise from the same facts or circumstances where individually each Policy Claim is for less than the De Minimis but in aggregate they exceed such sum and in which case they will be treated as one Loss.

## 6 EXCLUSIONS

### 6.1 Exclusions

Notwithstanding any other provision in this Policy, the Insurer shall not be liable for any Loss arising out of, relating to or to the extent that it is increased by:

- a) Breach of any warranty and indemnity marked as “Not included” in column 3 of the Warranty and Indemnity Table;
- b) Breach of any warranty and indemnity referred to in column 4 (“Included as re-written below”) of the Warranty and Indemnity Table to the extent that such Loss arises out of that part of the Insured Warranty and Indemnity for which cover is not provided as provided for in column 4 of the Warranty and Indemnity Table;
- c) any Breach or any facts or circumstances of which the Insured or any Deal Team Member had Actual Knowledge as of the later of (a) the Commencement Date of this Policy; or (b) the execution of the No Claims Declarations provided that nothing in this Clause 6.1c) shall preclude or prohibit the Insured from providing a Claim Notice in respect of a Breach of any of the Insured Warranties and Indemnities given at the date of signing of the Sale Agreement provided that that Breach occurred prior to the Commencement Date and that a Deal Team Member only gained Actual Knowledge of that Breach after the Commencement Date;
- d) any actual or alleged breach or non-compliance with any Law concerning or relating to anti-bribery, anti-corruption, anti-money laundering, trading or economic sanctions or similar matters;
- e) any payments, commissions, gratuities, contributions, benefits or any advantages or other favours to or for the benefit of:
  - i. any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;
  - ii. any full or part-time officials, directors, agents, partners, representatives, principal shareholders, or owners or employees, or affiliates of any customers, suppliers or any other party who has dealings with any company or any members of their family or any entity with which they are affiliated;in each case to the extent such payments, commissions, gratuities, benefits or any other advantages or favours are illegal or unlawful or made to procure the improper performance of a function or activity;
- f) any fraudulent, deceptive, corrupt, dishonest or criminal conduct, action or untrue statement by or on behalf of the Insured or any Deal Team Member (alone, in collusion with or in conspiracy

with third party(s)), which for the avoidance of doubt includes any fraudulent or wilful omission or withholding of information from the Insurer;

- g) consequential loss or damage;
- h) civil or criminal fines or penalties and punitive or exemplary damages;
- i) any purchase consideration adjustment provision (including post-Closing purchase price adjustments and any disputes in respect thereof) in the Sale Agreement;
- j) any financial estimate, provision, budget, projection, forward looking statement or forecast (including the collectability of debts);
- k) any Secondary Tax Liabilities;
- l) any actual or alleged Pollution;
- m) the non-availability of any tax relief or losses in any of the Target Group members, whether arising as a result of the failure by such Target Group member to obtain any relief, the failure or inability of any company to surrender any relief or losses to any Target Group member or otherwise;
- n) the application of transfer pricing legislation in respect of any Target Group member or an inability of the relevant Target Group member to substantiate a transfer pricing policy to the relevant Tax Authority;
- o) any liability arising directly or indirectly from the operation of any anti-avoidance legislation by a Tax Authority;
- p) any actual or alleged lack or inadequate funding or performance of any pension scheme, plan or employee benefit plan; [or]

## **6.2 Disclosure**

The Insurer shall not be liable to pay any Loss to the extent that disclosure of a fact, matter or circumstance giving rise to the Loss is made, or deemed to have been made, by the Insured in accordance with the express terms of this Policy. The Insured shall be deemed to have disclosed against the Insured Warranties and Indemnities, and the Buyer is deemed to be aware of, all facts, matters and circumstances which are Disclosed in any of the following:

- a) the Sale Agreement;
- b) the Disclosure Letter;
- c) the Disclosure Information; or
- d) the Data Room / the Disclosure Materials (including the written answers to requests for information or written confirmations provided to the Buyer or their respective representatives).

## **6.3 Part Loss**

If only part of a Loss is excluded under this Clause 6, the Insurer shall remain liable for that part of the total Loss which is not so excluded.

# **7 CLAIMS**

## **7.1 General**

All Policy Claims in respect of Loss and matters eroding the Retention must be dealt with in accordance with this Clause 7.

## **7.2 Claim Notice**

The Insured shall deliver a Claim Notice to the Insurer in accordance with Clause 11.9, as soon as reasonably practicable and in any event within 15 Business Days after the Insured becomes aware of any of the following that may give rise to a Policy Claim:

- a) any fact or circumstance which will, or could reasonably be expected to, in whole or in part, erode the Retention;
- b) any fact or circumstance which could reasonably be expected to give rise to a Loss; or
- c) a Loss.

## **7.3 Claim Notice contents**

In order to allow the Insurer to assess the Policy Claim, the Claim Notice shall, in sufficient detail:

- a) describe the facts and circumstances relating to the erosion or potential erosion of the Retention or Loss or potential loss;
- b) provide an estimate of the amount of Loss or potential Loss (to the extent reasonably practicable);
- c) provide specific references to the relevant Insured Warranties and Indemnities (where appropriate); and
- d) enclose a copy of the relevant Third Party Demand (as appropriate).

## **7.4 Loss subsequent**

If a Claim Notice is delivered to the Insurer in accordance with Clause 7.2, any subsequent Loss materialising from the circumstances notified in the Claim Notice shall be deemed reported at the time such Claim Notice was received by the Insurer.

## **7.5 Late notification**

- a) The Insurer shall not be liable for Loss nor shall the Retention be eroded unless the respective Claim Notice has been delivered to the Insurer:
  - i. prior to the relevant Expiry Date to which the Claim Notice relates; or
  - ii. no later than 15 Business Days after the relevant Expiry Date to which the Claim Notice relates if the Insured first became aware of the matter set out in the Claim Notice in the 15 Business Day period prior to such relevant Expiry Date.
- b) A deficiency or alleged deficiency in the content or timing for delivery of a Claim Notice which is received on or before the date required under this Clause 7.5, shall not preclude or reduce the liability of the Insurer for the Loss to which the Claim Notice relates, except to the extent the Loss would have been mitigated by delivery of a Claim Notice absent such deficiency or alleged deficiency (subject to the Insurer providing reasonable evidence of such effect to the Insured, if reasonably requested).

## **7.6 Insurer response**

- a) As soon as reasonably practicable after the Insurer receive a Claim Notice and in any event by no later than 45 Business Days after the Insurer receive the Claim Notice, the Insurer shall respond by acknowledging or denying liability for the Policy Claim and in the case where the Insurer have denied the Policy Claim, the Insurer shall be required to specify the reasons in writing for such denial.
- b) If the Insurer cannot determine a final cover position on the information provided in a Claim Notice within the period specified in Clause 7.6a) then the Insurer shall request such additional information as they may reasonably require from the Insured in order to fully assess the Policy Claim and following receipt of which the time limit in Clause 7.6a) shall apply.

## **7.7 Claims participation**

The Insurer shall be entitled to participate fully in the defence, negotiation, pursuit and settlement of any Third Party Demand, Breach or any matter that may reasonably be expected to affect the Insurer rights under this Policy in respect of a Policy Claim, such that the Insured shall (without limitation):

- a) subject to Clause 8.1b), not incur any Defence Costs without prior consultation with and the prior written consent of the Insurer, such consent not to be unreasonably withheld, conditioned or delayed;
- b) not settle, compromise or discharge any Breach or Third Party Demand without prior consultation with and the prior written consent of the Insurer;
- c) at the request of the Insurer and to the extent reasonably practicable, provide the Insurer with copies of all correspondence, documentation and any pleadings (including draft pleadings) available in connection with the Third Party Demand or Breach, and, to the extent practicable, afford the Insurer sufficient time to review and comment on such documentation;
- d) at the request of the Insurer and to the extent reasonably practicable, grant the Insurer access to all documentation and information;
- e) at the request of the Insurer and to the extent reasonably practicable, attend case management conferences, meetings with legal advisers and the Insurer, hearings, mediations, arbitrations and trials;
- f) keep the Insurer reasonably informed of proposed meetings with the Buyer or any other relevant third party in connection with any Third Party Demand or Breach and, where the Insurer so request, provide a detailed written report to the Insurer of the outcome of meetings and discussions at which the Insurer were not present;
- g) keep the Insurer reasonably informed and updated of any matters which are relevant to the calculation of Loss, including but not limited to providing Insurer with timely updates regarding the progress of any recovery action as contemplated by Clause 4.2(a) of this Policy;

- h) conduct all negotiations and proceedings in respect of any Third Party Demand or Breach with advisers consented to by the Insurer in writing (such consent not to be unreasonably withheld, delayed or conditioned) and take such action as the Insurer may reasonably request having regard to the circumstances of the Policy Claim, to contest or otherwise defend a Third Party Demand or Breach;
- i) not enter into or permit the entering into of any confidentiality agreement or undertaking which restricts the Insured from responding to requests for information by the Insurer specifically in respect of a Third Party Demand or Breach; and
- j) provide the Insurer with such other information and assistance in connection with any Policy Claim as the Insurer may reasonably request.

#### **7.8 Privilege**

If, in relation to (including the investigation of) a Third Party Demand, any information, document or materials requested by the Insurer, or to be provided to the Insurer under this Policy, is subject to a claim for 'legal professional privilege' or 'client legal privilege' or 'without prejudice privilege' (**Privileged Material**), or its provision would waive a claim for privilege in relation to any Privileged Material, the Insured is not required to disclose or give (to the extent it has an obligation to disclose or give) such information, document or material unless:

- a) the Insurer provide such undertakings and assurances around the use, disclosure and confidentiality of any such information, documents or materials as the Insured may require (acting reasonably) to preserve, privilege, including reasonable undertakings not to do any act or omit to do any act which might cause confidentiality or privilege in the information, document or material to be lost without the prior written consent of the Insured; or
- b) the Privileged Material is subject to common interest privilege as between the Insurer and the Insured.

#### **7.9 Settlement of Third Party Demands**

If the Insured does not consent to a settlement, compromise or discharge of a Third Party Demand which is acceptable to the Insurer and to the relevant third party claimant, the Insured shall not be prevented from defending the Third Party Demand further but the Insurer shall not be liable for any additional Loss above the amount of such settlement, compromise or discharge which was acceptable to the Insurer and the relevant third party.

#### **7.10 No duty to defend**

Notwithstanding any other provision of this Policy, the Insurer do not assume any duty to defend the Insured or the Target Group with respect to any Third Party Demand or otherwise.

## 8 DEFENCE COSTS

### 8.1 Reimbursement of Defence Costs

- a) Subject to Clause 8.1b) of this Policy, if any Insured requests in writing, the Insurer shall, subject to the De Minimis and provided that the Retention has been fully eroded, reimburse such Insured after each calendar month for the Defence Costs incurred and billed during such calendar month, notwithstanding that the Third Party Demand may not have been agreed by the Insurer in writing, or settled or finally determined.
- b) If the Insurer written consent cannot reasonably be obtained before Defence Costs are incurred, the Insurer will give retrospective approval for such Defence Costs of up to, in the aggregate, \$100,000 or equivalent to INR 65,00,000.

## 9 ADDITIONAL OBLIGATIONS OF THE INSURED

### 9.1 Mitigation and preservation of rights

To the extent that it is within its control the Insured shall:

- a) act at all times as if uninsured and to take all reasonable steps to mitigate any Loss;
- b) take all reasonable steps to preserve all rights against any other person in respect of any Loss and to preserve the Insurer subrogation rights with respect thereto (except as otherwise provided herein); and
- c) not do anything or omit to do anything which is likely to prejudice the position of the Insurer.

### 9.2 Maintenance of records

Until the later of 90 days after the Expiry Date or the final resolution of all Policy Claims or disputes relating to this Policy, the Insured shall, and to the extent possible shall cause its professional advisers to, maintain all of their respective materials relating to any due diligence and the consummation of the transactions documented in the Sale Agreement.

### 9.3 Reimbursements

- a) The Insured shall reimburse to the Insurer as soon as reasonably practicable any amount paid by the Insurer in connection with this Policy:
  - i. which is mutually agreed by the Insured and the Insurer, or finally determined by an arbitrator or court, did not constitute Loss or should not otherwise have been paid under this Policy; or
  - ii. which the Insured or its Group Companies subsequently recover (directly or indirectly) from the Buyer or Target Group or any insurance, or, in the case of taxation, a Tax Authority, or any other source, to the extent that such amount exceeds the Insured's and the Group Companies' reasonable costs of recovery of such amount and so reduces the amount of Loss actually suffered; and
  - iii. in respect of any Recovered Amounts.

- b) Any such reimbursement shall be made promptly but in no event later than 20 Business Days after such agreement, determination or receipt referred to in Clause 9.3a) above.
- c) Upon payment of such reimbursement, the unexhausted Limit of Liability under this Policy shall be restored accordingly.

## **10 SUBROGATION**

### **10.1 Right to subrogate**

If the Insurer make any payment to the Insured under this Policy then, the Insurer shall be subrogated (or may require the Insured to assign to the Insurer) such party's respective rights of recovery against any person (other than, the other Insured, except in the case of fraud [or intentional non-disclosure]) to the extent of the payment received by the Insured in respect of such Loss and the Insurer shall be entitled to sue in the name of the Insured.

### **10.2 Obligation to secure subrogation rights**

The Insured shall, and to the extent possible cause its Group Companies to, execute all documentation reasonably required and take all reasonable steps to secure and further any subrogation or assignment rights under Clause 10.1 above. In no event shall the Insured or its representative Group Companies waive any rights that could affect such subrogation or assignment.

### **10.3 Application of amounts recovered from subrogation**

Any amounts recovered by the Insurer as a result of subrogation or assignment of rights shall be applied in the following order:

- a) firstly, to reimburse the Insurer for any costs and expenses incurred in connection with such recovery and any Loss paid by them under this Policy;
- b) secondly, to reimburse the Insured for any Loss borne by it which provided the basis for such subrogation or assignment recovery;
- c) thirdly, to reimburse the Insured for any Loss borne by it in excess of the Limit of Liability under this Policy; and
- d) lastly, to reimburse the Insured in respect of any Loss which the Insured has retained by reason of the Retention.

### **10.4 Costs of defending claim**

The Insured shall defend at its own expense and satisfy any liability with respect to any counterclaim or third party demand asserted in connection with any assignment or subrogation claim pursued by the Insurer, except to the extent such counterclaim or third party demand arises out of the same facts and allegations as the subrogation claim or would itself lead to a Breach.

## **11 MISCELLANEOUS**

### **11.1 Waiver and Amendment**

The Insured shall not effect or give any waiver, consent, amendment, assignment or abandonment of any right afforded to the Insured under the Sale Agreement without first obtaining the consent of the Insurer (such consent not to be unreasonably withheld, delayed or conditioned). The Insurer shall be entitled to withhold their consent or limit their liability under this Policy in respect of any such proposed waiver, consent, amendment, assignment or abandonment which could reasonably be expected to adversely affect the Insurer rights or liability under this Policy.

#### **11.2 Variation**

No term of this Policy may be amended or waived without a prior written endorsement or other instrument duly signed by the Insurer and the Insured.

#### **11.3 Cancellation**

This Policy may not be cancelled or renewed by the Insured.

#### **11.4 Assignment**

The Insured may not assign any of its rights or interest, nor transfer its obligations under this Policy without first obtaining the written consent of the Insurer (such consent not to be unreasonably withheld, delayed or conditioned).

#### **11.5 Entire Agreement**

- a) This Policy constitutes the entire agreement between the Insurer and the Insured concerning the subject matter of this Policy and supersedes any previous agreement, oral or written, between the Insurer and their Group Companies on the one hand, and the Insured and its Group Companies on the other hand, concerning the subject matter of this Policy.
- b) Nothing in this Clause 11.5 shall exclude or limit any liability or any right which any party may have in respect of any intentional deception or any statement made fraudulently or dishonestly prior to the date of this Policy.

#### **11.6 Invalidity**

If any provision of this Policy is or becomes invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of any other provision shall not be affected or impaired in any way.

#### **11.7 Change of law**

The Insurer agree that any change or amendment of any laws, rules, regulations, or codes made or issued which affect the Insured Warranties and Indemnities directly or indirectly, concurrently or retroactively, shall not affect the Insurer obligations under this Policy, provided that there is no increase whatsoever in the Insurer exposure under this Policy or the Loss under this Policy as a result of such change or amendment.

#### **11.8 Confidentiality**

Except where agreed in writing by the Insurer, the Insured shall, and shall use reasonable endeavours to procure that its advisers, keep this Policy and details of any dispute relating to it confidential and not disclose any part of this Policy to any third party, unless required by law, regulatory authority, or listing



rules, or as necessary to support a defence in litigation or arbitration between the Insured and the Insurer. This Clause 11.8 survives termination of this Policy.

### **11.9 Notices**

All Claims Notices and any other notice or communication under this Policy shall be made in writing, signed on behalf of the party giving it and delivered by prepaid express courier, certified mail or electronic mail. Notices delivered by courier or post shall be deemed to be received and effective upon actual receipt thereof by the addressee to the respective address set forth below (or at such other address for a party as shall be specified by similar notice), or if delivered by email, at the time of transmission.

Each such notice or communication shall be delivered:

(a) if to the Insured, to its address stated in Item 1 of the Policy Schedule,

(b) if to the Insurer, to the following address or email address:

**Liberty Videocon General Insurance Co. Ltd.**

10th floor, Tower A, Peninsula Business Park,

Ganapatrao Kadam Marg, Lower Parel,

Mumbai, Maharashtra 400013

## **12 GOVERNING LAW AND DISPUTE RESOLUTION**

### **12.1 Governing Law**

This Policy shall be governed by and construed in accordance with the Indian laws.

### **12.2 Dispute resolution**

Any dispute arising out of or in connection with this Policy, including any question regarding its existence, validity or termination, 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).

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.

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 favor 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.

The place of the 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 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.

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.

**Appendix A: Warranty and Indemnity Table**

For the avoidance of doubt, any warranty and indemnity marked as “Not included” or “Included as re-written below” in columns 3 and 4 respectively of the Warranty and Indemnity Table shall concurrently limit the liability of the Insurer for all Loss in respect of any other Insured Warranties and Indemnities.

For the avoidance of doubt, the exclusions under Clause 6 of this Policy will apply to the warranties as re-written in column 4 below of the Warranty and Indemnity Table.

**Part A: General Warranties: the following warranties set forth in Schedule [●] of the Sale Agreement:**

(1) Warranty reference	(2) Included	(3) Not Included	(4) Included as re-written below
_____	[✓]		

**Part B: Title and Capacity Warranties: the following warranties set forth in Schedule 1 of the Sale Agreement:**

(1) Warranty reference	(2) Included	(3) Not Included	(4) Included as re-written below
-----	[✓]		

**Part C: Tax Warranties: the following warranties set forth in Schedule 1 of the Sale Agreement:**

(1) Warranty reference	(2) Included	(3) Not Included	(4) Included as re-written below
-----	[✓]		

**Part D: General Indemnity**

(1) Indemnity clause reference	(2) Included	(3) Not Included	(4) Included as re-written below

Clause __ of the Sale Agreement	[ ✓ ]		
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**Part E: [Tax Deed]**

(1) Indemnity clause reference	(2) Included	(3) Not Included	(4) Included as re-written below
Clause _____ of the Sale Agreement	[ ✓ ]		

## APPENDIX B: CLOSING NO CLAIMS DECLARATION

[On the Insured's letterhead]

Liberty Videocon General Insurance Company Limited  
10th floor, Tower A, Peninsula Business Park,  
Ganapatrao Kadam Marg, Lower Parel, Mumbai,  
Maharashtra 400013

Dear Sirs/Madam

Project \_\_\_\_\_, Warranty and Indemnity Insurance Policy No. \_\_\_\_\_ (the Policy) - Closing No Claims Declaration

1. On behalf of the Insured, I acknowledge this Closing No Claims Declaration is required to be given in relation to the Policy issued by Liberty Videocon General Insurance Company Limited to the Insured.
2. I am authorised to make this Closing No Claims Declaration on behalf of the Insured.
3. Capitalised terms in this Closing No Claims Declaration shall have the respective meanings assigned to them in the Policy.
4. On behalf of the Insured and as at the Closing Date, solely in relation to the Closing Warranties, I declare as follows:
  - a) I do not have Actual Knowledge of any Breach, or any facts or circumstances that could reasonably be expected to give rise to a Breach;
  - b) Each Deal Team Member is aware, is in possession of and has approved the contents of this Closing No Claims Declaration; and
  - c) No Deal Team Member has Actual Knowledge of any Breach and so far as I am aware, having made due enquiry of each Deal Team Member, no Deal Team Member has Actual Knowledge of any facts or circumstances that could reasonably be expected to give rise to a Breach[, except as provided below]:

Sign Name:

Print Name:

Date:

## Appendix C

### Sale Agreement and Disclosure Letter

## Appendix D

### Notices

#### WAR AND CIVIL WAR EXCLUSION CLAUSE

Notwithstanding anything to the contrary contained herein, this Policy does not cover loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, actions of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damages to property by or under the order of any government or public or local authority.

#### RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE

This Policy does not cover:

- loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or
  - any legal liability of whatsoever nature,
- directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

#### ASBESTOS EXCLUSION CLAUSE

This Policy shall not apply to and does not cover any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity, however, this exclusion shall not apply to any claim or part of a claim for financial loss arising out of a breach of professional duty where the originating cause is not directly relating to any asbestos exposure subject to any other exclusions set out in this Policy.

#### SANCTIONS EXCLUSION CLAUSE

This Policy does not cover and the Insurer shall not be liable for any loss or any benefit where such loss or benefit would expose the Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

#### SEVERAL LIABILITY CLAUSE

The liability of an Insurer under this contract is several and not joint with other Insurer party to this contract. An Insurer is liable only for the proportion of liability it has underwritten. An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer. Nor is an Insurer otherwise responsible for any liability of any other Insurer that may underwrite this contract.