

## COMPREHENSIVE LIABILITY COVER FOR PERSONAL TRAINER RELATED ENTITIES

### GENERAL OPERATIVE CLAUSE

The Insured, as named in the Schedule and insurance granted for their Professional Business activities, however restricted only to liability arising in their Professional Business capacity and restricted to claims forthcoming from the Regulations having applied to the Underwriters for this 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 Underwriter agrees herewith, in consideration of the payment of the premium, to indemnify the Insured for the Insuring Agreements of this Policy subject to the terms, exclusions and conditions of this policy.

### Definitions and interpretations

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

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

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

### Insured means

1. any person or persons, company, or other entity as listed as Insured in the Schedule acting as a director, member, partner, trustee or principal of the business and
2. includes their predecessors in that specific business who acted as director, member, partner, trustee or principal

### Circumstance means

an event, or series of events arising out of one originating cause, which gives, or is likely to give, rise to a Claim or Claims against any Insured and is the subject of indemnity provided under this Policy.

### Costs and Expenses mean

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 not include overhead or benefit expenses associated with salaries, wages and fees of Insured Persons or of the Company.

### Damage

means the physical damage to or loss of tangible property.

### Defence Costs means

all costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred with the prior written consent of the Underwriter (which consent shall not be unreasonably withheld) in the investigation, defence or negotiation of the settlement of any Claim.

### Documents means

all forms of documents of whatsoever nature including computer system records (provided the Insured maintains duplicates of computer system records).

**Employee means**

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.

**Executive Officer means**

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

**First Amount Payable means**

the amount stated in the Schedule as the First Amount Payable to be borne by the Insured and the Underwriter 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

**Injury**

means bodily injury, illness inclusive of mental condition, disease or death to any person.

**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 Underwriter's aggregate liability during the Period of Insurance shall not exceed the Limit of Indemnity.

**North America means**

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

**Officer means**

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

**Period of Insurance means**

the period stated in the Schedule.

**Policy means**

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

**Pollutants means**

any substance located anywhere in the world exhibiting any hazardous characteristics as defined by or identified on a list of hazardous substances issued by any governmental agency in the country where the pollutants are situated or as defined in South Africa. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials. Pollutants shall also mean any other air emission, odour, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, electric or magnetic or electromagnetic field and noise.

**Product**

means any tangible property (inclusive of containers and labels) after it has left the custody or control of the Insured which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired inclusive of any gratuitous or technical advice given by the Insured in the promotion of such product. This shall exclude food and drink provided as a staff benefit to employees by the Insured

**Professional Business means**

the Insured's business activities as a Personal Trainer acting as such professional subject to the insured having the requisite license or registration when required by law.

**Proposal means**

the application for the insurance cover provided by this Policy including the proposal form together with any other documentation or information submitted to the Underwriter for consideration of the risk.

**Regulations**

as imposed on relevant entities by the Construction Regulations as amended from time to time and promulgated in terms of the Occupational Health and Safety Act nr 85 of 1993

**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 Insured's 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.

**Schedule means**

the schedule attaching to this Policy which shall incorporate all Endorsements and Extensions.

**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.

**Wrongful Act means**

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

**PROFESSIONAL INDEMNITY****Insuring agreement**

1. The Underwriter agrees to indemnify the Insured against its legal liability to pay damages and costs in respect of claims made against the Insured:
  - a. and notified to the Underwriter during the Period of Insurance for liability incurred in the conduct of the Insured's Professional Business as a result of a negligent act, breach of professional duty, error or omission arising in the course of the Business activities as stated in the Schedule
  - b. restricted to the territorial limits, and by a Court of competent jurisdiction in accordance with the law of the Republic of South Africa or a regulatory body created by statute, subject to the Circumstance occurring within the Geographical limits as set out in the Schedule, but excluding any judgement, payment, settlement or award made under any laws of any other country and also to any order in part or full to enforce such award, settlement or judgement, made in any other country
2. Limits 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 Underwriters' aggregate liability during the Period of Insurance shall not exceed the Limit of Indemnity.
3. The Underwriter and Insured agree that the party named as the Insured in the Schedule will act on behalf of all the Insured's covered in terms of this Policy in respect of the giving and receiving of notice of claim or termination of cover, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this Policy.

### **Specific exclusions**

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:

#### **1. Breach of Contract of Employment**

any contract of service or obligation owed by the Insured as employer including any Claim for wrongful or unfair dismissal.

#### **2. Computer Network and Data Corruption**

3.1 the corruption, erasure, theft, alteration of; or

3.2 the access or lack of access to; or

3.3 the interference with electronically held data of or held by the Insured wholly or partly caused by any computer virus or by any person not being a partner, director or employee currently employed by the Insured.

#### **3. Computer Records**

loss, distortion or erasure of computer records

4.1 whilst stored on any computer for use or processing unless caused by any negligent act or omission on the part of the Insured or

4.2 resulting from wear, tear, vermin or gradual deterioration or

4.3 caused by climatic or atmospheric conditions or extremes of temperature or

4.4 due to the presence of magnetic flux or due to loss of magnetism.

#### **4. Dishonesty**

the dishonesty of the Insured or any Employee.

#### **5. Employers' Liability**

bodily injury, sickness, disease or death sustained by any person arising out of and in the course of their employment by the Insured in any capacity.

#### **6. Insolvency**

or from the insolvency, curatorship, bankruptcy, liquidation or financial inability to pay, of the Insured or any insurance company, reinsurance company, underwriter, syndicate, agent, broker or intermediary, benefit plan, self-insurance plan, insurance pool or risk retention group, financial institution or other risk bearing entity with whom, or through whom, coverage has been placed or obtained.

#### **7. Financial Guarantee**

financial default, bankruptcy or insolvency of any party or person, whether a party to this contract or not, other than in respect of Claim(s) arising from any negligent act, error or omission committed or alleged to have been committed by the Insured.

For the purposes of this Exclusion the term "negligent act, error or omission" shall include but not be limited to misstatement, misleading statement, breach of duty, breach of trust, breach of warranty of authority.

#### **8. Defamation or Breach of Confidentiality**

defamation or breach of confidentiality committed or allegedly committed by the Insured.

#### **9. Warranty or Guarantee**

the giving by the Insured of any warranty, indemnity or guarantee or financial obligation assumed by the Insured under contract unless such liability would have attached to the Insured notwithstanding such express agreement.

#### **10. Disclosure of Commission**

a dispute concerning the payment of commission, fees or other remuneration to the Insured.

#### **11. Failure to Account for Monies**

failure on the part of the Insured to account for money.

**12. Loss of Documents**

against any reasonable cost or expense incurred by the Insured in replacing and restoring Documents.

**Additional extensions****1. Defamation Extension**

Notwithstanding Specific Exclusion 11, this Section of the Policy is hereby extended when requested and granted at additional premium consideration to indemnify the Insured in respect of Claims made against the Insured and notified to the Underwriter during the Period of Insurance incurred in the conduct of the Insured's Professional Business as a result of defamation committed without intentional malice by the Insured. Provided that the liability of the Underwriters shall not exceed in respect of any one Claim made in terms of this Defamation Extension and in the aggregate in the Period of Insurance, the sub-limit stated in the Schedule.

**2. One Automatic Reinstatement of Limit of Indemnity**

The Insured shall be entitled to one automatic reinstatement of the Limit of Indemnity provided that any one claim shall not exceed any one Limit of Indemnity.

**PUBLIC LIABILITY (CLAIMS MADE BASIS)****Operative clause**

Damages which the Insured shall become legally liable to pay consequent upon injury or damage 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.

**Specific conditions**

1. Any claim first made in writing against the Insured as a result of a defined event reported in terms of General condition 6 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, the Insured may report an event in terms of General condition 6 to the company for up to 30 days after cancellation or non-renewal, provided such event occurred during the period of insurance.
2. 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
  - a. on the date that the event was reported by the Insured in terms of General condition 6  
or
  - b. 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.

**Specific exceptions**

The company will not indemnify the Insured in respect of

1. liability consequent upon injury to any employee by the Insured under a contract of service or apprenticeship and arising from and in the course of such employment with the Insured
2. damage to
  - a. property
    - i. belonging to the Insured
    - ii. property in the custody or control of the Insured or any employee of the Insured but this exception shall not be applicable to the premises (or contents thereof) temporarily occupied by the Insured for work therein.
  - b. that part of any property on which the Insured is or has been working if such damage results directly from such work.
3. liability consequent upon injury or damage caused by or through or in connection with
  - a. any advice or treatment of a professional nature (other than first aid treatment) given or



- administered by or at the direction of the Insured.
- b. the ownership, possession or use by or on behalf of the Insured of any mechanically propelled vehicle (other than a pedal cycle or lawnmower) or trailer or of any watercraft exceeding 5 meters in length or of any watercraft 5 meters and less but that is not used on inland waterways only, locomotive or rolling stock. This exception shall not relieve the company of liability to indemnify the Insured in respect of liability consequent upon injury or damage caused or arising in connection with the loading or unloading of any vehicle, insofar as such injury or damage is not insured by any other insurance policy.
  - c.
    - i. the refuelling of aircraft
    - ii. the ownership, possession, maintenance, operation or use of aircraft or an airline
    - iii. the ownership, hiring or leasing of any airport, airstrip or helicopter pad.
  - d. goods or products (including containers and labels) sold or supplied and happening elsewhere than on premises occupied by the Insured other than food and drink supplied incidentally for consumption on the premises.
4. damage caused by vibration or by the removal or weakening of or interference with support to any land, building or other structure.
  5. assumed by the Insured by agreement unless such liability would have attached in the absence of such agreement.
  6. fines, penalties, punitive, exemplary or vindictive damages.
  7. damages in respect of judgements delivered, awarded or settlements made within North America or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part.
  8. 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 6 Claims.
  9. the first amount payable as per schedule.
  10. liability consequent upon injury or damage arising out of deliberate disregard by the Insured of the need to take reasonable precautions to prevent any event or circumstance which may give rise to a claim
  11. 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 monopoly 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 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 liability arose.
  12. any liability arising from pollution inclusive of the cost of nullifying or cleaning up of the pollution provided that it will not apply for any claims arising from a sudden, unintended and unexpected occurrence.

## **DIRECTORS' & OFFICERS' LIABILITY**

### **Insuring agreements**

The Insurers agree to indemnify:

#### **A. Directors and officers liability**

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

#### **B. Company reimbursement**

the Company against Costs and Expenses paid by the Company arising out of any Claim or Claims as described in Insuring Agreement A but only when and to the extent that the Company shall be

required or permitted to indemnify the Insured Persons pursuant to the law or in terms of the Memorandum of Incorporation or Articles of Association of the Company.

### Exclusions

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

#### 1. 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.

#### 2. 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.

#### 3. 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.

#### 4. 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.

#### 5. 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.

### EXTENSIONS OF COVER

1. 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.

2. 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.
3. 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

## General conditions

### 1. Material change in risk

It is hereby agreed that, beginning with the Insured's Proposal and continuing to the end of the Period of Insurance, the Insured is under a continuing duty to disclose to the Underwriter as soon as is reasonably practicable all material changes that shall or might have a bearing on whether the Underwriter would accept the risk or at different terms.

- 1.1 the Insured must pay to the Underwriters all premiums due to the Underwriters;
- 1.2 the Insured must not notify any claim knowing it to be false or fraudulent as regards amount or otherwise;
- 1.3 beginning with the Insured's Proposal and continuing to the end of the Period of Insurance the Insured is under a continuing duty to disclose to the Underwriters as soon as is reasonably practicable all material changes, including notice of any extension of underwriting authority.

Any breach of General Condition 1.1, 1.2 or 1.3 above by the Insured will entitle the Underwriters at their discretion to terminate the Policy from the date of inception and all claims shall be forfeited.

### 2. Claims Conditions Precedent to Liability

The following conditions are conditions precedent to the Underwriter's liability and accordingly, no claim will be paid unless full and complete adherence to these Conditions is maintained by the Insured.

#### 2.1 Notification

The Insured shall give notice to the Underwriter as soon as reasonably practicable of:

- 2.1.1 any Claim made against the Insured and/or
- 2.1.2 any Circumstance of which the Insured becomes aware during the Period of Insurance.  
Provided that such notice as required in 2.1.2 of this Condition has been given during the Period of Insurance any resultant Claim arising from such matters notified, shall be deemed to have been made during the Period of Insurance, provided however that this deeming provision shall only have effect if the Insured complies within a reasonable time and at their own expense with: -
- 2.1.3 the Underwriter's standard requirement that the notification should state precisely why a Claim is likely and if so, from whom, and
- 2.1.4 any reasonable request by the Underwriters for further information in relation to the matters notified and



2.1.5 any request by the Underwriters for steps to be taken to reduce or avert the said risk.

For the avoidance of doubt, no other Condition of this Policy shall have the effect of limiting the Underwriter's right to refuse to give effect to this deeming provision in the event of a failure by the Insured to comply with a request under 2.1.3, 2.1.4 and 2.1.5 above.

## 2.2 Co-operation

Following the occurrence of a Loss, Claim or Circumstance, the Insured shall: -

2.2.1 at their own expense give all information and assistance to the Underwriters; and

2.2.2 make no admission of liability, arrangement, compromise, offer, promise or payment without the consent of the Underwriter.

2.2.3 as soon as reasonably practicable, inform the police of any theft and take all practicable steps to discover the guilty party and to recover the stolen property.

## 3. Underwriter's Rights

Following the notification of a Claim or a Circumstance the Underwriter will be entitled: -

3.1 at its discretion, to take over and conduct in the name of the Insured the investigation, defence or settlement of any such matter;

3.2 at any time, to pay to the Insured the amount of the Limit of Indemnity (less the First Amount Payable and any sum already paid during the Period of Insurance) or any lesser amount for which, in the Underwriter's opinion, any Claim or Claims can be settled and shall then cease to have conduct and control of the Claim or proceedings and be under no further liability in respect of such costs or Claim. The Underwriter shall not be liable for any loss which the Insured may claim to have sustained by reason of the Underwriter having so acted;

3.3 to be subrogated to all rights of recovery the Insured may have against any party and the Insured shall do nothing to prejudice such rights. It is agreed, however, that the Underwriter shall not exercise such rights against any Employee except in respect of any claim arising out of the dishonesty of such Employee. The Insured shall execute all papers required and shall do everything necessary to secure and preserve such execution of such documents necessary to enable the Underwriter effectively to bring suit in the name of the Insured.

## 4. Alteration and Assignment

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by a written endorsement to this Policy which is signed by an authorised representative of the Underwriter.

## 5. Fraud

If any claim under this Policy is in any respect fraudulent or if 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, then all benefits afforded under this Policy shall be forfeited.

## 6. Action against the Underwriter

No action shall lie against the Underwriters unless, as a condition precedent thereto, there shall have been full compliance with all the terms and conditions of this Policy. The Insured shall not join the Underwriter as a party to any action instituted against an Insured. The Insured and their legal representatives shall assist the Underwriter as much as is reasonably possible. Liquidation or insolvency of an Insured or of the estate of any Insured shall not relieve the Underwriter of its obligations nor deprive the Underwriter of its rights or defences under this Policy.

## 7. Administrative Conditions - Policy Disputes

Any dispute or difference between the Insured and the Underwriter arising from this Policy shall be referred to Senior Counsel or such other expert mutually agreed upon between the



Underwriter and the Insured or failing such agreement, to a Senior Counsel appointed by the Johannesburg Bar Society of Advocates.

The findings of the appointed Senior Counsel or expert shall be binding upon the Underwriter and the Insured, and the costs of such an exercise shall be allocated by the Senior Counsel or expert on the basis he/she considers fair and equitable.

#### **8. Prevention of Loss**

The Insured shall take all reasonable steps and precautions to prevent Losses/Claims.

#### **9. Other Insurance**

If any Loss arising from any claim is Insured by another valid and collectible policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically in excess of this Policy by reference in such other policy to this Policy's Policy Number.

#### **10. Cancellation of Policy**

The Insured may cancel this insurance at any time by giving immediate notice to the Underwriter. The Underwriters may cancel this Policy for non-payment of premium by sending not less than ten (10) days' notice to the Insured at their last known address. The Underwriter may cancel this Policy under any other circumstances by giving 30 days' notice to the Insured in which event the Insured will be entitled to a pro rata return of premium. In the event of the Insured cancelling this Policy, the Underwriter shall retain the customary short rate premium. Payment of any unearned premium by the Underwriter shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

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

In the event of the Underwriter being entitled to avoid this Policy ab initio the Underwriters 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 Underwriter 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).

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

The maximum amount payable by the Underwriters 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 Underwriter 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.

#### **13. First Amount Payable**

The Insured shall be responsible for the First Amount Payable stated in the Schedule in respect of any one claim arising from any one Circumstance. All Claims arising out of the same Wrongful Act shall be deemed to be one Claim and such Claim shall be deemed to be first made on the date that the Insured advises the Underwriter of such Claim or Circumstance.

#### **14. Territory and Valuation**

All premiums, Limits of Indemnity, First Amounts Payable and claims are expressed and payable in the currency of the Republic of South Africa.

#### **15. Representations**

The Insured agrees that in the event that the particulars and statements contained in the Proposal are untrue, the Underwriter shall not be liable to indemnify:

- 4.1. any Insured Person who knew at the inception date of the Policy that the facts concerning himself / herself were not truthfully disclosed in the Proposal;
- 4.2. the named Insured, if a director or any executive officer knew at the inception date of this Policy that the facts were not truthfully disclosed in the Proposal.

No fact pertaining to or knowledge possessed by any Insured Person shall be imputed to any other Insured Person for purposes of applying the exclusions set forth in this clause 4.

#### **16. Acquisition of the Named Insured**

If during the Period of Insurance

- 5.1 the named Insured merges into or consolidates with another organisation, or
- 5.2 another organisation, or persons or group of organisations and/or persons acting in concert acquires shares or voting rights which result in ownership or voting control by the other organisation(s) or persons(s) of more than fifty percent (50%) of the voting shares then the Insured's Policy shall terminate with immediate effect except in respect of insured Circumstances having been notified to the Underwriter prior to such merger, consolidation or acquisition.

#### **17. Communication**

Wherever this Policy provides that notice be given to the Underwriter, such notice shall be given to:

Physical Address:

Postal Address:

Telephone No:

Fax No: (011)

#### **General exclusions**

This Policy shall not indemnify the Insured or any person or entity insured in terms of this Policy in respect of any claim, loss, liability or expense arising directly or indirectly out of :-

##### **1. Asbestos and Toxic Mould**

or in any manner related to, asbestos and Fungi.

For the purposes of this clause, Fungi shall mean any fungus or mycota or any by-product or type of infestation produced by such fungus or mycota, including but not limited to mould, mildew, mycotoxins, spores or any biogenic aerosols.

In any claim and in any action, suit or other proceedings to enforce a claim under this Policy, the burden of proving that such claim does not fall within this Exclusion shall be upon the Insured.

This Exclusion does not apply in respect of any claim, loss, liability or expense, arising directly or indirectly out of the negligent failure of the Insured to place insurances on behalf of clients for the above named events, or any other breach of professional duty, by the Insured or any person or firm acting on behalf of the Insured. In the event that any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall continue to be in full force and effect.

##### **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.

##### **3. Nuclear Risks and War/Terrorist Risks**

or caused by or contributed to by

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

In any claim and in any action, suit or other proceedings to enforce a claim under this Policy, the burden of proving that such claim does not fall within this Exclusion shall be upon the Insured.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall continue to be in full force and effect.

This Exclusion does not apply in respect of any claim, loss, liability or expense arising directly or indirectly out of the negligent failure to place insurances on behalf of clients for the above named events, or any other breach of professional duty by the Insured.

#### **4. Pollution**

based upon or attributable to

- 4.1 the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of pollutants into or on real or personal property, water or the atmosphere; or
- 4.2 any direction or request that the Insured, or any person or entity to whom indemnity is extended, to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants, or any voluntary decision to do so; based upon, arising out of, or attributable to the matters described in this exclusion. This Exclusion does not apply in respect of any claim, loss, liability or expense, arising directly or indirectly out of the negligent failure of the Insured to place insurances on behalf of clients for the above named events, or any other breach of professional duty, by the Insured or any person or firm acting on behalf of the Insured.

#### **5. Punitive or Exemplary Damages**

any fines, penalties, punitive or exemplary damages imposed on any Insured.

#### **6. Retroactive Date**

any act, error, omission or Wrongful Act committed or alleged to have been committed prior to the Retroactive Date(if any applicable) specified in the Schedule.