



# ITOO Directors' and Officers' Liability

## D&O Classic

THIS IS A CLAIMS MADE POLICY. EXCEPT AS OTHERWISE PROVIDED, THIS POLICY COVERS ONLY CLAIMS FIRST MADE TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD. TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANINGS. SEE THE DEFINITIONS FOR MORE INFORMATION.

PLEASE READ THIS POLICY CAREFULLY



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## Preamble

In consideration of the **Insured** having paid the premium and relying upon the truth of the information supplied in the proposal or submission to the **Insurer** so far as is within the **Insured's** knowledge or that could, with reasonable diligence, have been ascertained and on the understanding and agreement that such proposal or submission forms the basis of and is incorporated into this contract of insurance (hereinafter, this **Policy**).

## Indemnity

The **Insurer** will, subject to the terms, exclusions, conditions, endorsements and **Indemnity Limits** indemnify the **Insured** as provided for in the **Indemnity Clauses** and in accordance with the law and procedure applicable anywhere in the world but neither in respect of any judgement, award, settlement or consent made within the jurisdiction of **USA/Canada** nor to any order made by a court anywhere in the world to enforce either in whole or in part such judgement, award, settlement or consent.

### 1. Indemnity Clauses

#### A. Directors' and Officers Liability:

The **Insurer** will pay **Loss** arising from a **Claim** first made against an **Insured Person** during the **Period of Insurance** as a result of a **Wrongful Act** except to the extent that the **Insured Person** has been indemnified by the **Company** for the **Loss**.

#### B. Company Reimbursement:

The **Insurer** will reimburse the **Company** for **Loss** arising from a **Claim** first made against an **Insured Person** during the **Period of Insurance** as a result of a **Wrongful Act** and in respect of which the **Company** has indemnified the **Insured Person**.

#### C. Defence Costs:

The **Insurer** will pay **Defence Costs** in respect of a **Claim** which is the subject of **Indemnity Clauses A or B**. In its sole discretion the **Insurer** will advance to the **Insured**, **Defence Costs** in respect of a **Claim** which is the subject of **Indemnity Clauses A or B** before the final disposition of the **Claim** (subject to any applicable Deductible). Payments by the **Insurer** shall be promptly repaid to the **Insurer** by the **Insured** in the event and to the extent that the **Insured** shall not be entitled under the terms and conditions of this **Policy** to indemnify for **Loss**.

#### Indemnity Limit:

The indemnity payable by the **Insurer** under this **Policy** shall not exceed the **Indemnity Limit**.

The **Indemnity Limit** shall be determined with reference to the Schedule or as may apply by endorsement or specific sub-limit set out in this **Policy**.

For the purposes of the **Indemnity Limit** and application of the **Deductible**, **Claims** arising out of, based upon or attributable to a specific and common originating cause or source shall be considered a single **Claim**.



The indemnity payable by the **Insurer** for **Loss** for all **Claims** made or reported during the Period of Insurance inclusive of **Defence Costs**, claimants' costs and expenses and all extensions of cover provided by this **Policy** shall be subject to and shall not exceed the annually aggregated **Indemnity Limit**.

The inclusion of more than one **Insured** under this **Policy** does not serve to increase the **Indemnity Limit**.

Regardless of the renewal, replacement or extension of any **Period of Insurance**, the **Indemnity Limit** shall not accumulate from one Period of Insurance to the next.



2. Definitions

- A. Companies Act** means the Companies Act No 71 of 2008, as amended or equivalent legislation found in other jurisdictions.
- B. Claim** means:
- (a) a written demand
  - (b) a civil, regulatory, mediation, administrative or arbitration proceeding seeking compensation or other legal remedy
  - (c) a criminal proceeding
- made or brought against an **Insured Person** for an alleged **Wrongful Act**.
- C. Company** means the **Policyholder** or any **Subsidiary**.
- D. Crisis** means any of the following circumstances that first occur during the Period of Insurance:
- (a) written notice to the **Company** that its securities will be or have been delisted from any equity exchange that lists the **Company's Securities** at the initiation of such exchange.
  - (b) any event which, in the reasonable good faith opinion of the Chief Executive Officer of the **Company** is reasonably likely to cause a decrease, within a period of 24 hours, of not less than 15% of the **Company's** equity price.
- Crisis** does not mean any event relating to
- any **Claim** which has been reported or any circumstances of which notice has been given under any policy of which this **Policy** is a renewal or replacement or which it may succeed in time.
- A **Crisis** shall be deemed to have commenced when the Chief Executive Officer, Chief Financial Officer, General Counsel or Risk Manager (or equivalent position) of the **Company** first becomes aware of the **Crisis** and concluded when the available **Indemnity Limit** in relation to **Crisis Costs** under this **Policy** has been exhausted or the public relations firm, crisis management firm or law firm agreed to by the **Insurer** advises the **Company** that such a **Crisis** no longer exists.
- E. Deductible** means that part of the **Loss** and **Defence Costs** per **Claim** which is borne by the **Insured** and will remain uninsured.
- F. De facto Director** means a natural person who is not formally appointed as a director of the **Company** but who in fact performs the acts or duties of a director.
- G. Defence Costs** means the reasonable costs and expenses incurred with the **Insurer's** prior written consent for the investigation, defence, settlement or appeal of a **Claim**.



**Defence Costs** may include the reasonable fees, costs and expenses of an accredited expert retained through defence counsel approved by the **Insurer**, to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the assessment or defence of a **Claim**.

**Defence Costs** does not include remuneration, cost of time or costs or overheads of the **Policyholder** or any **Insured Person**.

- H. Deprivation of Assets Expenses** means expenses of service providers incurred by an **Insured Person** relating to schooling, housing, utilities and personal insurances.
- I. Emergency Legal Costs** means **Defence Costs** reasonably and necessarily incurred as a matter of urgency with retrospective approval by the **Insurer** (if the **Insurer's** prior written consent cannot reasonably be obtained) in dealing with a **Claim** which is the subject of the indemnity under Indemnity clause A of this **Policy**.
- J. Extended Reporting Period** means a period immediately following the expiry of the **Period of Insurance** during which written notice may be given to the **Insurer** of a **Claim** first made against an **Insured Person** during such period or the **Period of Insurance** for a **Wrongful Act** occurring prior to the expiry of the **Period of Insurance**.
- K. Extradition Proceeding** means any extradition proceeding brought against an **Insured Person** in connection with and arising from an actual or alleged act, error, omission, breach of duty, breach of trust, misstatement, misleading statement or other act or omission by an **Insured Person** acting solely in such capacity. An **Extradition Proceeding** includes any related appeal, any judicial review applications challenging the designation of a territory for the purposes of extradition law, any challenge or appeal of any extradition decision by the responsible governmental authority or any applications to the European Court of Human Rights or similar court.
- L. Insured** means the **Company** and **Insured Persons**.
- M. Insured Person** means any natural person who was, is or during the Period of Insurance becomes:
- (a) a director (including Non-Executive Director) or alternate director of the **Company**;
  - (b) a **De facto Director** or prospective director named as such by the **Company**;
  - (c) a prescribed officer as defined in the **Companies Act**, including the company secretary;
  - (d) an employee in a managerial or supervisory capacity;
  - (e) the company secretary of the **Company**
  - (f) a public officer of the **Company**
  - (g) a member of a committee of the board including the audit committee;
  - (h) a non-retirement benefit fund trustee;

and who is acting in such capacity.



For purposes of this **Policy**, an **Insured Person** will also be deemed to include:

- (i) the spouse of an **Insured Person** (whether that status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) as a result of his or her status as the spouse of that **Insured Person**, including any **Claim** that seeks damages recoverable from the marital community property or property jointly held by that **Insured Person** and the spouse provided however, that indemnity does not apply to any **Claim** for any **Wrongful Act** of the spouse but only to a **Wrongful Act** committed by the **Insured Person**
- (j) the executor, heirs or legal representatives of an **Insured Person** who has died or the lawfully appointed legal representatives of an **Insured Person** who has been declared incompetent, insolvent or liquidated to the extent that in the absence of such death, incompetence, insolvency or liquidation, such a **Claim** against the **Insured Person** concerned would have been indemnified under this **Policy**.

**Insured Person** shall not include any agent, independent contractor, external auditor, legal or other advisor, consultant or insolvency office-holder or business rescue practitioner of the **Company**.

**N. Investigation** means any formal or official hearing, investigation or inquiry by any **Official Body** into the affairs and conduct of an **Insured Person**, once an **Insured Person**:

- (a) is required to attend or produce documents to or answer questions by or attend interviews with that **Official Body**; or
- (b) is identified in writing by an investigating **Official Body** as a target of a specific hearing, examination or inquiry other than an industry-wide hearing or examination or inquiry.

An **Investigation** shall be deemed to be first made when the **Insured Person** is first so required or, so identified.

**O. Loss** means any amount which the **Insured** is legally liable to pay resulting from a **Claim**, **Defence Costs** and any awards of damages (excluding punitive, constitutional and other exemplary damages), awards of costs or settlements (including claimant's legal costs and expenses) and pre and post-judgment interest on an indemnified judgment or award.

**Loss** shall include **Costs and Expenses** and any amount covered under any Extension, but only to the extent set out in the relevant section.

**Loss** shall not include criminal fines or penalties, taxes, remuneration or employment related benefits, multiple damages (other than a single compensatory amount of damages prior to such multiplication), nor any other amounts which are uninsurable by law.

**P. Loss Mitigation Costs** mean payments to prevent, settle or compromise any **Claim** or potential **Claim**.

**Q. Non-Executive Director** means a member of the **Company's** board of directors who is not dedicated on a full time basis to the management of the **Company** or who does not receive a monthly or annual salary from the **Company**.

**R. Official Body** means any regulatory authority or commission, government body, official trade body, or any other body empowered to investigate the affairs of a **Company** or an **Insured Person**.

**S. Prosecution Costs** means reasonable legal fees, costs and expenses to bring legal proceedings to obtain the discharge or revocation of:





- (a) an order obtained during the Period of Insurance disqualifying an **Insured Person** from holding office as a director in terms of the **Companies Act**;
- (b) an interim or interlocutory order obtained during the Period of Insurance confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an **Insured Person**;
- (c) a charge made over real property or personal assets of an **Insured Person** obtained during the Period of Insurance;
- (d) an order of court obtained during the **Period of Insurance** imposing a restriction on an **Insured Person's** liberty;
- (e) the deportation of an **Insured Person** following revocation during the Period of Insurance of the otherwise proper, current and valid immigration status for any reason other than the **Insured Person's** conviction of a crime.

**T. Policyholder** means the entity specified as such in the Schedule.

**U. Pollutant** means any solid, liquid, gaseous or thermal contaminants or irritant, including vapours, smell, fumes, odours, humidity; smoke, fibres, soot or other airborne particulates; mould, spores, fungi, germs; acids, alkalis, toxic chemicals, effluent; radioactive material of any sort; medical or other waste which actually or are alleged to adversely affect land, water, atmosphere, property, buildings, other structures or people, animals, plants and all other living organisms or the general environment. 'Waste' includes, without limitation, material to be recycled, reconditioned or reclaimed.

**V. Public Relations Expenses** means the reasonable fees, costs and expenses for public relations consultants retained by an **Insured Person** directly to mitigate the adverse effect or potential adverse effect on that **Insured Person's** reputation arising from an indemnified **Claim** or an **Investigation**.

**W. Reckless Trading** means the carrying on of a business in a reckless manner, with gross negligence, with the intent to defraud any person, for any fraudulent purpose or trading under insolvent circumstances as set out in the **Companies Act**.

**X. Retroactive Date** means the retroactive date specified in the Schedule.

**Y. Securities** means any security representing debt or equity interests in a **Company**.

**Z. Subsidiary** means any company in which the **Policyholder** either directly or indirectly –

- (a) controls the composition of the board of directors OR
- (b) controls more than half of the shareholder or equity voting power OR
- (c) holds more than half of the issued share capital or equity.

In respect of any **Subsidiary**, cover provided by this **Policy** for any **Wrongful Act** will cease as of the effective date of the sale or dissolution of that **Subsidiary**.



**AA. Transaction** means any one or a combination of the following events:

- (a) the **Policyholder** consolidates with or merges into or sells all or a greater part of its assets or undertaking to any other person or entity or group of persons or entities acting in concert
- (b) any person or entity or group of persons or entities acting in concert (other than a **Subsidiary**) becomes entitled to exercise more than 50% of the rights to vote at the **Policyholder's** general meetings or to control the appointment of directors who are able to exercise a majority of votes at meetings of the **Policyholder**.

**BB. USA/Canada** means the United States of America (including the District of Columbia), Canada and any territory operating under the laws of or subject to the jurisdiction of courts of the aforementioned territories.

**CC. Wrongful Act** means:

- (i) with respect to any **Insured Person**, an actual or alleged act, error, omission, breach of duty, breach of trust, misstatement, misleading statement or other act or omission by an **Insured Person** acting solely in such capacity and which unexpectedly or unintentionally results in a liability under this **Policy**.
- (ii) with respect to any **Company**, an actual or alleged act, error or omission by the **Company** but solely with respect to **Securities**.



3. Extensions  
(If stated as applicable in the Schedule with relevant sub-limit)

**A. Deprivation of Assets Expenses**

The **Insurer** will pay directly to service providers those **Deprivation of Assets Expenses** incurred by an **Insured Person** arising from a **Claim** or **Investigation** first made during the Period of Insurance for a period not exceeding 12 months commencing 30 days after the execution of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of or creating a charge over, real or personal assets of such Insured Person.

Provided that:

- (a) a personal allowance has been directed by a court to meet such payments; and
- (b) such personal allowance has been exhausted.

**B. Costs and Expenses**

Subject to the **Insurer's** prior written consent, the **Insurer** will pay the following costs and expenses first incurred during the **Period of Insurance**:

(i) **Emergency Legal Costs**

(ii) **Loss Mitigation Costs**

Reimbursement of **Loss Mitigation Costs** incurred by an **Insured Person** to mitigate a **Claim** or potential **Claim** that, had it been pursued, would have been indemnified by this Policy provided that:

- (a) Claim Notification conditions have been complied with;
- (b) the **Insured Person** had taken all reasonable steps to mitigate losses arising from any such **Claim** or potential **Claim**;
- (c) any action taken by the **Insured Person** is taken, where practicable, with the prior approval of the **Insurer**;
- (d) the liability of the **Insurer** shall not exceed that which would have existed if a **Claim** had been pursued against the **Insured Person**.

(iii) **Investigation Costs**

The reasonable fees, costs and expenses (except remuneration of any **Insured Person**, cost of their time or costs or overheads of any **Company**) of any legal advisor retained in connection with an **Investigation** by or on behalf of an **Insured Person**.

(iv) **Public Relations Expenses**

(v) **Extradition Costs**

The reasonable fees, costs and expenses with respect to an **Extradition Proceeding**.

(vi) **Prosecution Costs**

(vii) **Crisis Loss Costs**



The reasonable and necessary fees and expenses (including travel costs) incurred by a public relations firm, crisis management firm or law firm agreed to by the **Insurer** in advising the **Company** in order to minimise or prevent potential harm to the **Company** from a **Crisis**.

### C. **Extended Reporting Period**

Unless a **Transaction** occurs, the **Policyholder** shall be entitled to an **Extended Reporting Period**:

- (a) automatically for 60 days if this **Policy** is not renewed or replaced; or
- (b) subject to the **Policyholder** making a request for such **Extended Reporting Period** in writing and paying any additional premium required, no later than 60 days after the expiry of the **Period of Insurance**.

If a **Transaction** occurs, the **Insurer** may in its sole discretion agree to grant an **Extended Reporting Period** at the terms and conditions it deems reasonable

### D. **New Subsidiaries**

If the **Policyholder**, during the Period of Insurance, incorporates or acquires a new **Subsidiary**, indemnity is extended as follows:

- (a) if the newly incorporated or acquired **Subsidiary's** total gross assets, as set out in the latest audited annual financial statements, does not exceed the **Policyholder's** total gross assets by more than the amount stated in the schedule, or the **Subsidiary** has a previous claims history, or is incorporated or domiciled or operates whether wholly or partly within USA/Canada, the **Policyholder** will give the **Insurer** such information as it may require and, if the **Insurer** elects to include such **Subsidiary** under this **Policy**, the **Policyholder** will pay the reasonable additional premium within forty five (45) days of such creation or acquisition;
- (b) if the newly incorporated or acquired **Subsidiary's** total gross assets, as set out in the latest audited annual financial statements, does not exceed the **Policyholder's** total gross assets by more than the amount stated in the schedule, and the **Subsidiary** does not have a previous claims history, and is not incorporated or domiciled and does not operate whether wholly or partly within USA/Canada, indemnity will automatically apply without payment of any additional premium;

Provided that, in either instance above, indemnity will only apply to -

- (i) a **Wrongful Act** committed or alleged to have been committed;
- (ii) an **Investigation, Extradition Proceedings** or prosecution proceedings;

occurring or arising, after the date of incorporation or acquisition and whilst that entity remains a **Subsidiary**.

### E. **Libel, Slander and Defamation of Character**

The definition of **Wrongful Act** is amended to include libel, slander and defamation of character attempted by an Insured Person of the **Company**, claimed against them solely in their capacity as such.

### 4. Exclusions

This **Policy** does not indemnify any **Claim** or **Loss** or any extension of cover:

#### A. **Illegal / Improper Conduct**

arising out of, based upon or attributable to:



- (a) the gaining of any personal profit, reward, advantage or receiving of any remuneration to which the **Insured** was not legally entitled;
- (b) the committing of any deliberately dishonest or deliberately fraudulent act by the **Insured**;
- (c) any criminal act other than costs as allowed for under **Prosecution Costs**, or permitted advanced **Defence Costs** as provided for in this **Policy**;
- (d) any matter or allegation that an **Insured** improperly benefited from any transaction relating to shares, stock or debentures as a result of information that was not readily available to other sellers or purchasers of such shares, stock or debentures;
- (e) any matter or allegation involving dealings by which it is sought to affect the price of shares, stock or debentures, any goods or services or currency or negotiable instrument, other than dealings carried out in accordance with all applicable laws and regulations pertaining to such dealings;
- (f) any matter which is deemed to be uninsurable under any law applicable to this **Policy**;

in the event that any of the above is established by final adjudication of a judicial or arbitral tribunal or by any formal written admission by any **Insured Person**.

For the purpose of determining the applicability of this exclusion, the information or knowledge possessed by any **Insured Person** will not be imputed to any other **Insured Person**

#### **B. Property Damage and Bodily Injury**

for bodily injury, sickness, disease, death or emotional distress or damage to, destruction, impairment or loss of use of any property.

#### **C. Prior Claims and Circumstances**

arising out of, based upon or attributable to:

- (a) any **Claim** made or any litigation commenced prior to or pending as of inception of this **Policy**;
- (b) any fact, matter or circumstance that, as of inception of this **Policy**, may reasonably have been expected to give rise to a **Claim**;
- (c) any circumstance or **Claim** of which notice has been given under any policy existing or expired before or as of inception of this **Policy**;
- (d) any **Claim** for a **Wrongful Act** committed by an **Insured Person** of any **Subsidiary** prior to the entity becoming a **Subsidiary**;
- (e) any **Claim** for a **Wrongful Act** committed on or before the **Retroactive Date**

provided that, nothing contained in this exclusion will be interpreted as releasing the **Insured** from the obligation to reveal as a material fact all details of **Claims** made or circumstances or events likely to give rise to a **Claim**.



**D. Pollution**

arising out of, based upon or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of or records concerning a **Pollutant** or any request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise a **Pollutant**, provided that this exclusion shall not apply to **Environmental Violation Defence Costs**.

**E. Employee Benefit Trustees**

arising out of, based upon or attributable to any act or omission as trustee, fiduciary or administrator of any pension plan, welfare plan, retirement fund, profit sharing, share option, share incentive scheme or trust or any other employee benefit programme.

**F. Fines and Penalties**

for any fines or penalties, loss of licence, the payment of taxes or remuneration, liquidated or non-compensatory damages including punitive or exemplary damages, or the multiple portion of multiplied damages or any amount which is deemed uninsurable by law or contrary to public policy, other than in respect of cover provided for Civil Fines and Penalties.

**G. USA/Canada Claims**

any matter or **Claim** arising out of, based upon or attributable to, directly or indirectly resulting from or in consequence of or in any way involving any activities carried on in **USA/Canada**.

**H. Professional Indemnity**

arising out of, based upon or attributable to any actual or alleged breach of professional services provided to a third party for a fee or any act, error or omission relating thereto provided that this exclusion will not apply to any derivative or shareholder derivative action against the **Insured** alleging a failure to supervise those who performed or failed to perform such professional services.

**I. Post Transaction Wrongful Act**

arising out of, based upon or attributable to a **Wrongful Act** committed after the occurrence of a **Transaction**.

**J. Sanctions**

where the indemnity, claim payment or provision of any benefit under this **Policy** :

- (a) is contrary to the prohibitions or restrictions under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America; or
- (b) is contrary to the prohibitions or restrictions under The Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 of the Republic of South Africa as amended from time to time.

**K. Initial Public Offering of Securities**

arising out of, based upon or attributable to, directly or indirectly resulting from or in consequence of the actual or intended listing or initial public offering of any **Securities** of a **Company**

**L. Commissions**

arising out of, based upon or attributable to, directly or indirectly resulting from or in consequence of:



- (a) payments, commissions, gratuities, benefits or any other favours provided to or for the benefit of any full or part-time domestic or foreign government or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;
- (b) payments, commissions, gratuities, benefits or any other favours provided to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, principal shareholders, or owners or employees, or "affiliates" (as that term is defined in the Securities Exchange Act of 1934, including any officers, directors, agents, owners, partners, representatives, principal shareholders or employees of such affiliates) of any customers of the **Insured** or any members of their family or any entity with which they are affiliated;
- (c) political contributions, whether domestic or foreign.

#### **M. Ionising Radiation**

of whatsoever nature, directly or indirectly, caused by or contributed by or arising from:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

For the purposes of this exclusion only, combustion shall include any self-sustaining process of nuclear fission.

#### **N. Asbestos**

arising directly or indirectly from any actual or alleged liability whatsoever for any claim, event or loss or losses caused by, arising out of, resulting from, in consequence of, any way involving or to the extent contributed to by the hazardous nature of asbestos in whatever form or quantity.

#### **O. Absolute Exclusion - infectious disease / epidemic / pandemic**

in connection with, arising out of, based upon or attributable to:

- i. any infectious or communicable virus, bacteria, disease;
- ii. any declared or classified epidemic or pandemic, whether such declaration or classification takes place before or after the commencement of the Policy; and/or
- iii. any mutation or variation of any such infectious or communicable virus, bacteria or disease, epidemic or pandemic.

#### **P. Absolute Exclusion - Cyber loss**

- (a) of whatsoever nature, directly or indirectly, caused by or contributed to by or arising from Cyber Loss.
- (b) Cyber Loss means any loss, damage, liability, expense, fines or penalties or any other amount directly or indirectly caused by:
  - i. the use or operation of any Computer System or Computer Network;
  - ii. the reduction in or loss of ability to use or operate any Computer System, Computer Network or Data;



- iii. access to, processing, transmission, storage or use of any Data;
  - iv. inability to access, process, transmit, store or use any Data;
  - v. any threat of or any hoax relating to 2.1 to 2.4 above;
  - vi. any error or omission or accident in respect of any Computer System, Computer Network or Data.
- (c) Computer System means any computer, hardware, software, application, process, code, programme, information technology, communications system or electronic device owned or operated by the Insured or any other party. This includes any similar system and any associated input, output or data storage device or system, networking equipment or back up facility.
- (d) Computer Network means a group of Computer Systems and other electronic devices or network facilities connected via a form of communications technology, including the internet, intranet and virtual private networks (VPN), allowing the networked computing devices to exchange Data.
- (e) Data means information used, accessed, processed, transmitted or stored by a Computer System.
- (f) When this clause forms part of a reinsurance contract, Insured shall be amended to read Original Insured.

#### **Q. State Capture**

arising out of, based upon or attributable to any claim or loss or costs or expenses made against or incurred by the Insured arising out of, based upon, or attributable to any allegation of alleged or actual involvement in any act, omission, wrongdoing or breach of any kind arising from, attributable to or based upon any involvement in "State Capture" referred to in the Public Protector's Report dated 14 October 2014 or any subsequent report, investigation, judicial proceedings, judicial inquiry or commission or other inquiry by any official body in relation to any act of favouritism, bribery, corruption, gaining of profit or advantage of any kind to which the Insured is not legally entitled to at any entity or organ of state.

Official body shall mean: any regulator, government body, government agency, parliamentary commission, official trade body, or any similar body having legal authority to investigate the affairs of the Insured or a client of the Insured, or the equivalent body in any other applicable jurisdiction.





## 5. Conditions

### A. Claim Notification

The cover provided under this **Policy** is granted solely with respect to **Claims** first made against an **Insured**, and other insured events arising, during the Period of Insurance, or any applicable **Extended Reporting Period**, or accepted as such in accordance with Condition B (Reporting of Circumstances), and only if such **Claims** or other insured event has been notified to the **Insurer** during the Period of Insurance or **Extended Reporting Period** if applicable, in writing as soon as possible:

- (a) after receiving a written demand, service of suit or institution of legal proceedings, arbitration or other alternate dispute resolution alleging a **Wrongful Act** or after the **Insured** becomes aware of the intention of any person to take such action against any **Insured Person**;
- (b) after receiving written notice of any criminal prosecution of any **Insured Person** in their capacity as such;
- (c) after receiving written notice requiring attendance at any hearing involving an **Official Body**;
- (d) after receiving written notice of any order or charge obtained against any **Insured Person** in their capacity as such.

### B. Reporting of Circumstances

The **Insured** may notify the **Insurer** during the **Period of Insurance** of any fact, matter or circumstance reasonably expected to give rise to a **Claim** or an insured event that occurred subsequent to the **Retro-active Date**. The notification must include the reasons for anticipating that **Claim** or insured event and provide full particulars as to dates, acts and persons involved. Any **Claim** or insured event arising out of such notified circumstances, if accepted by the **Insurer**, will then be deemed to have been made during the **Period of Insurance**.

### C. Defence and Settlement

Any person making notification or indemnified hereunder must, at their own cost, render all reasonable assistance to and cooperate with the **Insurer**. Any such person will, in the event of any **Claim**, take all reasonable steps to mitigate loss. Except as otherwise provided in this clause, the **Insured** will have the right to defend and contest any **Claim** made against it. The **Insurer** will be entitled to participate fully in the defence and negotiation of any settlement that involves or appears likely to involve the **Insurer**. The **Insurer** will also be entitled, if it so elects, to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** or to prosecute in the name of the **Insured** for the **Insurer's** own benefit any claim for indemnity or damages or otherwise. The **Insurer** will have full discretion in the conduct of any such proceedings and in the settlement of any such **Claim**.

The **Insurer** may at any time pay to the **Insured** in connection with any **Claim or Claims**, the **Indemnity Limit** after deduction of any sum or sums already paid, or any lesser amount for which the **Claim or Claims** can reasonably be settled. Upon such payment being made, the **Insurer** will relinquish the control and conduct of such **Claim or Claims** and be under no further liability in connection therewith.

### D. Admission of Liability

The **Insured** will not admit or assume any liability, enter into any settlement agreement, or consent to any judgment without the prior written consent of the **Insurer**. Only judgments resulting from **Claims** defended in accordance with this Policy will be recoverable as a **Loss** under this Policy. If the **Insured** is in breach of this condition, this Policy will afford no cover in connection with that **Claim**.



#### **E. Permitted Advanced Costs under the Companies Act**

The **Insurer** shall where permitted by law and subject to the **Insurer's** prior written consent, advance costs, charges and expenses incurred by an Insured Person during the Period of Insurance, for the defence of allegations of any criminal act, wilful misconduct, wilful breach of trust, **Reckless Trading** or breach of authority. Provided that, it is a condition of the cover provided that all such costs, charges and expenses advanced in terms of section 78(4)(a) of the **Companies Act**, or any similar provision, will be repaid to the **Insurer** should the defence be unsuccessful.

Except to the extent that the **Insurer** has denied cover, the **Insurer** will advance to, or pay on behalf of the **Insured** such **Defence Costs** promptly after sufficiently detailed invoices, including time, expense and narrative detail satisfactory to the **Insurer**, are received and accepted by the **Insurer**. The **Insurer** may not refuse to advance costs by reason only that the **Insurer** considers that conduct specified in Exclusion A (Conduct) has occurred, until such time as the condition to that exclusion is satisfied.

#### **F. Other Insurance**

This Policy will not be drawn into contribution with any other indemnity insurance except in respect of any excess beyond the amount payable under such other insurance.

#### **G. Subrogation**

If any payment is to be made under this **Policy** in respect of a **Claim**, the **Insurer** shall be subrogated to all rights of recovery of the **Insured** whether payment has in fact been made or the **Insured** has been fully compensated for its actual loss. The **Insurer** shall be entitled to pursue and enforce such rights in the name of the **Insured** who shall provide the **Insurer** with all reasonable assistance and co-operation in doing so including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any amount recovered in excess of the **Insurer's** total payment shall be restored to the **Insured** less the cost to the **Insurer** of such recovery.

#### **H. Fraud**

If any matter reported under this **Policy** is in any respect fraudulent or if 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** for the offending **Insured** will be forfeited. Any such act committed by an **Insured Person** shall not be imputed to any other **Insured Person**.

#### **I. Notice and Authority**

It is agreed that the **Policyholder** shall act on behalf of all **Insureds** with respect to all matters under this **Policy** including the giving of notice under this **Policy**, the payment of premiums that may become due, the receipt and acceptance of any endorsements issued to form a part of this **Policy** and the exercising or declining to exercise any right available under the **Policy**.

#### **J. Signatory to Proposal Form**

Any misrepresentation or non-disclosure due to the dishonesty of any signatory to the proposal form provided, committed by that signatory whilst acting as an **Insured Person** prior to the signing of such proposal form, will not be imputed to any other **Insured Person**.

#### **K. Assignment**

This **Policy** and any and all rights hereunder cannot be assigned without the prior written consent of the **Insurer**.



## L. Interpretation

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

An Extension applies only if stated in the Schedule to apply and unless specifically varied in the Extension itself, will be subject to the relevant Indemnity Limit and Deductible recorded in the Schedule and is otherwise subject to the terms, exclusions, conditions and limitations of this

**Policy**.

Headings in this **Policy** are included for convenience only and do not affect its construction.

If the **Insurer** becomes entitled to avoid this **Policy** from inception, at renewal or from the time of any variation thereof, the **Insurer** may in its sole discretion and without prejudice to any other rights of the **Insurer** maintain the **Policy** in full force but exclude the consequences of any claim relating to any matter which ought to have been disclosed prior to or at inception, renewal or any variation thereof.

This **Policy** is subject to and shall be interpreted in accordance with the law of the Republic of South Africa.

No amendment to this **Policy** shall be effective other than by way of a written endorsement issued and signed by the **Insurer**.

## M. Cancellation

The **Insurer** may cancel this **policy** by sending thirty days' notice by registered letter to the **Policyholder** or the **Insured** at their last known address or that of their agent or intermediary. In such event the **Insured** shall become entitled to the return of a proportionate part of the premium corresponding to the unexpired portion of the Period of Insurance, less any sums due from the **Insured** to the **Insurer** provided always that no claim(s) or circumstance(s) have been notified to the **Insurer**.

In the event that any claims or circumstances have been notified to the **Insurer**, then the **Insurer** reserves the right to withhold such return premium until such claims or circumstances are settled or a release from liability is received from the **Insured**.

If the sum total of all claims paid exceeds the calculated pro rata time on risk charge, the **Insurer** reserves the right to deduct the amount of the excess from the return premium which would have been allowable.

## Privacy

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### The privacy of your personal information

We care about the privacy, security and online safety of your personal information and we take our responsibility to protect this information very seriously. Below is a summary of how we deal with your personal information. For a more detailed explanation, please read our official Privacy Notice on our website.

- **Processing your personal information:** We have to collect and process some of your personal information in order to provide you with our products and services, and also as required by insurance, tax and other legislation.
- **Sharing your personal information:** We will share your personal information with other insurers, industry bodies, credit agencies and service providers. This includes information about your insurance, claims and premium payments. We do this to assess claims, prevent fraud and to conduct surveys.



- **Protecting your personal information:** We take every reasonable precaution to protect your personal information (including information about your activities) from theft, unauthorised access and disruption of services.
- **Receiving marketing from us:** Please contact us if you want to change your marketing preferences. Remember that even if you choose not to receive marketing from us, we will still send you communications about this product.