

## DIRECTORS' & OFFICERS' LIABILITY

In consideration of the payment of the premium and in reliance upon the proposal and other information, supplied by or on Your behalf, which shall be the basis of this contract of insurance, We agree to indemnify You in the manner and to the extent stated herein.

This insurance will apply only to Claims first made against You during the Period of Insurance. If, however, an Insured notifies Us during the currency of this Policy, or within thirty (30) days thereafter of any circumstance occurring during the period from the applicable retroactive date to the expiry date of this Policy, then any Claim or Claims which may subsequently arise in connection with such circumstance shall be treated as having been made during the period of this Policy.

### Insuring agreements

We agree to indemnify:

#### A. Directors and officers liability

the Insured Persons against Loss arising out of any Claim or Claims made against them jointly or severally on account of any Wrongful Act committed or alleged to have been committed by them.

#### B. Company reimbursement

the Company against Costs and Expenses paid by the Company arising out of any Claim or Claims as described in Insuring Agreement A but only when and to the extent that the Company shall be required or permitted to indemnify the Insured Persons pursuant to the law or in terms of the Memorandum of Incorporation or Articles of Association of the Company.

### Definitions and interpretations

Various words and phrases have a standard meaning within this Policy and such meanings are defined in this section. Where a more general meaning applies this will be apparent from the way it is used in this Policy.

In any instance where there is conflict, Specific conditions shall override General conditions.

The titles and headings to the various paragraphs and sections in this Policy, including endorsements attached, are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such paragraphs and sections to which they relate.

#### Insured means:

1. any person or persons as listed as Insured in the schedule while acting in their capacity as a director, member, partner or principal of the business including their predecessors in that specific business as director, member, partner or principal and
2. any person who becomes a director, member, partner or principal during the period of insurance, but limited to the extent that liability only attaches to Them acting in this capacity and
3. any employee of the Company other than as described above named as co-defendant in an action with any of the above mentioned.

In addition, cover will also apply to the following, but only in respect of any Wrongful Act committed or alleged to have been committed by an Insured Person while serving in his or her capacity as a director or Officer of the Company:

- a. the estates, heirs, legal representatives or assignees of such Insured Persons in the event of their death, incapacity, bankruptcy or insolvency
- b. the lawful spouses of such Insured Persons, but only in respect of any Claims brought against such spouses solely by reason of:
  - i. such status as lawful spouse(s) of Insured Persons, and
  - ii. such spouses' ownership or interest in property which the claimant seeks as recovery for an alleged Wrongful Act of the Insured Persons.

All sums which such spouse becomes legally liable to pay on account of such Claim shall be treated as a loss which the Insured Person becomes liable to pay on account of the Claim made against the Insured Person.

**Claim means:**

1. any suit or proceedings brought by any person or organisation against any Insured Person for monetary damages; or
2. any written demand from a person or organisation detailing the intention of such person or organisation to hold one or more Insured Persons responsible for monetary damages; or
3. any criminal prosecution brought against an Insured Person; or
4. any administrative or regulatory proceeding or other official investigation into the action or omission of an Insured Person.

**Company means**

the company or organisation named in the Schedule or any Subsidiary of the named company or organisation. Company shall also mean any entity acquired, created, formed or associated during the Period of Insurance provided that this Policy shall only apply in respect of a Wrongful Act committed or alleged to have been committed by an Insured Person subsequent to the date of acquisition, creation, formation or association.

**Costs and Expenses mean**

legal expenses (including disbursements) reasonably incurred with Our prior agreement by or on behalf of an Insured Person in the evaluation and investigation of Claims, handling, response to and defence of Claims **including but not limited to Claims which result in any actions, suits or proceedings and any appeals. Costs and Expenses shall not include overhead or benefit expenses associated with salaries, wages and fees of Insured Persons or of the Company.**

**Deductibles mean**

the amounts stated in the Schedule applicable to each and every Claim or series of Claims arising out of an Occurrence for which You shall be responsible and shall remain uninsured.

**Employment Practice Claim means**

any claim or series of related claims relating to a past, present or prospective employee of the Company and arising out of any actual or alleged unfair or wrongful dismissal, discharge or termination, either actual or constructive, of employment, employment-related misrepresentation, wrongful failure to employ or promote, wrongful deprivation of career opportunities, wrongful discipline; failure to furnish accurate job references; failure to grant tenure or negligent employee evaluation; or sexual or workplace or racial or disability harassment of any kind (including the alleged creation of an harassing workplace environment) or unlawful discrimination, whether direct, indirect, intentional or unintentional, or failure to provide adequate employee policies and procedures.

**Executive Officer means**

the chairperson, chief executive officer, managing director, chief financial officer or in-house general counsel.

**Limit of Indemnity means**

Our total liability to pay a Loss in respect of any one Occurrence or any number of Occurrences in the Period of Insurance. The renewal of the Policy from year to year will not have the effect of increasing the Limit of Indemnity. The Limit of Indemnity shall apply in excess of the Deductible, if any.

To the extent that You are accountable to the tax authorities for Value Added Tax in respect of any payment in terms of this Policy We will include the amount of such tax in the final settlement of any claim under this Policy in addition to the Limits of Liability.

Should any Limit of Indemnity be altered during the Period of Insurance the Limit of Indemnity applicable when You first became aware of an Occurrence shall apply to all claims made or deemed to have been made or arising out of such occurrence.

**Loss means**

any amount which an Insured may become legally obligated to pay in terms of damages, judgments, settlements including claimant's costs and Costs and Expenses as defined. Loss excludes civil or criminal fines or penalties, taxes, remuneration or employment related benefit.

**North America means**

The United States of America and Canada and or any other territory that may be operating under the laws of these two respective countries.

**Occurrence means**

an event or series of events or continuous or repeated exposure to the same or similar set of conditions giving rise to a Claim or any number of Claims and such Claims shall be deemed to be first made on the date the earliest of such Claims is first made regardless of whether such date is before or during the Period of Insurance.

**Officer means**

any natural person who is employed by the Company in an executive, managerial or supervisory position.

**Period of Insurance means**

the period stated in the Schedule

**Policy means**

the contents of this document together with the Schedule, incorporating all Extensions and Endorsements, issued from time to time by Us to attach to this insurance together with the Proposal which shall all be read together as the contract of insurance.

**Subsidiary means**

any company which the Company or a Subsidiary controls through:-

1. holding a majority of the voting rights; or
2. the right to appoint or remove a majority of its board of directors; or
3. controlling alone, or pursuant to a written agreement with other shareholders or members, a majority of the voting rights therein.

If before or during the Period of Insurance an organisation ceases to be a Subsidiary, cover in respect of such Subsidiary and its Insured Persons shall continue until termination of this Policy but only in respect of Claims for Wrongful Acts taking place subsequent to any applicable Retroactive Date and prior to the date such organisation ceased to be a Subsidiary.

**Change in Control Transaction means**

one of the following events:

1. the Company merges with or consolidates into any other entity;
2. the Company sells all or more than 90% of its assets to any person or entity or persons or entities acting in concert;
3. any person or entity or persons or entities acting in concert acquire more than 50% of the issued share capital of the Company;
4. any person or entity or persons or entities acting in concert acquire control of the appointment of the majority of the directors of the Company.

**Wrongful Act means**

any actual or attempted breach of duty, breach of statute, breach of trust, breach of warranty of authority, neglect, fault, oversight, Employment Practice Claim, error, omission misstatement, misleading statement or other act by any Insured Person acting in his/her capacity as director or Officer or any claim made against an Insured Person solely by reason of his/her serving in his/her capacity as director or Officer.

**Exclusions**

This insurance cover will not apply to any Claims made against an Insured:

1. **Bodily Injury and Property Damage**
  - a. for any bodily injury, mental anguish or emotional distress, sickness, disease or death, or any other mental, emotional or physical injury of any person, or
  - b. for any loss of or damage to or destruction of any tangible property unless such Claim, loss, liability or expense arises from negligent advice, or
  - c. for defamation of character or violation of a person's right of privacy.
2. **Claims and Circumstances known at inception**

for any Claim or Circumstance known to You prior to the inception of this Policy or which in the reasonable opinion of Ours ought to have been known by You and which was not declared.

**3. Retroactive Date**

arising from any circumstance occurring or alleged to have occurred prior to the applicable Retroactive Date stated in the Schedule provided that nothing contained within this exclusion shall be interpreted as releasing You from Your obligation to disclose as a material fact all details of Claims made or outstanding or events likely to give rise to a Claim.

**4. Secret profit**

based upon or attributable to any Insured Persons gaining any **secret profit**, advantage, remuneration or reward to which they were not legally entitled.

**5. Wilful misconduct**

brought about or contributed to by dishonesty, fraud, the wilful violation of any statute or regulation or malicious conduct of any Insured Persons provided that:

- a. this exclusion shall not relieve Us of liability to provide indemnity in respect of any Costs and Expenses reasonably incurred in successfully defending proceedings in respect of any allegation of such Wrongful Act;
- b. the dishonesty or fraud of any Insured Persons shall not be imputed to the Company or any other Insured Persons;
- c. We will indemnify the Insured Persons where the final judgement or other final adjudication of the court hearings or proceedings against the Insured Persons determines their legal liability in respect of a Wrongful Act on some cause of action which is not dependent on the existence of a dishonest, fraudulent or malicious purpose or intent and makes no finding of their dishonesty, fraud or malicious conduct in relation to the Wrongful Act in question.

**6. Failing to perform professional duties**

arising out of any Insured Person's actual or alleged performance of or failure to perform professional services, any actual or alleged breach of duty owed in a professional capacity, providing professional advice, or any act, error or omission relating thereto arising from or attributable to the Insured Persons carrying out or failing to carry out professional services in the Business. This exclusion shall not apply to any Claim alleging failure to supervise those who performed or failed to perform such professional services.

**7. Instigation**

whether in the name of the Company or not, and **instigated by any Insured Person** against another Insured Person but this exclusion shall not apply to:

- a. any Claim brought or maintained by an Insured Person for contribution or indemnity, if the claim directly results from another Claim otherwise covered under this Policy;
- b. any Claim brought or maintained by a curator, liquidator or administrator on behalf of the Company without the solicitation, assistance or participation of any Insured Person or the Company;
- c. any Claim brought or maintained by any former director, officer or employee of the Company.

**8. Insider trading**

arising directly or indirectly out of actual or alleged **insider trading** irrespective of whether the Insured Person obtained any financial or other benefit there from.

**9. Pension fund involvement**

based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any **pension** profit sharing or employee benefit or welfare programme or share option, share incentive scheme or trust established in whole or in part for the benefit of any directors, officers or employees of the Company.

**10. Failure to procure insurances**

Arising out of any failure or omission to procure or maintain **insurance** coverage of any kind.

**11. Public Finance Management Act**

based upon, arising out of or in any way involving any loss or legal liability of whatsoever nature attributable to **the Public Finance Management Act** which would not have attached in the absence of such Act.

## 12. Geographical and Jurisdiction Limits

for any claims made based on:

- a. work in connection with any contract performed outside of South Africa, Lesotho, Mozambique, Swaziland, Namibia, Zimbabwe and Botswana.
- b. any judgment, award, payment or settlement made within countries which operate under the laws of the North America or
- c. any order made anywhere in the World to enforce any judgment, award or settlement either in whole or in part, made in the courts of or under the laws of North America.

## 13. Pollutants

arising out of, based upon or attributable to or in any way involving, directly or indirectly, the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants, nuclear material or nuclear waste.

## 14. Nuclear Risks, War/Terrorist Risks

for legal liability, loss (including consequential loss) or damage, cost or expenses caused directly or indirectly by any of the following, regardless of any cause or event contributing concurrently or in any sequence to the loss:

- a. ionising radiation or contamination by radioactivity from any nuclear material, nuclear fission or fusion, nuclear radiation, nuclear waste from the use of nuclear fuels, nuclear explosives or any nuclear weapon;
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof;
- c. war, invasions, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority, or
- d. any act or acts, or threat thereof, of terrorism, force or violence for political, religious or other ends directed towards the overthrowing or influencing of the government, or for the purpose of putting the public in fear, by any person or persons acting alone or on behalf of or in connection with any organisation.

## 15. Asbestos and Toxic Mould

for legal liability, loss (including consequential loss) or damage, cost or expenses caused directly or indirectly by or in any manner related to asbestos and Fungi. For the purposes of this clause, Fungi shall mean any fungus or mycota or any by-product or type of infestation produced by such fungus or mycota, including but not limited to mould, mildew, mycotoxins, spores or any biogenic aerosols.

## 16. Insolvency

arising out of or attributable to the **insolvency** of the Company.

## 17. Money Laundering

arising out of, based upon or attributable to or in any way involving any actual or alleged act of **Money Laundering**. The burden of proving that any loss does not fall within this exclusion shall be upon You.

## 18. Commissions

based upon payments, **commissions**, gratuities, benefits or any other favour to or for the benefit of any:

- a. political group or party;
- b. Government or armed services official;
- c. director, officer, employee or any person having a proprietary interest in any customer of the Company.

## Conditions

1. This Policy and the Schedule shall be **read together** as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear.

2. This Policy shall be governed by the **laws of the Republic** of South Africa, whose courts shall have jurisdiction in any dispute arising hereunder.
3. The due observance and fulfilment of any of the provisions of this Policy that require anything to be done or complied with by You and the **truth of the answers** and statements in the information supplied by You or on their behalf are precedent to any liability of Ours to provide indemnity to any Insured under this Policy. However, this notwithstanding, no fact pertaining to or knowledge possessed by any Insured Persons shall be imputed to any other Insured Persons for the purpose of determining the availability of cover for or with respect to Claims made against any Insured Persons. Only facts pertaining to or knowledge possessed or actions by an Executive Officer shall be imputed to the Company for purposes of applying the exclusions set forth in this Policy.
4. You shall, as a condition precedent to their rights under this Policy, give to Us **written notice** of any Claim made against the Insured Persons as soon as practicable but in any event no later than thirty (30) days after expiry of the Period of Insurance. You shall, further, include within any notice of Claim or circumstance all relevant known information concerning the alleged Wrongful Act, the Claim and the claimants and give to Us such further information and cooperation as We may reasonably request.
5. By acceptance of this Policy, the **Company agrees to act** on Your behalf in respect of the giving and receiving of notice of termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this Policy and the Insured Persons agree that the Company may act on their behalf. The Insured Persons may personally give notice of a Claim against them to Us.
6. If during the Period of Insurance a **Change in Control Transaction** occurs, cover under this Policy shall continue until termination of this Policy but only in respect of Claims for Wrongful Acts taking place prior to such **Change in Control Transaction**. The parties agree that as at the effective date of such **Change in Control Transaction**, all premiums paid or due at any time under this Policy shall be deemed fully earned and non-refundable. The Company and You acknowledge that a **Change in Control Transaction** materially alters the risk and accordingly undertake that they shall give written notice of such **Change in Control Transaction** to Us as soon as practical together with such information as We may request. Upon receipt of such notice and information and at the request of the Company, We shall provide to the Company a quotation for cover of the Directors and Officers of the Company following the **Change in Control Transaction**.
7. **It shall be the duty of You and not Our duty to defend any Claim. You agree not to settle or offer to settle any Claim, incur any Costs and Expenses or otherwise assume any contractual obligation or admit any liability with respect to any Claim without Our prior written consent. We shall not be liable for Loss, assumed obligation or admission to which they have not consented.** In respect of any Claim submitted for cover under this Policy, We shall have the right to:
  - a. appoint the appropriate defence attorneys and counsel;
  - b. determine substantive defence strategies, including without limitation decisions regarding the filing and content of substantive motions; and
  - c. negotiates settlement.You agree to provide Us with all information, assistance and cooperation which We reasonably request and agree that in the event of a Claim You will do nothing that shall prejudice Our position or their potential or actual rights of recovery. We may make any investigation they deem necessary.
8. We may, with the written consent of an Insured, settle any Claim solely for a monetary amount which We deem reasonable. **If You withhold consent to such settlement, Our liability for all loss on account of such Claim shall not exceed the amount for which We could have settled such Claim plus Costs and Expenses accrued as at the date such settlement was proposed in writing by Us to You. We and You shall not unreasonably withhold any consent referred to in this Condition.**
9. This Policy shall **terminate** at the earliest of the following times:
  - a. upon expiration of the Period of Insurance as set forth in the Schedule;
  - b. ten (10) days after receipt by the Company of a written notice of termination from Us for failure to pay a premium when due, unless the premium is paid within such ten (10) day period;
  - c. one calendar month after receipt by the Company of a written notice of termination from Us; or

- d. at such other time as may be agreed upon by Us and the Company.
10. If any claim made against an Insured during the Period of Insurance shall form the subject of indemnity by any **other current policy** effected by You, such claim shall, subject to the provisions of this Policy, be a claim in terms of this Policy only in respect of any excess beyond the amount payable by such other insurance.
11. If during the Period of Insurance the Company:
- a. acquires shares in another organisation or creates another organisation, which as a result of such acquisition or creation, this entity becomes a Subsidiary, or
  - b. acquires any organisation by merger into or consolidation with the Company, such organisation and its directors and Officers shall be covered under this Policy as follows:
    - i.. If the fair value of all cash, shares, assumed indebtedness and other consideration paid by the Company for any such acquisition or creation is less than 10% of the total assets of all of the companies as reflected in the Company's most recent financial statements as at the inception of the Period of Insurance, such organisation and its directors, officers and qualifying employees shall automatically be covered under this Policy, but only with respect to Wrongful Acts taking place after such acquisition or creation, unless We agree after presentation of the complete application and all appropriate information to provide cover by endorsement for Wrongful Acts taking place prior to such acquisition or creation.
    - ii. In respect of all other acquisitions or creations described in a, or b, above, such organisation and its directors, officers and qualifying employees shall automatically be covered under this policy but only for ninety (90) days or the remainder of the Period of Insurance, whichever is less, following the effective date of such acquisition or creation ("automatic cover period") and only in respect of Wrongful Acts taking place after such acquisition or creation. The Company shall, as a condition precedent to this automatic cover period, give written notice of such acquisition or creation to Us as soon as reasonably possible but in no event later than thirty (30) days following the effective date of such acquisition or creation, and shall thereafter promptly provide to Us such information as We may request.

Upon receipt of such notice and other information, We shall promptly provide to the Company a quotation for cover under this Policy for such organisation and its directors and Officers for the remainder of the Period of Insurance.

If the Company fails to comply with such condition precedent, or if within ten (10) days following receipt of such quotation the Company fails to pay any additional premium or fails to agree to any additional cover terms and conditions as set forth in such quotation, cover otherwise afforded by this clause for such organisation and its directors and Officers shall terminate upon expiration of such automatic cover period.

## Extensions of cover

1. We agree to **advance reasonable Costs and Expenses** on a current basis prior to the settlement of the Claim to the Company or the Insured Persons (unless such Costs and Expenses have been advanced to the Insured Persons by the Company) **provided always that:**
  - a. no Costs and Expenses shall be incurred without Our prior written consent;
  - b. such advance payment of Costs and Expenses shall be repaid to Us by the Insured Persons severally according to their respective interests in the event that they shall not be entitled to payment of such loss under this Policy.

If there is an allegation of dishonesty or fraud or of a criminal act or omission on the part of an Insured Person in any civil or criminal proceedings, the Costs and Expenses reasonably incurred by the Insured Person so advanced will be repaid in the event that the Insured Person pleads guilty or is found guilty or admits liability or is found liable for any dishonesty, fraud, criminal act or omission.
2. Subject to their prior written agreement, We will pay fees, costs and expenses of **public relations consultants**, crisis management firm or law firm reasonably incurred by such Insured Person in order to prevent or limit adverse effects or negative publicity which it is anticipated may arise from a Claim or investigation directly in connection with a Wrongful Act for which a Claim has been admitted in terms of this Policy provided that Our liability in terms hereof shall be limited to 5% of the Limit of Indemnity stated in the Schedule.

3. If Our written consent cannot be obtained before defence costs are incurred by an independent legal counsel with respect to an indemnifiable loss, We will give **retrospective approval** for such defence costs provided that such approval is sought as soon as reasonably practicable

