

# MAGNUM

## PUBLIC LIABILITY BROADFORM WORDING

**RSUM (PTY) Ltd**  
Directors: BP Marais,  
JC Marais (CA) SA  
Reg no: 2020/448716/07

**FSP no. 51113**

**Physical Address:**  
Main Road 70  
Paarl  
Western Cape  
7646

**Our Insurer:**  
Western National Insurance  
Company Limited (South Africa)  
Tyger Waterfront, Charl Cronje  
Drive, Bellville 7535  
Juristic Representative under  
FSP9465

# MAGNUM PUBLIC LIABILITY BROADFORM WORDING

## (CLAIMS MADE BASIS)

### PLEASE READ THE FOLLOWING:

#### Application for insurance

The Insured, as named in the Schedule, having applied to the Insurer for the Insurance and having agreed that any Proposal or other information supplied by the Insured or on his behalf shall be the basis of this contract of insurance, the Insurer agrees, in consideration of the payment of the premium, to indemnify the Insured as provided for within the Insuring Agreements of each Section of this Policy subject to the terms, Exclusions and Conditions of this Policy read together with the Schedule.

#### Claims Made

The Insurer is under no obligation to indemnify the Insured, unless the Wrongful Act first takes place on or after the Retroactive Date; and is committed solely in the performance of or failure to perform Professional Services and this policy will only apply to Claims first made against the Insured by a Third-Party and reported to the Insurer during the Period of Insurance.

This is a Claims Made aggregate certificate. Defence costs and Disciplinary hearing costs are included within the Limit of Indemnity as provided in the Schedule.

#### First amount payable

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

#### Limit of Indemnity

The total maximum liability for all and any Claim and/or Loss in the Period of Insurance shall be subject to and shall not exceed the Limit of Indemnity stated in the schedule irrelevant to the number of Insureds enjoying cover under this policy.

Should any Limit of Indemnity be altered during the Period of Insurance, then the previous Limit of Indemnity shall apply to all Claims reported or deemed to have been made prior to the effective date of such alteration.

The Limit of Indemnity available to pay judgments or settlements shall be reduced by amounts incurred for Defence Costs.

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# 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.

## Any One Claim / Each and Every Claim

means an unlimited indemnity during the Period of Insurance, however all Claims, regardless of their number or the identity of the claimants or whether attributable to separate contracts or mandates arising from or out of,

- a) the same negligent act, error, omission, misrepresentation, misstatement, breach, or infringement,
- b) the dishonest, fraudulent, malicious, or criminal acts or omissions of any one person, or any number of people acting in collusion,
- c) an originating cause of destruction, loss, mislaying of or damage due to theft or access of Third-Party Documents and Property, shall always be regarded as one Claim under this contract and such Claim shall always be subjected to the Limit of Indemnity of the Policy.

## Breach of Duty

means any actual or alleged negligent act, error, omission, misstatement, misleading statement, or breach of duty in the performance of or failure to perform Professional Services.

## Business

the Insured's business activities as declared and the related activities, acting as such professional and any other business as may be specifically stated in the Schedule subject to the insured having the requisite training and/or license and/or registration as required by law.

## Claim (s)

means any: (i) written demand or (ii) civil or administrative proceeding, that seeks Damages as a result of a Wrongful Act.

## Circumstance

means knowledge of an event, or series of events arising out of one originating cause, which ought reasonably to lead to the conclusion that a Claim may be made against the Insured and is the subject of indemnity provided under this Policy.

## Contract Work

means where a formal contract of whatever kind was entered into by at least two or more parties which does have a specific start and end date; which is of long duration, or which is of a significant contract value.

## Damage

"Damage" shall mean loss of possession or control of or actual physical damage to tangible property;

## Damages

means any amount that an Insured shall become legally liable to pay to a Third-Party in respect of judgments rendered against an Insured, or for settlements agreed to by the insurer or which complies with the terms of this cover as expressed in the policy wording and or schedule.

## Deductible

the amount stated in the Schedule as the First Amount Payable to be borne by the Insured and the Insurer shall only be liable for the amount of Loss arising from a claim against this Policy which is in excess of the First Amount Payable which shall remain uninsured

## Defence Costs

means all costs, reasonable fees and expenses incurred by or on behalf of the Insured with the prior written consent of the Insurer in the investigation, defence, adjustment, settlement or appeal of any Claim including any inquests. Defence Costs will not include any internal or overhead expenses of any Insured or the cost of any Insured's professional time.

## Documents

means all documents of any nature whatsoever including computer records and electronic or digitized data; but does not include any currency, negotiable instruments, or records thereof.

## Due Date

will be the first day of each calendar month where the premium is payable monthly unless otherwise agreed to by Insurer or the first day of each twelfth calendar month where the policy is paid annually.

## Employee

any person currently (or who at the time of the Circumstance was) employed under a contract of service with the Insured including partners, executive and nonexecutive directors, consultants, and temporary employees employed by the Insured.

## Fraud / Dishonesty

means fraudulent or dishonest conduct of an Employee:  
a) not condoned, expressly or implicitly by the Policyholder or any Subsidiary, and  
b) that results in liability to the Policyholder or any Subsidiary.

## Inefficacy Claims

"Inefficacy Claims" means claims made against the Insured for economic or financial loss sustained by reason of the claimant alleging that his property:  
a) is rendered of less value, or  
b) has not achieved its anticipated value, or  
c) has not been capable of full beneficial use due to the failure of any Product or part thereof to fulfil its intended function or to perform as specified warranted or guaranteed

## Infringement

means an unintentional infringement of any intellectual property right of any Third-Party, other than patents and Trade Secrets.

## Insured

means:  
a) any person or persons, company, or other entity as listed as Insured in the Schedule acting as a director, member, partner, or copyright  
b) of the Business and  
c) includes their predecessors in that specific business who acted as director, member, partner, or principal; and any person who becomes a director, member, partner or principal during the Period of Insurance, but limited to the extent that liability only attach to the Insured.

## Insurer

means the insurance company and or Insurer as specified in the Certificate or Schedule as follow:  
Western Administration Services (Pty) Ltd  
5th Floor, The Edge, 3 Howick Close,  
Tygerfalls Office and Residential Park, Bellville, Cape Town, 7530  
Registration No. - 2002/026492/07;  
FAIS Registration - FSP 9465;  
Website: www.westnat.com

## Injury

"Injury" shall mean death, bodily injury, illness, or disease of or to any person;

## In the Aggregate

where this term appears it shall mean: the maximum amount payable in respect of all claims made during the period of insurance shall not exceed in the aggregate, the limit of indemnity specified in the Schedule.

## Limit of Indemnity

means the sum stated in the Schedule which is the maximum amount applicable to any and all Claims, inclusive of all costs and expenses including Defence Costs, for which indemnity is provided under this Policy. The Insurer's aggregate liability during the Period of Insurance shall not exceed the Limit of Indemnity.

## Loss

means Damages and Defence Costs.

## Mitigating costs

means reasonable, emergency, and necessary costs incurred with the prior consent of the Insurer by the Insured to reduce the ultimate legal liability of the Insured.

<b>Occurrence</b>	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.
<b>Period of Insurance</b>	means the period stated in the schedule inclusive of both the inception date and the date of cancellation of the policy, which is described in the General Conditions.
<b>Policyholder</b>	means the entity or natural person specified as such in the Schedule.
<b>Pollutants</b>	means, but is not limited to, any solid, liquid, biological, radiological, gaseous, or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, smoke, vapour, soot, fibers, mold, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals, or waste. "Waste" includes, but is not limited to, material to be recycled, reconditioned, or reclaimed.
<b>Pollution</b>	"Pollution" shall mean any pollution or contamination of the atmosphere or of any water, land, or other tangible property through the creation of noise; radiation; electricity; temperature fluctuations and odors. It shall also include but not limited to emission or discharge; seepage or dispersal of any material that will give rise to any contamination, pollution or the like to air, land and water.
<b>Premium</b>	means the amount specified as such in the Schedule and any premium adjustment reflected in an endorsement to this policy.
<b>Product</b>	"Product" shall mean any tangible property after it has left the custody or control of the Insured which has been designed, specified, formulated, manufactured, constructed, installed, sold inclusive of any advice or information given at promotion of the product, supplied, distributed, treated, serviced, altered or repaired including related advice or the dissemination of advice by or on behalf of the Insured, but shall not include food or drink supplied by or on behalf of the Insured primarily to the Insured's employees as a staff benefit.
<b>Proposal</b>	"Proposal" shall mean a written proposal made by or on behalf of the Insured to the Underwriters for the insurance enacted through this Certificate, which shall include all supporting documentation inclusive of email correspondence but not limited to, declarations, forms or information upon which the Underwriters have based their proposal to offer cover and, where a special form such as a quotation or presentation has been used for the purpose, during the date of business between Underwriter and Insured as stated in the Schedule.
<b>Retroactive Date</b>	means the date specified as such in the Schedule.
<b>Schedule</b>	means the schedule attaching to this Policy which shall incorporate all Endorsements and Extensions.
<b>Statutory Defence Cost</b>	"Statutory defence cost" will indemnify the Insured under Section A in respect of legal costs, fees and expenses incurred with the consent of the Underwriters in the defence of any criminal action brought against the Insured as a result of the alleged contravention of any Statute, other than Statutes governing the ownership or use of motor vehicles, the Labour Practice Act No.28 of 1956 or the Companies Act No.61 of 1973, governing the conduct of the Business and as read in conjunction with the Criminal Procedure act No.56 of 1955.
<b>Subsidiary</b>	<p>means companies in which the Policyholder, either directly or indirectly through one or more of its Subsidiaries;</p> <ul style="list-style-type: none"> <li>a) controls the composition of the board of directors; or</li> <li>b) controls more than half of the voting power; or</li> <li>c) holds more than half of the issued share capital.</li> </ul> <p>For any Subsidiary or any Insured thereof, cover under this policy shall only apply to Wrongful Acts committed while such entity is a Subsidiary of the Policyholder.</p>

## Takeover or Merger

means any transaction whereby another company acquires control over the assets or management of the named Insured or whereby the assets of the Insured become vested in or under the control of another company including a transfer of whole or any part of a business, trade or undertaking that is transferred as a going concern.

## Territorial Limits

Anywhere in the world

## Third-Party

means any entity or natural person; provided, however, Third-Party does not mean:

- a) any Insured; or
- b) any other legal entity or natural person having a financial interest or executive role in the operation of the Policyholder or any Subsidiary.

## Trade Secret

means information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.

## United States and/or Canada

means the United States of America and/or Canada and/or their respective possessions or protectorates and/or any country which operates under the laws of the United States of America or Canada.

## Vehicle

means a land vehicle (including any machinery or apparatus attached thereto) whether or not subject to motor vehicle registration and whether or not self-propelled, including railway locomotives and rolling stock.

## Wrongful Act

means any act, error, omission, misstatements, misleading statements, Infringement, defamation, or Breach of Confidentiality where the Insured becomes legally liable to pay in the scope or course to perform Professional Services.

## Wrongful Act under Directors & Officers cover only

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 or, in respect of Insuring Agreement C, any breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority or other act by the Company, but solely in regard to a securities claim.

# OPERATIVE CLAUSE

Whereas the Insured named in the Schedule has made to Underwriters a Proposal which is hereby agreed to be the basis of this Certificate,

The Underwriters will indemnify the Insured, in consideration of the payment of the Premium stated in the Schedule, against the Insured's liability to pay damages, including claimants' costs, fees and expenses, in accordance with the law of any country but not where the action is brought in a court of law in or any judgment, award, payment, settlement or proceedings are made within territories which operate under the laws of the United States of America or where any order or proceedings are made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part.

This indemnity applies only to such liability as is set out in each insured Section of this Certificate arising in the ordinary course of the Business specified in the Schedule, subject always to the terms and conditions of such Section and of the Certificate as a whole. Only those Sections where an amount has been inserted under Limit of Liability in the Schedule are insured.

## 1. DEFENCE COSTS

Subject always to Limit of Liability, the Underwriters will pay all reasonable legal costs and expenses incurred by the Insured with Underwriter's prior consent

- a) in the investigation, defence or settlement of and/or
- b) as a result of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any occurrence which forms or could form the subject of indemnity by this Certificate ("Defence Costs").

## 2. INDEMNITY TO OTHERS

The indemnity granted extends at the request of the Insured to:

- a) any party who enters into an agreement with the Insured for any purpose of the Business, but only to the extent required by such agreement to grant indemnity;
- b) officials of the Insured in their business capacity for their liability arising out of the performance of the Business and/or in their private capacity arising out of their temporary engagement of the Insured's employees;
- c) the officers, committee and members of the Insured's canteen, social, sports, medical, firefighting and welfare organisations in their respective capacity as such;
- d) the personal representatives of the estate of any person indemnified by reason of this Clause 4 in respect of liability incurred by such person;
- e) liability assumed by the Insured under a contract entered into with any security firm and arising out of any willful or negligent acts or omissions of employees of the security firm whilst undertaking any duties in terms of the contract;

provided always that all such persons or parties shall observe, fulfil and be subject to the terms, conditions, and exclusions of this Certificate as though they were the Insured.

## 3. CROSS LIABILITIES

Each person or party specified as an Insured in the Schedule is separately indemnified in respect of claims made against any of them by any other such person or party, subject to Underwriters' total liability not exceeding the stated Limit of Liability.



## 4. LIMIT OF LIABILITY

Regardless of the number of Insured's, additional Insured's or entities comprising an Insured or the number of claims or claimants or any other reason whatsoever, Underwriter's liability to pay damages, including claimants' costs, fees and expenses, shall not exceed the sum stated in the Schedule against each Section in respect of any one occurrence or series of occurrences arising from one originating cause and in the aggregate where so stated in the schedule during the period of insurance. The limits of indemnity as stated are in excess of the deductible.

The limit applicable to any claim will be the limit stated in the certificate at the date of the occurrence of the event that led to the claim.

Where applicable will Value Added Tax be included in all settlements made.

Should liability arising from the same originating cause form the subject of indemnity by more than one Section of this Certificate, each Section shall be subject to its own Limit of Liability, provided always that the total amount of Underwriters' liability shall not exceed the single greatest Limit of Liability available under the Sections providing indemnity.

The total liability of the Underwriters under this Extension shall not exceed the Limit of Liability in respect of in respect of all claims made against the Insured during any one twelve-month period of insurance, period initially commencing on the Effective Date stated in the Schedule and then on the Anniversary Date stated in the Schedule.

## (Claims made basis)

### 5. SECTION A - INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause for:

Injury or damage which occurred in the course of or in connection with the business provided that:

- a) it occurred within the Territorial Limits and
- b) it occurred on or after the retroactive date shown in the Schedule and
- c) it results in a claim or claims first being made against the Insured in writing during the period of insurance and
- d) the Insured becomes legally liable to pay Damages.

### 6. SECTION A - EXCLUSIONS

This Section does not cover liability forthcoming from:

#### 6.1 Aircraft & Watercraft

Liability arising directly or indirectly out of the ownership, possession or use by or on behalf of the Insured of any aircraft, spacecraft, watercraft, or hovercraft (other than watercraft not exceeding five meters in length and then only whilst on inland waterways). Liability is also excluded regarding any other aviation or water based ancillary commercial services, inclusive but not only to harbor or jetty facilities, or landing strips or helipads.

#### 6.2 Care, Custody & Control

Liability for Damage to property owned, leased, or hired by or under hire purchase or on loan to the Insured or otherwise in the Insured's care, custody or control other than:

- a) premises or the contents thereof temporarily occupied by the Insured for work therein or thereon, but no indemnity is granted for Damage to that part of the property on which the Insured is working, and which arises out of such work;
- b) clothing and personal effects belonging to employees and visitors of the Insured;
- c) premises tenanted by the Insured to the extent that the Insured would be held liable in the absence of any specific agreement;
- d) Property belonging to Transnet Limited or their Subsidiary companies, or any governmental or quasi-governmental department, provincial administration, municipality, or similar body whilst on any premises permanently occupied by the Insured.

#### 6.3 Compulsory Vehicle Insurance

Liability for which is the subject of statutory or similar legislation controlling the possession or use of motor vehicles or trailers and in respect of which liability:

- a) the Insured is compelled to effect insurance or otherwise furnish security, or
- b) the State or other governmental authority has accepted responsibility.

#### 6.4 Employees

Liability consequent upon injury to any employee arising from and in the course of employment by the Insured.

## **6.5 Motor Vehicles**

Liability arising directly or indirectly out of the ownership, possession or use of any motor vehicle or trailer by or on behalf of the Insured, other than liability:

- a) caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
- b) arising beyond the limits of any carriage way or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;
- c) for Damage to any bridge, weigh bridge, road or anything beneath caused by the weight of any motor vehicle or trailer or the load thereon;
- d) arising out of any motor vehicle or trailer temporarily in the Insured's custody or control for the purpose of parking;
- e) arising out of the possession or use by the Insured of any vehicle or trailer belonging to Transnet Limited, or their subsidiary companies, or any government or quasi-government department, provincial administration, municipality, or similar body whilst on any premises permanently occupied by the Insured.

## **6.6 Products**

Liability consequent upon injury or damage caused by or through or in connection with any product other than food and drink provided for consumption on the premises of the Insured.

## **6.7 Professional advice**

Liability consequent upon injury or damage caused by or through or in connection with any professional advice or treatment (other than first aid treatment) given or administered by or at the direction of the Insured.

## **6.8 Vibration and removal of support**

Liability consequent upon damage caused by vibration or by the removal or weakening of or interference with support to any land, building or other structure.

## **6.9 Work by contractors (unless stated in the Schedule to be included)**

Liability consequent upon performing Contract Work by a contractor unless stated in the Schedule

## **6.10 Unlawful competition**

Liability consequent upon Injury or damage arising out of the deliberate, conscious and intentional disregard by the Insured's management of the need to take reasonable precautions to prevent any event or circumstance which may give rise to a claim.

Any claim or claims whether actual or alleged howsoever arising in connection with or based upon or arising from or in any way involving actual or alleged unlawful competition, unfair practices, abuse of monopolistic power, cartel activities or as may otherwise arise from or be based upon or relate to any breach of a provision of the Competition Act no. 89 of 1998 (as amended) or any similar provision, act or regulation as may be in force in any jurisdiction or country in which the Insured's liability arose.

## **6.11 USA and Canada judgments, awards or settlements**

Liability consequent upon damages in respect of judgments, award or settlement made within the United States of America or Canada (or to any order made anywhere in the world to enforce such judgment, award or settlement either in whole or in part). For the purpose of this Specific Exception "damages" shall be deemed to include costs and expenses of litigation recovered by any claimant from the Insured.

## 7. SECTION A - EXTENSIONS

The following extensions are covered under this section:

### 7.1 Additional Insured

The Company will also, as though a separate policy had been issued to each, indemnify:

- a) in the event of the death of the Insured, any personal representative of the Insured in respect of liability incurred by the Insured;
- b) any partner or director or employee of the Insured (if the Insured so requests) against any claim for which the Insured is entitled to indemnity under this insurance;
- c) to the extent required by the conditions of any contract (and notwithstanding General Exclusion 5), and in connection with any liability arising from the performance of the contract, any employer named in any contract entered into by the Insured for the purposes of the business;
- d) in respect of the activities of any social or sports club, welfare organisation, first aid, fire or ambulance service, canteen, or the like, belonging to or formed by the Insured for the benefit of their employees and
  - i) any officer or member thereof;
  - ii) any visiting sports team or member thereof,provided that the aggregate liability of the Company is not increased beyond the limits of indemnity stated in the schedule;
- e) any person or organisation to which this extension applies is not entitled to indemnity under any other policy;
- f) the indemnity under (a), (b) and (c) applies only in respect of liability for which the Insured would have been entitled to indemnity if the claim had been made against the Insured.

For the purposes of this extension, the Company waives all rights of subrogation or action which they may have or acquire against any of the above, and each party to whom the indemnity hereunder applies shall observe, fulfil and be subject to the terms, exceptions, and conditions (both general and specific) of this insurance in so far as they can apply.

### 7.2 Car parks

Notwithstanding the provisions of specific exception 6.5, the Company will indemnify the Insured in respect of liability as herein provided arising from loss of or damage to vehicles and their contents and accessories, the property of tenants, customers, visitors, or employees of the Insured using parking facilities provided by the Insured.

### 7.3 Emergency medical expenses

The Company will indemnify the Insured for all reasonable expenses incurred by the Insured for such immediate medical treatment as may be necessary at the time of an accident-causing injury to any person who may be the subject of a claim for indemnity by the Insured in terms of this section.

### 7.4 Employees' and visitors' property

Specific Exception 6.2 a) (ii) shall not apply to property belonging to any partner, director or employee of the Insured or any visitor to the Insured's premises.

### 7.5 Fire extinguishing costs

This extension includes a sub limit for direct costs incurred by firefighting teams limited to the amount as per schedule per event but always to an aggregate of R100 000 per policy period. Proof of costs incurred need to be substantiated.

### 7.6 Gratuitous advice

Notwithstanding anything to the contrary contained in Specific Exception 3(a) the Company will indemnify the Insured in respect of the defined events caused by the unintentional failure of the Insured to perform the legal duty to exercise due care owed to another person or party in providing technical information or advice to such person or party provided that this Section does not cover liability arising out of:

- a) the insolvency of the Insured;
- b) financial services and/or cost estimates provided by or on behalf of the Insured;
- c) defamation;
- d) design, formula, supervision, treatment or advice given by or on behalf of the Insured in exchange for a fee or benefit of any kind;
- e) technical information or advice given in connection with a product unless the extension for Products Liability is included in the Schedule.
- f) If at the time of any event giving rise to a claim under this Extension, indemnity is also provided under any other insurance, this Extension shall not be drawn into contribution with such other insurance except in respect of any excess over and above the amount payable by such other insurance.

## **7.7 Tenant's liability**

Specific Exceptions 6.2 a) (ii) of this Section shall not apply to premises occupied by the Insured as tenant (but not as the owner) thereof.

## **7.8 Tool of trade**

Specific Exception 6.5 shall not apply to the operation as a tool of any vehicle or plant forming part of such vehicle or attached thereto provided that the Company shall not be liable hereunder in respect of so much of any liability as falls within the scope of any form of motor insurance or compulsory third party insurance legislation, notwithstanding that no such insurance is in force or has been effected, nor shall the Company be liable where any other form of motor insurance has been effected by the Insured covering the same liability.

## **7.9 Unattached trailers**

Specific exception 6.5 shall, as far as it relates to trailers, not apply in respect of any trailer that was attached to any mechanically propelled vehicle that became unintentionally detached from that vehicle, provided that the Company shall not be liable hereunder in respect of so much of any liability:

- g) which is insured by or would, but for the existence of this section, be insured by any other policy or policies effected by the Insured;
- h) as falls within the scope of any compulsory Third-Party insurance legislation, notwithstanding that no such insurance is in force or has been affected.

## **7.10 Wrongful arrest and defamation**

The defined events are extended to include damages:

- a) resulting from wrongful arrest (including assault in connection with such wrongful arrest);
- b) in respect of defamation,

provided always that the limits of indemnity as stated shall not exceed the limit stated in the schedule under each of (a) and (b) and the same limit as per the schedule in any one (annual) period of insurance.

(if stated in the schedule to be included)

(Claims made basis)

## 8. SECTION B - INDEMNITY

The Company will indemnify the Insured in respect of defined events happening anywhere in the territories, or as stated in the schedule elsewhere than at premises occupied by the Insured and caused by any Product sold or supplied (including wrongful delivery and delivery of incorrect goods) by the Insured in connection with the nature of business.

The amount payable under this extension, inclusive of any Legal Costs recoverable from the Insured by a claimant or any number of claimants, and all other costs and expenses incurred with the Company's consent, for any one event or series of events with one original cause or source or during any one (annual) period of insurance, shall not exceed in the aggregate the limit of indemnity for this extension stated in the schedule.

## 9. SECTION B - EXCLUSIONS

This Section does not cover liability forthcoming from:

- a) for the cost of repair, alteration, recall, reconditioning or replacement of the Product or part thereof causing injury or damage.  
For the purposes of this additional specific exception the term "replacement" shall be deemed to include any credit or refund granted or alternative Product provided by or on behalf of the Insured in lieu of replacement of the defective Product;
- b) for the cost of demolition, breaking out, dismantling, delivery, rebuilding, supply and installation of the Products and any other property essential to such repair, alteration, or replacement unless physically damaged by the Product;
- c) arising from the failure of any Product or any part thereof to fulfill its intended function or to perform as specified, warranted, or guaranteed but this exception shall not apply to consequent Injury or Damage;
- d) arising from Products intended to be installed and installed in, or intended to form part of and forming part of, an aircraft;
- e) for any defect in any Product or any part thereof of which the Insured was aware prior to the inception of this extension.

## SECTION B - ADDITIONAL EXTENSIONS

(if stated in the schedule to be included)

## 10. FORECOURT LIABILITY

Notwithstanding anything to the contrary contained in specific exclusions 6.6, and also with the deletion of the following words from the Product Definition: "after it has left the care custody and control of the Insured", but subject otherwise to the terms and conditions and limitations of this Section and policy, the Insurers shall indemnify the Insured in accordance with the operative clause, including the costs incurred in providing a customer with a hired vehicle for the Damage occurring as a result of the Insured or any forecourt employee of the Insured:

- a) dispensing incorrect fuel or top-up lubricant
- b) after providing a forecourt service to a customer's vehicles fails to correctly;
  - i) tighten or close caps or lids of such vehicle;
  - ii) close the bonnet or boot lid of such vehicle;
- c) denting, scratching or otherwise damaging a customer's vehicle while providing a forecourt service;
- d) damaging a customer's vehicle whilst being cleaned on the Insured's premises including car wash and valet service.

### **For the purposes of this extension only:**

- a) damage shall include the costs incurred in cleaning the fuel or lubrication system of the vehicle whether visible physical damage has been caused by the incorrect dispensing of fuel or lubricants or not,
- b) forecourt service shall mean the dispensing of fuel or top-up lubricant or the topping up of water and other reservoirs of the vehicle or the inflation or deflation of tyre pressures or the cleaning of window glass. It shall not include any form of mechanical or electrical repair or service nor the removal repair or fitting of any tyre wheel or tube or rim,
- c) the Insurers shall not indemnify the Insured or the Customer in respect of:
- d) the cost of the fuel or lubricant that has been incorrectly dispensed or that was in the tank beforehand,
- e) the excess as stated in the Schedule,
- f) the amount payable under this extension, inclusive of any legal costs and any other costs and expenses recoverable from the Insured by a claimant or any number of claimants, and all other costs and expenses incurred with the Insurer's consent, for any one event or series of events with one original cause or source shall not exceed the limit of indemnity stated in the schedule,
- g) the car hire shall be limited as per the cover stated in the schedule or until the customer's vehicle has been repaired, whichever is the earlier.

## **11. BEAUTICIAN'S LIABILITY**

Notwithstanding anything to the contrary contained in specific exception 6.4, the Company will indemnify the Insured in respect of defined events happening anywhere in the territories stated in the schedule to include liability arising out of any treatment administered in the course of the business as Hairdressers and or Beauticians and or Massage Therapists.

For the purpose of this extension the following are included: dyeing, tinting, permanent waving and other special treatments of hair, eyebrow plucking and shaping, violet ray, vibro electrolysis, pedicure, chiropody, manicure, waxing and massaging.

**Additional specific exceptions and conditions to this extension applicable to hairdressing**  
(It is understood that) Hairdressing operations will be covered subject to the following exceptions and conditions:

- a) in respect of the use of preparations such as dyes, tints, shampoos, waving lotions and the like, the Insured must have complied with the recommendations, requirements and precautions laid down by the manufacturers or suppliers;
- b) the Company will not indemnify the Insured in respect of liability arising from any products such as dyes, tints, shampoos, waving lotions, ointments (but not restricted to these) manufactured by the Insured;
- c) the liability of the Company under this extension shall not exceed the amount as stated in the Schedule for any one event or series of events with one original cause or source during any one annual period of insurance;
- d) the Company shall not be liable for any claims arising directly or indirectly out of the cutting or puncturing of the skin or any procedure of a surgical kind or resembling any surgical procedure in any form;
- e) all utensils and appliances shall be kept clean, where required sterilized and kept in a proper state of working according to the specific prescription of care for the apparatus or utensil at all times and all electrical apparatus shall be examined at least once every 12 months by a competent technician and that all parts or apparatuses found worn or damaged shall immediately be replaced;
- f) the indemnity granted by this extension is extended to apprentices only when they are assisting in a minor capacity in the administration of treatments.

## **12. PRODUCT RECALL EXTENSION**

The Insurers shall indemnify the Insured for Expenses incurred as a consequence of a decision by the Insured during the Period of Insurance to recall the Insured's Products from any place within the Territorial Limits and notified to the Insurers during the Period of Insurance where such Products are likely to cause Injury or Damage for which the Insured may become legally liable.

Where such recall is initiated by the Insured the Insurers' prior written consent is required (such consent will not unreasonably be withheld).

### **Specific Definition (applicable to this Extension only)**

Expenses shall mean reasonable and necessary costs of

- a) media communication and correspondence; and
- b) transportation in connection with the return of the Products or any part thereof to the manufacturer or their nominated agents; and
- c) destruction of the Product except to the extent that any claim for such costs is greater than a claim for transportation expenses.

### **Specific Exclusions (applicable to this Extension only)**

This Extension does not cover liability arising out of:

- a) any Product or part thereof.
- b) costs incurred in the repair, reconditioning, modification or replacement of any Product or part thereof.
- c) actual or alleged intentional alteration, adulteration or contamination of the Insured's Product, but this Specific Exclusion shall not apply to the Insured's legal liability incurred in the defence of any legal action arising out of such intentional alteration, adulteration or contamination of the Insured's Product by persons other than the Insured and not acting on behalf of the Insured, provided that the Insurers' liability for such expenses shall not exceed 10% (ten percent) of the Limit of Indemnity for this Extension.
- d) the recall of any Products
  - i) forced upon the Insured by any government or public authority where the Insured would not have made a recall but for the intervention of a government or public authority; or
  - ii) which are in the care, Custody or Control of the Insured or any subsidiary of the Insured; or
  - iii) as a result of mis delivery or misdirection of any Product by or on behalf of the Insured.
- e) the deliberate or intentional
- f) breach of national or local regulations by the Insured; or
- i) failure of the Insured's management to take reasonable precautions to prevent claims.
- ii) any Product where the Insured was aware that the Product was likely to cause Injury or Damage before the inception of the cover provided in terms of this Extension.
- g) any Product (including any marketing advisory service in connection with any Product) within North America where such Product was to the knowledge of the Insured intended for sale or resale in North America or such sale or resale could reasonably have been contemplated by the Insured.

Provided always that the total liability of the Insurers under this Extension shall not exceed the Limit of Indemnity stated in the Schedule for this Extension in respect of all claims made during the Period of Insurance.



(Automatically included in and subject to Section A)

**(Claims made basis)**

## 13. SECTION C - INDEMNITY

### **Liability consequent upon:**

- a) liability in respect of injury, damage or loss of use of property directly or indirectly caused by pollution;
- b) the cost of nullifying or cleaning up substances resulting from pollution, provided that this exception shall not apply where such pollution is caused by a sudden, unintended, and unforeseen occurrence.

This exception shall also not extend the Policy to cover any liability which would not have been insured under this Policy in the absence of this Exception but not for 20% of the limit of indemnity, but always restricted to R1 000 000 (one million) for Mitigating Costs following any event which is indemnified under this section.

(if stated in the schedule to be included)

(Claims made basis)

## 14. SECTION D - INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause against all sums which the Insured becomes legally liable to pay arising from any claims made against the Insured during the period of the policy as a direct result of any negligent act, error or omission in the conduct of the Insured's Business, as stated in the proposal form.

If during the period of the policy the Insured become aware and notify Underwriters of a circumstance which Underwriters accept is likely to give rise to a claim against them, then any claim which may subsequently be made against the Insured arising out of such a circumstance shall be deemed to have been made during the period of the policy.

## 15. SECTION D - EXCLUSIONS

This Section does not cover liability :

- a) which forms the subject of indemnity by any other section of this insurance and this section shall not be drawn into contribution with such other section;
- b) for or arising out of claims made by one Insured against another unless emanating from an independent Third-Party;
- c) for or arising out of liquidated damage clauses, penalty clauses or performance warranties unless liability would have attached in the absence of such clauses or warranties;
- d) for fines, penalties, punitive, multiple or exemplary damages;
- e) arising from any claim forthcoming from an employee based on an alleged unfair employment practice of any kind, including sexual related harassment claims;
- f) for any claim related to the loss of money in whatever nature or title or similar documents;
- g) for any claim arising from insolvency, liquidation or judicial management of any party who forms part of the insured, or to any party who have entered in any contract of any kind with the insured;
- h) for any breach of contract unless any professional duty or act where a breach or alleged breach of contract occurred where the insured is reliant on that party;
- i) for any claim arising from any fraudulent act, dishonesty, illegal or criminal acts or any malicious act committed by the insured;
- j) for or arising out of claims made against the Insured while acting in their capacity as a director or officer of any the Insured or company.
- k) for any claim made against the Insured outside the jurisdiction of the Republic South Africa.

(if stated in the schedule to be included)

**(Claims made basis)**

## 16. SECTION E- INDEMNITY

Damages which the Insured shall become legally liable to pay consequent upon death of or bodily injury to or illness of any person employed under a contract of service or apprenticeship with the Insured, which occurred in the course of and in connection with such person's employment by the Insured within the territorial limits and on or after the retroactive date shown in the Schedule, and which results in a claim or claims first being made against the Insured in writing during the period of insurance.

## 17. SECTION E- EXCLUSIONS

This Section does not cover :

- a) liability assumed by the Insured under any contract, undertaking or agreement where such liability would not have attached to the Insured in the absence of such contract, undertaking or agreement;
- b) liability for disease or impairment attributable to a gradually operating cause which does not arise from a sudden and identifiable accident or event;
- c) fines, penalties, punitive, exemplary or vindictive damages;
- d) damages in respect of judgements delivered or obtained in the first instance otherwise than by a court of competent jurisdiction within the Republic of South Africa, Namibia, Botswana, Lesotho and Swaziland; and
- e) costs and expenses of litigation recovered by any claimant from the Insured which are not incurred in and recoverable in the territorial limits;
- f) any claim arising from an event known to the Insured:
  - i) which is not reported to the Company in terms of General Condition 3;
  - ii) prior to inception of this Section.

(if stated in the schedule to be included)

(Claims made basis)

## 18. SECTION F- INDEMNITY

Subject otherwise to the terms, conditions and limitations of this policy, the maximum limit of indemnity provided for liability occurring in direct connection with the performance of a contract by the Insured for events that happen on or in the immediate vicinity of a contract site not indemnified under Section A, Specific Exclusion 6.2.a) (ii), is stated in the schedule as a limit of this Section only.

This limit only extends to include indemnity insofar as it is specific restricted to premises (or the contents thereof) temporarily occupied by the Insured for work therein.

The limit of indemnity is inclusive of any legal costs recoverable from the Insured by a claimant or any number of claimants and all other costs and expenses incurred with the Company's consent for any one event or series of events with one original cause or source.

The performance of a contract is deemed to be any party whose main source of income is derived whilst working on properties which are placed in their temporary control to perform either construction, erection, maintenance, replacement, demolition, breaking out, dismantling, rebuilding, supply and installation.

This limit of indemnity applies to any one annual period of insurance and no claims will be paid exceeding this amount in the aggregate.

## 19. SECTION F- EXCLUSIONS

**This Section does not cover claims:**

- a) from the cost of repair, alteration, recall, reconditioning or replacement of the product or part thereof (including containers and labels) causing injury or damage and/or the loss of use of any product or part thereof;
- b) from inefficacy of such work or because the work did not produce the result anticipated or claimed;
- c) prior to the handing over of such work;
- d) from defective design.

For the purposes of this additional specific exception the term "replacement" shall be deemed to include any credit or refund granted or alternative product provided by or on behalf of the Insured in lieu of replacement of the defective product

# SECTION G - DIRECTORS AND OFFICERS LIABILITY

(if stated in the schedule to be included)

(Claims made basis)

## 20. SECTION G- INDEMNITY

We will insure you in return for the payment of the agreed premium and in we rely on the proposal and other information, supplied by you as the insured or a representative of the Insured. This will form the basis of this insurance contract and the Insurers as is specified in the Schedule agree to indemnify you as the Insured in the manner and to the extent stated herein.

This insurance will apply only to any claims first made against you as the Insured during the Period of Insurance. If, however you as the Insured notifies us as the Insurers 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 to insurers during the period of this Policy.

## 21. SECTION G- INSURING AGREEMENTS

The Insurers agree to indemnify:

### A. Directors and Officers liability

Means 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

Means 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.

## 22. SECTION G- ADDITIONAL SPECIFIC EXCEPTIONS AND CONDITIONS

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

### 22.1 Asbestos and Toxic Mold

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 mold, mildew, mycotoxins, spores, or any biogenic aerosols.

### 22.2 Bodily Injury and Property Damage

- 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
- 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
- for defamation of character or violation of a person's right of privacy.

### 22.3 Claims and Circumstances known at inception

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

### 22.4 Commissions

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

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

## **22.5 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.

## **22.6 Failure to procure insurances**

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

## **22.7 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.

## **22.8 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.

## **22.9 Insolvency**

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

## **22.10 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.

## **22.11 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 the Insured.

## **22.12 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.

## **22.13 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.

## **22.14 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.

## **22.15 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 the Insureds from their obligation to disclose as a material fact all details of Claims made or outstanding or events likely to give rise to a Claim.

## **22.16 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.

## **22.17 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 the Insurers 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) Insurers 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.

## **23. SECTION G - SPECIFIC CONDITIONS**

### **23.1 Change in Control Transaction**

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 the Insured 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 the Insurers as soon as practical together with such information as the Insurers may request. Upon receipt of such notice and information and at the request of the Company, the Insurers shall provide to the Company a quotation for cover of the Directors and Officers of the Company following the Change in Control Transaction:

- a) It shall be the duty of the Insureds and not the duty of the Insurers to defend any Claim. The Insureds 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 the Insurers' prior written consent. The Insurers 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, the Insurers shall have the right to:
  - b) appoint the appropriate defence attorneys and counsel;
  - c) determine substantive defence strategies, including without limitation decisions regarding the filing and content of substantive motions; and
  - d) negotiates settlement.

The Insureds agree to provide the Insurers with all information, assistance, and cooperation which the Insurers reasonably request and agree that in the event of a Claim the Insureds will do nothing that shall prejudice the Insurers' position or their potential or actual rights of recovery. The Insurers may make any investigation they deem necessary.

### **23.2 Shareholding changes**

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 the Insurers 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 23.a or 23.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 the Insurers 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 the Insurers such information as the Insurers may request.

Upon receipt of such notice and other information, the Insurers 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.

## **24. SECTION G - AUTOMATIC EXTENSIONS OF COVER**

### **24.1 Advance reasonable Costs and Expenses**

The Insurers 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 the prior written consent of the Insurers;
- b) such advance payment of Costs and Expenses shall be repaid to the Insurers 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.

### **24.2 Public relations consultants**

Subject to their prior written agreement, Insurers 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 the liability of the Insurers in terms hereof shall be limited to 5% of the Limit of Indemnity stated in the Schedule.

### **24.3 Retrospective approval**

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



(if stated in the schedule to be included)

(Claims made basis)

## 25. SECTION H - OPERATIVE CLAUSE

Damages which the Insured shall become legally liable to pay consequent upon a Cyber Risk Event which occurred in the course of or in connection with the business within the territorial limits and on or after the retroactive date shown in the schedule, and which results in a claim or claims first being made against the Insured in writing during the period of insurance.

## 26. SECTION H - CYBER RISK EVENT

The Underwriter agrees to indemnify the Insured against its legal liability to pay Damages and Costs in respect of claims made against the Insured following:

### 1. Security and Privacy Liability

the Insured's Legal Liability arising out of Security Breach or Privacy Breach or Breach of Privacy Regulations including the loss of data in a non-electronic format;

### 2. Privacy Regulatory Defence and Penalties

the Insured's Legal Liability arising from, a regulatory action, penalty, or fines to the extent insurable by law, imposed by a governmental regulatory body against the Insured arising from a Security Breach, Privacy Breach restricted to the limit of indemnity on the schedule.

## 27. SECTION H - 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.

### Computer network

A computer network is a group of two or more computers or electronic devices linked together inclusive of servers and the respective programs and data stored on such devices. This could extend to included "in the cloud" computing as well.

### Costs

means legal expenses (including disbursements) reasonably incurred with the prior agreement of the Insurers 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 include overhead, or benefit expenses associated with salaries, wages and fees of Insured Persons or of the Company following a Cyber Risk Event.

### Data means

Data is information processed or stored by a computer. This information may be in the form of text documents, images, audio clips, software programs, or other types of electronic stored data and does not imply that it is tangible property. Data is not limited to digital media as it could include printed text media as well.

### Malicious Code

is the term used to describe any code in any part of a software system or script that is intended to cause undesired effects, security breaches or damage to a system. Malicious code describes a broad category of system security terms that includes attack scripts, viruses, worms, Trojan horses, backdoors, and malicious active content

### Privacy Breach

means a breach when there is unauthorized access to, or collection, use, or disclosure of, personal information. Such activity is "unauthorized" if it occurs in contravention of applicable privacy legislation.

## Privacy Regulations

means the following, current or future relevant acts and regulations, including, but not limited to:

1. Constitution of the Republic of South Africa Act 108 of 1996;
2. Protection of Personal Information Act 4 of 2013
3. Promotion of Access to Information Act 2 of 2000;
4. Consumer Protection Act 68 of 2008 and relevant regulations
5. Electronic Communications and Transactions Act, 25 of 2002;
6. Regulation of Interception of Communications and Provision of Communications-Related Information Act 70 of 2002;
7. Common law in relation to the right to privacy.

## Security breach

means the Insured's actual or alleged breach of duty in preventing the intentional misuse of the Insured's computer network to modify, delete, corrupt, destroy or wrongfully disclose data or participate in a denial of service.

## 28. SECTION H - SPECIFIC CONDITIONS OF COVER

- a) Any claim first made in writing against the Insured as a result of a defined event reported in terms of General condition 3 shall be treated as if it had first been made against the Insured on the same day that the Insured reported the event to the company.
- b) In the event of cancellation or non-renewal of the policy, the Insured may report an event in terms of General condition 3 to the company for up to 30 days after cancellation or non-renewal, provided such event occurred during the period of insurance.
- c) Any series of claims made against the Insured by one or more than one claimant during any period of insurance consequent upon one event or series of events with one original cause or source shall be treated as if they all had first been made against the Insured on the date that the event was reported by the Insured in terms of General condition 3.
- d) if the Insured was not aware of any event which could have given rise to a claim, on the date that the first claim of the series was first made in writing against the Insured.

## 29. SECTION H - SPECIFIC EXCLUSIONS OF COVER

This Section of the Policy shall not indemnify the Insured in respect of any Claim, Loss, liability, or expense arising directly or indirectly out of:

### 29.1 Bodily Injury and Property Damage

- a) any bodily, mental, or emotional injury, sickness, disease or death, or
- b) any loss of or damage to property, including wear and tear or failure to perform as required in which ever way.

### 29.2 Claims and Circumstances known at inception

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

### 29.3 Claims Conditions Precedent to Liability

Damages which shall include costs and expenses of litigation recovered by any claimant from the Insured, in respect of any claim arising from an event known to the Insured which is not reported to the company in terms of General Condition 3.

### 29.4 Contractual agreement

assumed by the Insured by agreement unless such liability would have attached in the absence of such agreement.

### 29.5 Criminal actions of the Insured

which are any actions that is of a criminal nature as such including but not limited to effect payment to a Third-Party for the release of data wrongfully acquired and kept by such Third-Party.

### 29.6 Insured's own costs

are any costs incurred by the insured for expenses of specialists, investigators, forensic auditors or the like, retained by the Insured to conduct any investigation of any kind which is not related to an insured event.

(if stated in the Schedule to be included)

### **30. SECTION I- INDEMNITY**

Any accident caused by or through or in connection with any vehicle described in the schedule or in connection with the loading and/or unloading of such vehicle in respect of which the insured and/or any passenger becomes legally liable to pay all sums including claimant's costs and expenses in respect of:

- a) death of or bodily injury to any person, but excluding death of or bodily injury to any person in the employ of the insured arising from and in the course of such employment or being a member of the same household as the insured,
- b) damage to property other than property belonging to the insured or held in trust by or in the custody or control of the insured or being conveyed by, loaded onto or unloaded from such vehicle. The company will also, in terms of and subject to the limitations of and for the purposes of this sub-section,
- c) indemnify any person who is driving or using such vehicle on the insured's order or with the insured's permission and
  - i) such person shall, as though he were the insured, observe, fulfil and be subject to the terms, exceptions and conditions of this insurance in so far as they can apply and
  - ii) such person driving such vehicle has not been refused any motor insurance or continuance thereof by any insurer
  - iii) pay all costs and expenses incurred with their written consent, and shall be entitled at their discretion to arrange for representation at any inquest or inquiry in respect of any death which may be the subject of indemnity under this sub-section, or for defending in any magistrate's court . any criminal proceedings in respect of any act causing or relating to any event which may be the subject of indemnity under this sub-section, provided that the total of the company's liability under this extension shall not exceed the limit of indemnity stated to apply to this sub-section and
  - iv) indemnity shall not apply in respect of claims made by any member of the same household as such person and
  - v) such person is not entitled to indemnity under any other policy except in respect of any amount not recoverable thereunder;
- d) indemnify the insured while personally driving or using any private type of motor car not belonging to him and not leased or hired to him under a lease or suspensive sale agreement, provided the insured is an individual and has insured hereunder such a vehicle declared under this section and provided the company shall not be liable for damage to the vehicle being driven or used;
- e) Indemnify the insured in respect of liability arising from the towing by a vehicle (other than for reward) of any other vehicle or trailer (including liability in connection with the towed vehicle or trailer), provided the company shall not be liable for damage to the towed vehicle or trailer or to property therein or thereon.

### **31. SECTION I- EXCLUSIONS**

The company shall not be liable under this sub-section in respect of:

- a) so much of any compensation or claim as falls within the scope of any compulsory motor vehicle insurance enactment. This exception shall apply notwithstanding that no insurance under such enactment is in force or has been affected;
- b) death of or injury to any person being carried in or upon or entering or getting onto or alighting from a vehicle described in this section at the time of the occurrence of the event from which any claim arises (except any person being carried in or upon or entering or getting onto or alighting from a permanently enclosed passenger carrying compartment of a commercial vehicle with a carrying capacity not exceeding 1 500kg);
- c) liability arising from the operation, demonstration, or use (for purposes other than maintenance or repair of the vehicle) of any tool or plant forming part of or attached to or used in connection with a vehicle or anything manufactured by or contained in any such tool or plant. This exclusion shall not apply to forklift trucks;
- d) the limit of indemnity under this policy will only become drawn upon once proof is provided confirming that the full underlying limit of indemnity is exhausted for any one single claim or event leading to a claim.

(if stated in the Schedule to be included)

**32. SECTION J - INDEMNITY**

At the option of the Insured and subject to payment of an additional premium to be determined and subject to all the Terms, Exceptions and Conditions of this Section, the Company agrees to extend the period during which the Insured may report an event in terms of General Condition 3 for a period to be agreed, but in no circumstances exceeding 36 (thirty-six) months (hereinafter referred to as extended reporting period) provided that:

- a) this option may only be exercised in the event of the Company cancelling or refusing to renew this Section;
- b) this option must be exercised by the Insured in writing within 30 days of cancellation or non-renewal;
- c) once exercised, the option cannot be cancelled by either the Insured or the Company;
- d) the Insured has not obtained insurance equal in scope and cover to this Section as expiring;
- e) the Company shall only be liable for a defined event which occurred after the retroactive date but prior to date of cancellation or non-renewal;
- f) claims first made against the Insured or any reported event by the Insured during the extended reporting period shall be treated as if they were first made or reported on the last day preceding the cancellation or non-renewal;
- g) the total amount payable by the Company for claims made or reported events during the extended reporting period shall not have the effect of increasing the limit of indemnity applicable as on the last day preceding the cancellation or non-renewal.

**SECTION K -  
INCIDENTAL MEDICAL MALPRACTICE**

(if stated in the Schedule to be included)

**33. SECTION K - INDEMNITY**

The Insurers shall indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay in connection with any claim or claims arising from Injury caused by medical malpractice which shall mean any negligent act, error or omission in the professional services rendered by any medical practitioner, nurse or other medical official in the full or part time service of the Insured.

**34. SECTION K - EXCLUSIONS**

This Extension does not cover liability arising out of

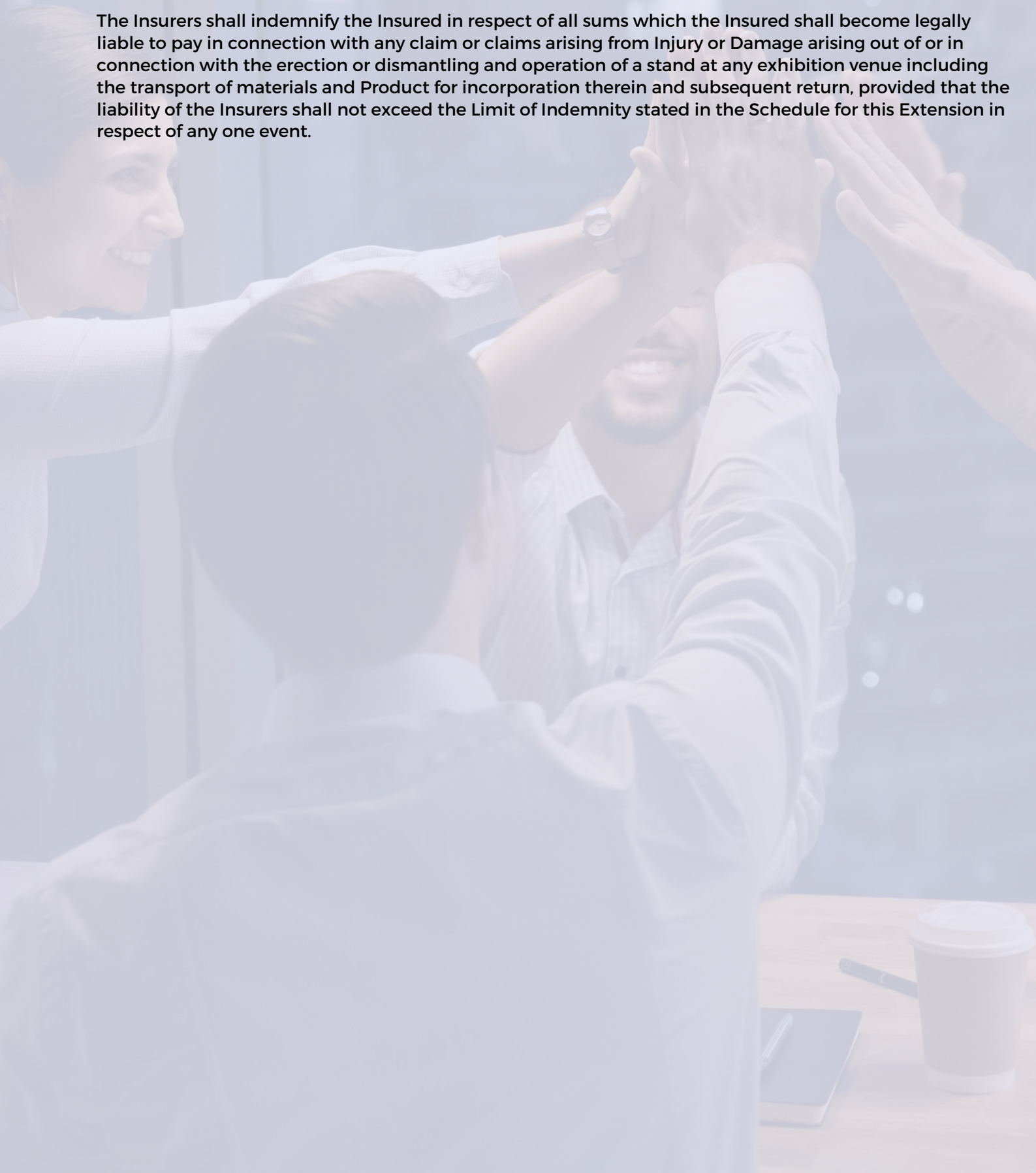
- a) any criminal act committed wilfully;
- b) services rendered by any person who to the Insured's knowledge is under the influence of intoxicants or narcotics;
- c) the use of drugs for weight reduction;
- d) services rendered for a fee payable by the patient;
- e) clinical tests or trials of drugs.

Provided that the liability of the Insurers shall not exceed the Limit of Indemnity stated in the Schedule in respect of this Extension for all claims made during the Period of Insurance.

(if stated in the Schedule to be included)

## 35. SECTION L - INDEMNITY

The Insurers shall indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay in connection with any claim or claims arising from Injury or Damage arising out of or in connection with the erection or dismantling and operation of a stand at any exhibition venue including the transport of materials and Product for incorporation therein and subsequent return, provided that the liability of the Insurers shall not exceed the Limit of Indemnity stated in the Schedule for this Extension in respect of any one event.



# GENERAL EXCLUSIONS APPLICABLE TO ALL SECTIONS OF THE CERTIFICATE

In addition to the Exclusions specified under the Section Exclusions this Certificate does not cover :

**1. Asbestos and related lung diseases**

any claim arising from or out of, based upon, attributable to, in consequence of or in any way involving the hazardous nature of or due to:

- a) asbestos or any materials containing asbestos in any form or quantity or
- b) silicosis or other fibrosis of the lungs or any other illness or disease related to infection of the respiratory system following continuous or continual inhalation or ingestion of any substance.

**2. Alcohol and/or Drugs**

any liability arising out of or contributed to by alcohol and/or drugs.

**3. Compulsory first amount payable**

the Compulsory First Amount Payable as stated in the Schedule which the Insured shall be responsible in respect of any one claim or number of claims arising from all events of a series consequent upon or attributable to any one source or originating cause or source. The provisions of the Clause shall apply to claims arising from damage or injury and shall apply to legal costs incurred by the Insured.

**4. Contractual Liability**

any liability assumed by the Insured under any liquidated damage, penalty or forfeiture clause, express warranty, contract, agreement or guarantee other than to the extent that such liability would have attached to the Insured in the absence of such clause, warranty, contract, agreement, or guarantee.

**5. Decennial Liability (Inherent Defects)**

any claim arising from or out of, based upon or attributable to decennial liability and/or inherent defect insurance.

**6. Deliberate Acts**

any claim arising from or out of, based upon or attributable to the deliberate, conscious, or intentional disregard by the Insured, or where applicable by anyone acting on the Insured's behalf, of the need to take all reasonable precautions to prevent loss, harm or injury.

**7. Electricity Supply Network Interruption**

Any loss, damage, liability, cost, or expense of any kind, including consequential losses of any kind, in terms of any section of this policy, that is directly or indirectly caused by, attributable to, contributed to by, resulting from, arising out of, following, or in any way in connection with an Electricity Supply Network Interruption at any stage (whether at the time of the Electricity Supply Network Interruption or at the reinstatement or restoration of an electricity supply) is not covered by this policy, this being so irrespective of any provision, term, condition, or endorsement to this policy which would otherwise override this general exclusion.

Electricity Supply Network Interruption is defined to mean a whole or partial interruption, interference, or suspension, of any nature, of any electricity supply, from any national, regional, or private, source to an insured business, or insured residence, or both, due to any cause whatsoever, including damage or any inability on the part of any electricity supplier to provide electricity.

**8. Fines, Penalties and Punitive Damages**

liability for awards or damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensation awards or damages or aggravated damages or in any other form whatsoever.

**9. Hazardous Sports**

any claim arising from or out of activities performed in the air with the assistance of any craft of any kind or any parachuting/floating device or any sea faring or related activities.

**10. Insolvency**

any claim arising from or out of, based upon or attributable to the insolvency of the Insured, its liquidation (whether provisional or final), curatorship (whether provisional or final) or where it is the subject of business rescue proceedings or of any person who enters into an agreement with the Insured.

## 11. **Medical Malpractice**

any claim arising from or out of, based upon, attributable to, in consequence of or in any way involving a legal cause of action that occurs when a medical or health care professional deviates from standards in his or her profession, thereby causing injury to a patient.

## 12. **Non-RSA Territorial Waters**

any liability, notwithstanding Clause 6.3, arising out of any activities requiring the use of marine craft of whatsoever nature and activities on the sea outside the RSA Territorial Waters.

## 13. **Polychlorinated Biphenyls (PCB's)**

any claim arising from or out of, based upon or attributable to polychlorinated biphenyls

## 14. **Prior Events**

any liability arising from or out of any negligent act, error or omission that occurred before the retroactive date, or for any claims where the Insured were aware of the circumstance which was likely to give rise to a claim before the inception of the policy.

## 15. **Radioactive Contamination and Explosive Nuclear Assemblies**

for any 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.

## 16. **Terrorism Exclusion Clause**

for any legal liability notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, injury, damage, cost, or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes loss, injury, damage, cost, or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, injury, damage, cost, or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured. In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

## 17. **War and Civil War Exclusion Clause**

for any legal liability notwithstanding anything to the contrary contained herein this Certificate does not cover liability arising directly or indirectly occasioned by, happening through or in consequence of war, terrorist act, invasion, act 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 damage to property by or under the order of any government or public or local authority.

Applicable to all Sections including but not limited to all Endorsements and/or Extensions unless otherwise stated.

## 1. Insurers Liability

- a) The total maximum liability for all and any Claims and/or Loss in the Period of Insurance shall be subject to and shall not exceed the Limit of Indemnity stated in the schedule.
- b) Defence Costs are part of the Limit of Indemnity and are not payable in addition to the Limit of Indemnity.
- c) The inclusion of more than one Insured under this Policy does not operate to increase the Limit of Indemnity payable by the Insurer under this Policy.
- d) Should any Limit of Indemnity be altered during the Period of Insurance, then the previous Limit of Indemnity shall apply to all Claims reported or deemed to have been made prior to the effective date of such alteration.
- e) Where any Loss is incurred in respect of any Claim which arises from both covered matters and matters not covered by this Policy, the Insurer's liability under this Policy is limited to the proportion of the Loss which represents a fair and equitable allocation between each Insured and the Insurer, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this Policy.
- f) Where the Insurer's liability under this Policy is limited under this clause, the Insured and the Insurer will use their best endeavors to agree upon the allocation to be adopted by them as the fair and equitable allocation.
- g) For the purposes of this policy, all claims arising out of the same wrongful act and all interrelated wrongful acts of the Insured Persons shall be deemed one claim, and such claim shall be deemed to be first made on the date the earliest of such claims is first made against them, regardless of whether such date is before or during the Period of Insurance.

## 2. Deductible

- a) The Insurer shall only be liable to pay the amount of any Loss which is in excess of the Deductible in respect of each Claim.
- b) For the avoidance of doubt, unless specifically stated otherwise, the Deductible also applies to Defence Costs.
- c) The Deductible is to be borne by the Insured and shall remain uninsured.
- d) The Insurer may, in its sole and absolute discretion, advance all or part of the Deductible, and, in that event, such amounts shall be reimbursed to the Insurer by the Insured forthwith.

## 3. Notification of Claims

On the happening of any event which may result in a Claim including Circumstances which might reasonably be expected to give rise to a Claim under this Certificate the Insured shall, at their own expense;

- a) give notice thereof to the Insurer as soon as reasonably possible and provide particulars of any other insurance covering such events as are hereby Insured;
- b) as soon as practicable after the event inform the Police of any Claim involving theft or (if required by the Insurer) loss of property and take all practicable steps to discover the guilty party and to recover the stolen or lost property;
- c) as soon as practicable after the event submit to the Insurer full details in writing of any Claim;
- d) give the Insurer such proofs, information and sworn declarations as the Insurer may require and forward to the Insurer immediately any communication, writ, summons or other legal process issued or commenced against the Insured in connection with the event giving rise to the Claim;
- e) any Claim first made in writing against the Insured as a result of a defined event reported shall be treated as if it had first been made against the Insured on the same day that the Insured reported the event to the company. In the event of cancellation or non-renewal of the policy or where the policy was issued for a specific time period, the Insured may report an event to the company for up to 30 days after cancellation or non-renewal, provided such event occurred during the Period of insurance;
- f) no Claim shall be payable after the expiry of 24 months or such further time as the Insurer may allow for the happening of any event unless the Claim is the subject of pending legal action or is a Claim in respect of the Insured's legal liability to a Third-Party;
- g) no Claim shall be payable unless the Insured claims payment by serving legal process on the Insurer within 6 months of the rejection of the Claim in writing and pursues such proceedings to finality;



If, after the payment of a Claim in terms of this Certificate in respect of lost or stolen property, the property (the subject matter of the Claim) or any part thereof is located, the Insured shall render all assistance in the identification and physical recovery of such property if called on to do so by the Insurer, provided that the Insured's reasonable expenses in rendering such assistance shall be reimbursed by the Insurer. Should the Insured fail to render assistance in terms of this condition when called upon to do so, the Insured shall immediately become liable to repay to the Insurer all amounts paid in respect of the Claim.

#### **4. Aggregate Limit of Indemnity Clause**

The maximum amount payable by the Insurers in respect of all the covers provided by this Policy in respect of any one Loss or Claim and in the aggregate in any one Period of Insurance shall not exceed the Limit of Indemnity stated in the Schedule.

If the Limit of Indemnity or First Amount Payable shall be increased at any time subsequent to the inception of the Period of Insurance such increased amount shall apply only to Circumstances arising after the date of such increase.

Renewal of this insurance from period to period or any extension of any Period of Insurance shall not have the effect of accumulating or increasing the liability of the Insurer beyond the Limit of Indemnity stated in the Schedule.

For the avoidance of doubt it should be noted that the indemnity afforded under the terms of this Policy is provided jointly to all parties constituting the Insured and for all purposes this Policy shall be considered as a joint policy with one Limit of Indemnity.

#### **5. Assignment**

This Policy and any rights under or in respect of it cannot be assigned by the Insured without the prior written consent of the Insurer.

#### **6. Cancellation**

- a) This Policy may be cancelled by the Insured giving immediate notice in writing to the Insurer.
- b) This Certificate may be cancelled by the Insurer giving thirty-one day's notice in writing (or other such period as may be mutually agreed or prescribed by relevant regulatorily bodies).
- c) The Premium shall be adjusted in accordance with General Condition 20, if applicable, and then calculated on the basis of Insurer receiving or retaining pro rata premium.
- d) Otherwise, if a Claim or Circumstance has been reported, and has been accepted in terms of the Policy, the Premium shall not be returned.
- e) Notice shall be deemed to be duly received if the letter of cancellation was sent by registered mail or per courier, properly addressed to the Insured's last known address.

#### **7. Compliance to relevant standards**

any liability where it is a pre-condition that the insured shall at times be compliant and where required registered with the relevant authorities, to ensure that applicable legislation or the like in whatever form as published and amended from time to time are fully adhered to.

#### **8. Change in control**

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 the Insured 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 the Insurers as soon as practical together with such information as the Insurers may request. Upon receipt of such notice and information and at the request of the Company, the Insurers shall provide to the Company a quotation for cover of the Directors and Officers of the Company following the Change in Control Transaction.

#### **9. Continuation of Cover**

If the premium is not received by the company by the Due Date, this Certificate shall be deemed to have been cancelled at midnight on the last day of the preceding Period of insurance unless the Insured can show that failure to make payment was an error on the part of his bank or other sending agent.

Subsequent payment of the overdue premium shall reinstate cover, but any event or claim occurring, and made against the Insured, during the period that cover was lapsed shall not be covered under this Certificate.

Notwithstanding the foregoing, if a premium payment is overdue for more than 45 days, cover under this Certificate shall only be reinstated at the sole discretion of Insurer.

## 10. **Consent to Collect, Use, Disseminate and Disclose Personal Information**

The Protection of Personal Information Act ('the Act') or any similar enactment in force within the geographical limits of this policy, applies to this policy and controls the method by which personal information is collected, used, disseminated and disclosed. The Insured is referred to the Protection of Personal Information External Policy, which can be found at [www.westnat.com](http://www.westnat.com), and more particularly to the Act itself. The Insured agree and consent to the collection, use, dissemination and disclosure of their personal information for the purpose of entering into this policy and giving effect to the terms and conditions hereof, subject to the requirements of such Act.

In addition to the above, the Insured acknowledge that the sharing of underwriting and claims information by the Company is essential to enable the insurance industry to underwrite policies and assess risks fairly and to reduce the incidence of fraudulent claims, in the public interest and with a view to limiting premiums. The Insured hereby waive any right to privacy in any information supplied by or on behalf of the Insured in respect of any underwriting or claims information made or lodged by the Insured and the Insured consent to such information being disclosed to any other insurance company or its agent. The Insured also waive any rights of privacy in, and consent to the disclosure of, any information relevant to any insurance claim concerning the Insured or any person that they represent or any person purporting to represent them.

## 11. **Dispute**

This Certificate shall be governed by South Africa Law unless stated to the contrary. If any dispute arises in connection with the formulation, validity or interpretation of this Certificate, it is understood and agreed by both the Insured and the Insurer that the dispute will be referred to non-binding Arbitration at a convenient venue for both parties. Arbitration shall be initiated by the delivery of a written notice of request for Arbitration by one party to the other. Each party shall bear the expenses of its own representation and shall jointly and equally bear with the other party the expenses of the Arbitration. Failing mutual agreement on a suitable Arbitrator, an Arbitrator shall be appointed by application to the President of the Law Society of South Africa.

If arbitration cannot resolve the dispute, then such dispute shall be submitted to the exclusive jurisdiction of the Courts of South Africa both parties agree to comply with all requirements necessary to give such court jurisdiction

## 12. **Due observance and fulfilment**

The due observance and fulfilment of any of the provisions of this Policy that require anything to be done or complied with by the Insured's and the truth of the answers and statements in the information supplied by the Insured's or on their behalf are precedent to any liability of the Insurers 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.

## 13. **Fraudulent Claims**

If any Claim under this Policy is in any respect fraudulent or any fraudulent means or devices are used by the Insured or anyone acting on their behalf or with their knowledge or consent to obtain any benefit under this Policy or if any event is occasioned by the wilful act or with the connivance of the Insured, the benefit afforded under this Policy in respect of any such Claim shall be forfeited. The Insurer shall also be entitled to immediately cancel the Policy, without prejudice to such other rights available to it in law and the Insured shall reimburse all Damages, costs and expenses paid by the Insurer.

## 14. **Interpretation**

The headings in this Policy are solely for reference purposes only and shall not affect the interpretation of this Policy. Words and expressions in the singular shall include the plural and vice versa. Words in bold have a special meaning and are defined in the Definitions section.

## 15. **Insurer's Consent**

As a condition precedent to liability under this Policy, no Insured shall admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any Defence Costs without the prior written consent of the Insurer.

Only those settlements, judgments and Defence Costs consented to by the Insurer, and judgments resulting from Claims defended in accordance with this Policy, shall be recoverable as a Loss under this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer shall be entitled to exercise all of its rights under the Policy including the right to participate fully in the defence and the negotiation of any settlement of any Claim in order to reach a decision as to reasonableness.

## 16. Insurer rights after an event

On the happening of any event in respect of which a Claim is or may be made under this Certificate, the Insurer and every person authorised by them may, without thereby incurring any liability and without diminishing the right of the Insurer to rely upon any conditions of this Certificate:

- a) Take over and conduct in the name of the Insured the defence or settlement of any Claim and prosecute in the name of the Insured for their own benefit any Claim for indemnity or Damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any Claim.
- b) No admission, statement, offer, promise, payment or indemnity shall be made by the Insured nor shall any cost be incurred by the Insured without the written consent of the Insurer.
- c) Take enter or keep possession of any damaged property and deal with it in any responsible manner. This condition shall be evidence of the leave and license of the Insured to the Insurer to do so. The Insured shall not be entitled to abandon any property to the Insurer whether taken possession of by the Insurer or not.

## 17. Material Changes in the Risk

In the event of Insurer being at any time entitled to void this Certificate by reason of any inaccurate or misleading information given by the Insured in the Proposal, the Insurer may at their election, instead of voiding this Certificate, give notice in writing to the Insured that they regard this Certificate as of full force and effect, save there shall be excluded from the indemnity afforded hereunder any Claim which has arisen or which may arise which is related to such information.

The Insured shall throughout the Period of Insurance of the Certificate give notice as soon as reasonably practicable of any material change in any fact, activity or circumstance as described in the Proposal. In the event of Insurer being at any time entitled to void this Certificate by reason of the Insured failing to give notice in accordance with this Condition, the Insurer may at their election, instead of voiding this Certificate, give notice in writing to the Insured that there shall be excluded from this indemnity afforded hereunder any Claim which has arisen or may arise which is related to such facts, activities, or Circumstances

## 18. Mergers and acquisitions

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 the Insurers 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 16.a) or 16.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 the Insurers 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 the Insurers such information as the Insurers may request.

Upon receipt of such notice and other information, the Insurers 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.

## 19. Other Insurance/Indemnification

If at the time of any event giving rise to a Claim under this Policy, other insurance cover exists applicable to such Claim, the Insurer shall be liable (subject at all times to the terms of this Policy) to pay only a ratable proportion of the amount payable to the Insured in respect of such Claim, whether the Insured is paid under such other insurance or not.

Nothing contained herein shall be construed to increase the Limit of Indemnity of this Policy. To the extent that another insurance policy imposes upon an insurer a duty to defend a Claim, Defence Costs arising out of such Claim shall not be covered under this Policy.

## 20. Pandemic and or Epidemic General Condition

Notwithstanding any provision of this policy including any Specific Exclusion or Extension or other provision not included herein which would otherwise override a General Exclusion, this policy does not cover death, injury, sickness, loss, liabilities, damage/s, cost, or expense of whatsoever nature (including indirect losses and consequential losses) directly or indirectly caused by, resulting from, happening through, or arising out of or in connection with:

- a) any epidemic or pandemic of whatsoever nature or cause; and/or
- b) the imposition of quarantine, isolation, or other restrictions in movement of people, goods and/or animals by a local, municipal, regional or government authority (whether national or international) or any other body or agency; and/or
- c) any travel advisory or warning being issued by a national or international government or any other body or agency; and /or
- d) any action taken in controlling, preventing, suppressing or in any way relating to any the events contemplated in a), b) and/or

if the INSURERS allege that by reason of this General Exclusion, any death, injury, sickness, DESTRUCTION, cost or expense of any type whatsoever is not covered by this policy, the burden of proving the contrary rests on the INSURED.

## 21. Relinquishment

- a) Where any Loss is incurred in respect of any Claim which arises from both covered matters and matters not covered by this Policy, the Insurer's liability under this Policy is limited to the proportion of the Loss which represents a fair and equitable allocation between each Insured and the Insurer, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this Policy.
- b) Where the Insurer's liability under this Policy is limited under this clause, the Insured and the Insurer will use their best endeavors to agree upon the allocation to be adopted by them as the fair and equitable allocation.
- c) The Insurer may at any time pay to the Insured in connection with any Claim or series of Claims under the Certificate the amount of the Limit of Liability remaining under the Certificate or any lesser amount for which such Claim or Claims can be settled less any sums already paid and, where Defence Costs are inclusive within the Limit of Liability, less any associated Defence Costs already paid. Upon such payment being made, the Insurer shall relinquish the conduct and control of and be under no further liability in connection with such Claims or associated Defence Costs incurred after the date of such relinquishment.
- d) However, if Insurer exercise the above option in c) and the total amount, exceeds the Limit of Liability and the Defence Costs, required to dispose of any Claim or series of Claims, exceeds the Limit of Liability and the Defence Costs, are payable in addition to the Limit of Liability under this Certificate then the Insurer will pay their proportion of Defence Costs incurred up to the date of relinquishment in such proportion as the amount of the indemnity available under this Certificate bears to the total amount which in the opinion of the Insurer at the time of relinquishment will be necessary to dispose of the Claim.

## 22. Risk Management

In the event that the Insurer provides the Insured with recommended risk management procedures during the Period of Insurance, the Insured shall comply with all such risk management procedures as recommended by the Insurer. If the Insured does not implement or comply with the recommended risk management procedures, the Insurer shall have no liability under this policy to the Insured in respect of any Claim which arises out of or is attributable to, whether directly or indirectly, the failure by the Insured to implement or comply with the Insurer's recommended risk management procedures.

### **23. Sanctions Exclusion**

No (Re)insurer shall be deemed to provide cover and no (Re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (Re)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.

### **24. Scope and Governing Law**

Any interpretation of this Policy relating to its construction, validity or operation shall be made in accordance with the laws of South Africa and in accordance with the English text as it appears in this Policy.

### **25. Subrogation**

Insurer shall become subrogated to all rights of recourse and remedies of the Insured, before as well as after any payment by Insurer to the extent of such payment and the Insured shall take all reasonable steps to preserve such rights and remedies.

Notwithstanding the above, if any payment is made or may be made under this Certificate and Insurer are thereupon subrogated to the Insured's rights of recovery in relation thereto, Insurer agree not to exercise any such rights against any director or Employee of the Insured unless the Claim is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director or Employee.

The Insured shall give all such assistance in the exercise of rights of recovery as Insurer may reasonably require.

### **26. Timing of Injury and Damage - Manifestation**

Where it is not otherwise possible to ascertain the timing of Injury or Damage, then for the purpose of determining the indemnity granted by this Certificate:

- a) Injury will be deemed to have occurred when the claimant first consulted a qualified Medical Practitioner regarding such Injury, whether or not it was correctly diagnosed at that time. If no such consultation took place, then the Injury will be deemed to have occurred when the Insured first received written notice of the Injury.
- b) Damage will be deemed to have occurred when the claimant first became aware of such Damage, even if the cause was unknown.

### **27. Waiver of Right to Cancel**

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