



# UMBRELLA LIABILITY POLICY



## 1. OPERATIVE CLAUSE

- 1.1 The Insured is indemnified up to the Indemnity Limit against the legally enforceable consequences of causing Injury, Damage or Malice or providing Negligent Advice (all as defined in Clause 2), in the course of carrying out the Business, but only in respect of resultant claims made by others for damages, costs, fees and expenses, and in accordance with the law and procedure anywhere in the world but not in respect of any judgement, award or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part);
- 1.2 All costs reasonably and necessarily incurred in defending or settling such claims will also be paid by the Insurers, as will costs of legal or similar representation at any inquest or other official enquiry into any incident which the Insurers agree might give rise to a valid claim under this Policy.

## 2. DEFINITIONS

For the purpose of this Policy, wherever they appear, the words or terms below shall be interpreted as follows:-

- 2.1 "Injury" is death, injury, illness (mental or physical), disease, assault, false imprisonment or arrest of or to any person;
- 2.2 "Damage" is loss of or damage to tangible property, conversion, trespass, nuisance or wrongful interference with the enjoyment of rights over tangible property;
- 2.3 "Malice" is malicious legal proceedings, malicious falsehood, defamation, or infringement of copyright, title, slogan or idea;
- 2.4 "Negligent Advice" is incorrect or inadequate advice given in the promotion of the Insured's Products, but without expectation of any other reward;
- 2.5 The "Business" is defined in the Schedule, but also includes all organisations or functions operated for the benefit of the Insured's employees or visitors or for the protection or promotion of the Insured's activities;
- 2.6 "Product" is any article 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 by or on behalf of the Insured;
- 2.7 "Pollution" is the emission, discharge, release, dispersal, disposal, seepage or escape of solid, liquid, gaseous or thermal contaminants or irritants including vapours, smell, odours, humidity, fumes; smoke, soot or airborne particulates; acids, alkalis, chemicals and waste; electromagnetic waves, noise, vibrations; other emission of effluent or noxious substances into or upon the soil, the atmosphere or any watercourse or body of water.

### **3. INDEMNITY LIMIT**

The Insurers' total liability to pay compensation, damages and costs as detailed in Clause 1.2, during the period of this Policy will not exceed the amount shown in the Schedule:-

- 3.1 in respect of the total of all claims arising out of or in connection with Products or Negligent Advice;
- 3.2 in respect of each and every other claim or series of claims arising out of one originating cause (subject always to Clause 5.7);
- 3.3 In the event of any one originating cause giving rise to a claim or series of claims which form the subject of indemnity by more than one of the Underlying Policies or Sections of that Policy the Indemnity Limit shown in the Schedule shall apply to each Underlying Policy or Sections of that Policy provided the Insurers total liability shall be limited to the greatest Indemnity Limit.

### **CLAIMS SERIES CLAUSE**

An Occurrence or series of Occurrences happening during the Policy Period which are attributable directly or indirectly or allegedly to the same event, condition, defect or hazard, or failure to warn shall be added together and treated as one Occurrence irrespective of the period of time after the commencement of the Policy Period or the number of persons or organisations who sustain Property Damage and/or Personal Injury. All such Occurrences shall be deemed to have occurred on the day of the first of such Occurrences.

The Limits of Indemnity specified under Item 7 of the Schedule are non-cumulative.

Zurich shall not indemnify the Insured for any liability of whatsoever nature in connection with Personal Injury or Property Damage where such Personal Injury or Property Damage is in any way connected with or related to an Occurrence or events or circumstances, whether of a continuous, intermittent or repeated exposure, which had occurred or commenced or existed prior to the Inception Date of this Policy.

### **4. POLICY INTENTION**

Within the limits of the Operative Clause this Policy provides indemnity in the following alternative circumstances:-

#### **4.1 EXCESS LAYER PROTECTION**

where the claim is prima facie covered by the terms of any of the policies listed as Scheduled Underlying Insurances, then this Policy operates only to the extent that the claim is not met by such Underlying Insurance solely because of the inadequacy of the Underlying Indemnity Limit;

#### 4.2 DIFFERENCE IN CONDITIONS PROTECTION

Where the claim is within the scope of the operative clause of any Scheduled Underlying Insurance, then this Policy operates only when such claim is rejected by the Underlying Insurers because of a policy term, condition or exclusion;

#### 4.3 ADDITIONAL RISKS PROTECTION

Where the claim is outside the scope of the operative clause of any Scheduled Underlying Insurance, then this Policy operates within the limitations of its own Operative Clause;

This Clause 4 establishes the intention of this Policy, but does not modify, alter or extend the specific terms, Conditions and Exclusions of this Policy, which remain paramount.

### 5. EXCESS LAYER PROTECTION

5.1 In respect of any claim which forms the subject of indemnity by any Scheduled Underlying Insurance, this Policy is declared to be subject to the same terms, conditions and exclusions as such Underlying Insurance and the Insurers of this Policy agree to follow the decision of the Underlying Insurer in interpreting such terms, conditions and exclusions;

5.2 Any decision of the Underlying Insurer to accept a claim on an "ex gratia" or "without prejudice" basis shall not however be binding on the Insurers of this Policy;

5.3 No action or decision of the Underlying Insurer which prejudices the rights of the Insurers in the conduct or settlement of any claim under this Policy shall be binding on the Insurers;

5.4 This Clause provides indemnity in respect of claims which are primarily indemnified, during the period of this Policy, by a Scheduled Underlying Insurance:-

5.4.1 in excess of the Indemnity Limit stated to apply to the Scheduled Underlying Insurance, except where such limit has been reduced or exhausted by reason of claims, in which case this Policy pays in excess of the residual limit (if any);

5.4.2 for those costs defined in Clause 1.2 provided these are not recoverable from the Scheduled Underlying Insurance. In the event of the wording of the Scheduled Underlying Insurance contradicting and thereby legally amending this provision, the Insurers' maximum liability under this sub-clause shall be the same proportion of incurred costs as the settled claim bears to the respective Indemnity Limit.;

5.5 Where the Indemnity Limit of the Scheduled Underlying Insurance is exhausted by reason of a claim which is also indemnified by this Policy, the Insurers will continue to follow the original decision of the Underlying Insurer in respect of that claim in accordance with Clause 5.1;

5.6 Where the Indemnity Limit of the Scheduled Underlying Insurance is exhausted by previous claims and as a consequence this Policy operates as a primary policy, in respect of any claims which would otherwise have been indemnified by the Scheduled Underlying Insurance, the Insurers will interpret this Policy as if the Underlying Insurance had still been in force;

5.7 Where the Scheduled Underlying Insurance states that generally or in respect of specified claims the Indemnity Limit is the aggregate of all indemnifiable claims occurring or made during the Underlying period of insurance, then the Indemnity Limit under this Policy is declared to be on an identical basis as the Scheduled Underlying Insurance;

5.8 Where the insurers of a Scheduled Underlying Insurance decline to grant indemnity in respect of a claim on the grounds that either:-

- the loss did not occur
- the event did not occur
- or the claim was not made

during the policy period (as the case may be) and as a consequence such claim falls to be indemnified by a policy effected prior to the relevant Scheduled Underlying Insurance, then such prior policy shall be treated as if it was a Scheduled Underlying Insurance. For the purpose of this Clause 5.8, the indemnity limit of the prior policy shall be deemed to be not less than the Indemnity Limit as stated in respect of the relevant Scheduled Underlying Insurance without allowance for reduction or exhaustion of such limit. In all other respects the provisions of this Clause 5 will apply;

5.9 Where the Insured is indemnified against a claim by a policy not listed as a Scheduled Underlying Insurance (other than in circumstances described in 5.8 above) then the Insurers may at their sole option (which must be exercised within a reasonable time) deem such policy to be an Underlying Insurance, in which event the provisions of this Clause 5 will apply as far as possible.

## **6. DIFFERENCE IN CONDITIONS PROTECTION**

6.1 Where a claim is indemnifiable by the operative clause of a Scheduled Underlying Insurance, but is then declared by the Underlying Insurer to be excluded by reason of a policy term, exclusion or condition, then this Policy will indemnify the Insured in accordance with this Policy's Operative Clause;

6.2 Where a claim is not excluded by the operative clause of a Scheduled Underlying Insurance which has however been exhausted by reason of other claims and where, in the opinion of the Insurers of this Policy such claim would have been excluded by the Underlying Insurance by reason of a term, exclusion or condition, then the provisions of this Clause 6 will apply;

6.3. The Insurers will follow the provisions of the operative clause of the appropriate Scheduled Underlying Insurance in determining the basis on which the Insured is indemnified by this Clause of the Policy, being either:-

- 6.3.1. in respect of Injury, Damage or Malice occurring or Negligent Advice given during the Period of this Policy (losses occurring), or
  - 6.3.2 in respect of claims made against the Insured during the Period of this Policy following Injury, Damage, Malice or Negligent Advice (claims made).
- 6.4 Whilst the basis of cover will follow the provisions of the operative clause of the Scheduled Underlying Insurance as detailed in Clause 6.3, the interpretation of these provisions will be the decision of the Insurers and not the Underlying Insurers. If the Scheduled Underlying Insurance is on a claims made basis, then the Insurers of this Policy will deal with any claim arising out of an event or circumstance first notified by the Insured to the Insurers during the Period of this Policy as if the claim had been made during the Period of this Policy even if the Scheduled Underlying Insurance contains no similar provision;
- 6.5 If the Underlying Insurer repudiates a claim on the basis of an exclusion relating to the failure of a product to perform as specified, warranted or guaranteed, or to fulfil its intended purpose and such Underlying Insurance is on a losses occurring basis and the circumstances of the claim are such that the Insured or the Insurers cannot mutually agree when the loss occurred, then the Insurers of this Policy will deal with the claim on the basis that the loss occurred when the claimant first notified the Insured of a circumstance or an event which subsequently gave rise to an indemnifiable claim;
- 6.6 Generally, this Clause 6 does not provide indemnity where a claim is excluded by the wording of the operative clause of the Scheduled Underlying Insurance. There are, however, two specific exceptions to this rule, being where a claim is excluded by the Scheduled Underlying Insurance:-
- 6.6.1 solely on the grounds that the Injury or Damage was not accidental by nature, or did not arise out of an accident;
  - 6.6.2 solely on the grounds that temporary loss of use of property or reduction in value of property did not constitute "damage" within the terms of the operative clause of the Scheduled Underlying Insurance;
- subject always to the provisions of Exclusions 11.5
- 6.6.3 where such a claim arises out of the failure of a product to perform as specified, warranted or guaranteed or to fulfil its intended purpose, then the provisions of clause 6.5 apply insofar as they can.

## **7. ADDITIONAL RISKS PROTECTION**

- 7.1 This Clause will indemnify the Insured in respect of any claim which is not the subject of indemnity by any other policy of insurance, is not indemnified (either in whole or in part) by Clauses 5 or 6 of this Policy and which forms the subject of indemnity by the Operative Clause;

- 7.2 The indemnity granted by this Clause 7 is limited to claims made against the Insured during the Period of this Policy, or events or circumstances notified by the Insured to the Insurers during such Period which subsequently give rise to claims being made;
- 7.3 The Indemnity Limit of this Policy in respect of cover granted by this Clause 7 is limited to the aggregate of all claims made during the Period of this Policy, or events or circumstances notified by the Insured to the Insurers during such Period which subsequently give rise to claims being made;
- 7.4 No indemnity is provided by this Clause where the insurers of a Scheduled Underlying Insurance decline to grant indemnity in respect of a claim on the grounds that the Injury, Damage, Malice, Negligent Advice or event did not occur or the claim was not made, during the policy period (as the case may be).

## **8. INDEMNITY TO OTHERS**

The indemnity granted shall extend at the Insured's option and subject to the Insurers' consent which consent shall not be unreasonably withheld; to:

- 8.1 directors, partners or employees of the Insured in that capacity or in their private capacity arising out of any temporary engagement (undertaken with the Insured's consent) of the Insured's employees;
- 8.2 any person or party to the extent that any contract entered into by the Insured requires that such indemnity is given;
- 8.3 the personal representatives of any person or party indemnified;

Provided always that all such persons or parties shall observe, fulfil and be subject to the terms, Exclusions and Conditions of this Policy.

## **9. CROSS LIABILITIES**

The Insured and persons or parties indemnified by Clause 8 are separately indemnified in respect of claims made by one against the other, subject to the Insurers' total liability not exceeding the Indemnity Limit.

## **10. CLAUSE 6 & 7 EXCLUSIONS**

No indemnity is granted by Clauses 6 and 7 in respect of liability for or arising out of:

### **\*10.1 AIRCRAFT OR WATERCRAFT**

the ownership, hire purchase or leasing of any aircraft, watercraft or hovercraft (other than watercraft not exceeding 15,25 metres in length and then only whilst on inland waterways) by or on behalf of the Insured;

**\*10.2 SHIP AND AVIATION REPAIRING**

the repair, maintenance, refuelling or defueling of any aircraft, watercraft or hovercraft undertaken by or on behalf of the Insured as a revenue producing activity.

**10.3 DIRECTORS AND OFFICERS LIABILITY AND PROFESSIONAL INDEMNITY**

acts, errors or omissions of the directors or officers of the Insured when acting in their capacity as such, or in the provision by the Insured of professional services which shall include advice given, any action taken or work done by the Insured when carrying on their functions in any capacity involving special skill or knowledge in their calling, or the failure to discharge any obligations pursuant thereto. This exclusion does not apply to the provision of Negligent Advice (as defined);

**10.4 ENVIRONMENTAL IMPAIRMENT**

seepage, pollution or contamination being the natural consequence of the operation or existence of the Business;

**10.5 DEDUCTIBLE**

the amount of the Deductible stated in the Schedule in respect of each and every claim, or series of claims arising from one originating cause;

**10.6 PROPERTY**

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 premises (or the contents thereof) temporarily occupied by the Insured for work therein, or other property temporarily in the Insured's possession for work thereon (but no indemnity is granted for damage to the property on which the Insured is working and which arises out of such work);

\* Exclusions 10.1 and 10.2 do not apply to liability for death, injury, illness or disease of or to employees of the Insured arising out of such employment, subject to Policy Exclusion 11.12

**11. POLICY EXCLUSIONS**

No indemnity is granted by this Policy against liability:-

**11.1 FINES AND PENALTIES**

for fines, penalties, punitive or exemplary damages.



## 11.2 POLLUTION

arising out of:-

11.2.1 Pollution provided always that this Exclusion shall not apply where such Pollution is caused by a sudden, unintended and unexpected happening;

11.2.2 the cost of removing, nullifying or cleaning-up the effects of Pollution unless the Pollution is caused by a sudden, unintended and unexpected happening seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening.

Nothing herein shall be construed as extending this Insurance to indemnify the Insured for any liability which would not have been covered under this Insurance in the absence of this Exclusion 11.2.

## 11.3 RETROACTIVE DATE

for any Injury, Damage or Malice, or for the provision of Negligent Advice which occurs prior to the Retroactive Date which is applicable to the Underlying Insurances or as stated in the Schedule, whichever is the later.

For purposes of this Exclusion, where any Injury or Damage resulting from continuous or continual inhalation, ingestion, absorption or application of any substance or condition and where the Insured and the Insurers cannot mutually agree when the Injury or Damage occurred, then:-

11.3.1 Injury shall be deemed to have occurred when the claimant first obtained medical advice or treatment for the Injury, whether or not the Injury was correctly diagnosed at the time;

11.3.2 Damage shall be deemed to have occurred when the claimant first became aware of the existence of the Damage.

## 11.4 KNOWN EVENTS and PRIOR NOTIFICATIONS

11.4.1 arising out of any circumstance, matter or thing which the Insured may reasonably be expected to suppose may give rise to a claim against the Insured and known by the Insured to have occurred prior to the inception of this Policy;

11.4.2 arising out of any circumstance, matter or thing which has been notified to the insurers of any other policy prior to inception or renewal of this Policy

## 11.5 DELIBERATE ACTS

arising out of any deliberate or intentional failure of the Insured's management to take reasonable precautions to prevent Injury, Damage or Malice occurring or Negligent Advice being given.

11.6 EMPLOYEE BENEFITS

for any benefits for which the Insured is liable under any relevant workmen's compensation, unemployment compensation or disability benefits law and/or similar law and/or scheme unless the Insured has assumed such liability (which would not otherwise have attached) by agreement with a third party.

11.7 MOTOR

for death of or bodily injury to persons, except for so much of any compensation payable for persons being carried in or upon or getting into or alighting from a vehicle, which –

11.7.1 is the subject of legislation enacted for the purpose of providing compensation for loss or damage wrongfully caused by the driving of a motor vehicle, or

11.7.2 is the subject of legislation controlling the use of motor vehicles or trailers and in respect of which liability –

- (i) the insured is compelled to effect insurance or otherwise furnish security, or
- (ii) the State or other governmental authority has accepted responsibility, or
- (iii) is suffered as a result of an emotional shock by a person other than an injured party on witnessing, observing or being informed of the injury of another person as a result of the driving of a motor vehicle.

This exclusion shall apply notwithstanding that no insurance under such legislation is in force or has been effected, or that compensation is not paid for any reason whatsoever.

11.8 PRODUCT REPLACEMENT

for the costs necessary to repair, replace, recondition or modify any Product or part thereof and/or for the loss of use of any Product or part thereof.

11.9 PRODUCT RECALL

arising out of the recall of any Product or part thereof.

11.10 PERFORMANCE GUARANTEES

arising out of performance warranties or guarantees, or clauses stipulating liquidated damages or penalties, except to the extent that it is proved that such liability would have existed in the absence of any contractual provision.

11.11 GRADUALLY OPERATING CAUSES

for personal Injury caused or contributed to by prolonged exposure to substances, factors or circumstances peculiar to any particular employment or occupation. This Exclusion is applicable to Employers Liability only.

#### 11.12 ASBESTOS

whether actual or alleged for any claim or claims in respect of loss or losses directly or indirectly caused by, arising out of, resulting from, in consequence of, in any way involving, or to the extent contributed to, by the hazardous nature of asbestos in whatever form or quantity. This Exception does not apply to any Personal or Motor Liability Sections, if included in the Underlying Policy.

#### 11.13 MOTOR BALANCE OF THIRD PARTY

for Motor Balance of Third Party liability unless such liability is in excess of the Scheduled Underlying Insurance and is indemnifiable thereby.

#### 11.14 UNFAIR LABOUR PRACTICE

arising out of any unfair dismissal (including any automatically unfair dismissal) as contemplated by the Labour Relations Act 66 of 1995 (or any Act passed in substitution thereof)

#### 11.15 WAR AND TERRORISM

for loss, damage, cost or expense of whatsoever nature directly or indirectly caused by resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (1) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power;
- (2) mutiny, military rising, martial law, state of siege or any other event which determines the proclamation or maintenance of martial law or state of siege;
- (3) any act of terrorism

for the purpose of this endorsement 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;

- (4) loss, 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 related to (1), (2) and (3) above.

If the Insurers allege that by reason of this exclusion, any loss, 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.

#### 11.16 NUCLEAR RISKS

11.16.1 for loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss

11.16.2 for any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

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

The indemnity provided by this policy shall not apply to nor include any loss destruction damage or legal liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material.

#### 11.17 USA/CANADIAN EXPORTS

arising out of any Product (including any marketing advisory service in connection with any Product) within the United States of America or Canada where such Product was to the knowledge of the Insured intended for sale or resale in the United States of America or Canada, or such sale or resale could reasonably be contemplated by the Insured.

#### 11.18 COMPULSORY INSURANCE

arising out of any circumstance compulsorily insurable by legislation.

#### 11.19 UNLAWFUL COMPETITION

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 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.

11.20 SPECIFIC PRODUCTS

loss caused by HIV or illness thereby induced (e.g.AIDS)  
contraceptives and RU 486

**12. POLICY CONDITIONS**

12.1 LAW AND JURISDICTION

Any dispute between the Insured and the Insurers in connection with or arising out of the Policy shall be decided exclusively in accordance with the law of the Republic of South Africa and exclusively by a competent court of the Supreme Court of South Africa;

The Insured undertakes that they will not institute action against the Insurers nor bring joinder proceedings against the Insurers in the Court of any country other than the Republic of South Africa;

12.2 PREMIUM

Unless otherwise stated, the Premium shown in the Schedule is a provisional premium based on estimates made and provided by the Insured. The Insured undertakes to keep an accurate and proper record of matters relevant to the calculation of premium and shall, within a reasonable time following the expiry of each Period of Insurance, provide the Insurers with a proper and correct statement so that the premium for that period shall be calculated and the difference paid by or allowed to the Insured as the case may be (subject to any minimum premium that may have been agreed);

12.3 INSPECTION AND AUDIT

The Insurers shall be permitted but not obliged to inspect the Insured's property and operations at any time. Neither the Insurers' rights to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe, or healthy, or are in compliance with any law, rule or regulation;

The Insurers may examine and audit the Insured's books and records at any time as far as they are relevant to this Policy or any Underlying Policy;

12.4 INSURED'S OBLIGATION TO REPORT TO INSURERS

The Insured shall, immediately they become aware of any of the following, give notice thereof in writing to the Insurers:

12.4.1 any and all claims made against the Insured;

12.4.2 any circumstance or any other matter or thing which might give rise to a claim by the Insured under this Policy.

The Insurers shall upon receipt of written notice from the Insured in terms of either of the foregoing provisions be entitled to investigate all and any matters which in the absolute discretion of the Insurers are relevant to the foregoing, and the Insured shall do all things necessary and comply with Condition 12.3 to enable the Insurers to investigate as aforesaid;

Inadvertent failure to comply with this Condition because the Insured could not reasonably have anticipated that the event would give rise to a claim under this Policy will not be construed as a breach of this Condition;

#### 12.5 ASSISTANCE AND CO-OPERATION OF THE INSURED

The Insurers shall be entitled but not obliged to assume control of the settlement or defence of any claim made or suit brought or proceeding instituted against the Insured;

The Insurers shall have the right and shall be given the opportunity to associate with the Insured or their Underlying Insurer, or both, in the defence any control of any claim, suit or proceeding which involves the Insurers or within the Underlying Indemnity Limit, in which event the Insured, such Underlying Insurers and the Insurers shall co-operate in all things in the defence of such claim, suit or proceeding and the Insured shall make available to the Insurers such information and afford access to such records as the Insurers may require;

The Insured shall enforce all rights of contribution and indemnity against any person or organisation who may be liable to the Insured in respect of any occurrence which has given rise to liability of the Insured and which is the subject of a claim for indemnity in terms of this Policy;

#### 12.6 APPEALS

In the event of the Insured or their Underlying Insurer elects not to appeal against a judgement in excess of the Underlying Limit, the Insurers may elect to make such appeal at their own cost and expense, and shall be liable for the taxable costs and disbursements and interests on judgement incidental thereto, as are incurred as a result of such election, but in no event shall the liability of the Insurers exceed the amount applicable to any one occurrence. If the Insurers shall make such an appeal the Insured shall themselves, and shall procure that their Underlying Insurers, make available to the Insurers all such evidence and material as the Insurers may require;

The Insured shall do all things necessary to enable the Insurers to act in accordance with this Condition;

#### 12.7 CLAIM PAYABLE

Indemnity will not be provided under Clause 5 until the relevant Underlying Insurers have agreed to pay the underlying indemnity limit as defined in 5.4.1;

#### 12.8 BANKRUPTCY OR INSOLVENCY

In the event of bankruptcy, insolvency or sequestration of the estate of the Insured, whether voluntary or involuntary, or upon takeover of the Insured's business by any Court Official, Trustee or Liquidator, acting or appointed for this purpose, this Policy shall thereupon terminate without the necessity of the Insurers giving notice of such cancellation. In the event of such termination the Insurers will refund such Court Official, Trustee or Liquidator the unearned premium or pro-rata thereon whichever is the lesser;

#### 12.9 UNDERLYING INSURANCES

The indemnity granted by this Policy is conditional upon the Underlying Insurances remaining in force throughout the Period of Insurance for the Indemnity Limits stated on the Schedule of Underlying Insurances attached to this Policy (other than where reduced or exhausted by claims);

#### 12.10 OTHER INSURANCE

If the Insured has effected insurance for the purpose of providing indemnity, other than a policy specifically to provide indemnity in excess of this Policy, the insurance afforded by this Policy shall not contribute with such other insurance. The provisions of this Condition shall apply notwithstanding that the aforesaid policy be voidable or that the insurer be entitled to avoid liability for an occurrence which has given rise to a claim under such other policy;

#### 12.11 SUBROGATION

No admission, offer or payment which results in a claim under this Policy may be made or given by or on behalf of the Insured or the Insurers of any Scheduled Underlying Insurance Policy without the written consent of the Insurers. The Insured will take all reasonable steps to ensure that the Underlying Insurers will co-operate with the Insurers in the defence and settlement of any claim which is indemnifiable both by a Scheduled Underlying Insurance Policy and this Policy, and in the exercise of any subrogation rights. The costs incurred in exercising such rights and any amounts recovered shall be apportioned to each party according to the sums paid or payable under the respective policies;

#### 12.12 CHANGES

Notice to or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy nor stop the Insurers from asserting any rights under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy, signed by an authorised representative of the Insurers;

12.13 ASSIGNMENT

Assignment of interest under this Policy shall not bind the Insurers until their consent is endorsed hereon;

12.14 CANCELLATION

This Policy may be cancelled by the Insurers or by the Insured by the giving of 30 days written notice of such cancellation and provided that the Insurers have not been notified of any claim under the Policy or any circumstance, matter or thing which may give rise to such a claim;

12.15 CURRENCY

Payments under this Policy shall be payable in South Africa in the currency of South Africa;

12.16 DECLARATIONS

By acceptance of this Policy the Insured agrees that the statements in the Schedule and in any subsequent notice relating to the Underlying Limits, are their agreements and representations, and this Policy is issued and continued in reliance upon the truth of such representations and this Policy embodies all agreements existing between the Insured and the Insurers relating to this Insurance;

12.17 DUE OBSERVANCE

The due observance and fulfilment of all provisions in this Policy that require anything to be done or complied with by the Insured is precedent to any liability of the Insurers in respect of any occurrence for which the Insured makes a claim under this Policy.

12.18 PAYMENT OF PREMIUM

Premium is payable before the inception date or renewal date as the case may be. The Insurers shall not be obliged to accept premium tendered to it after such date but may do so upon such terms as they, in their sole discretion, may determine;

12.19 FRAUDULENT CLAIMS

If any claim under this Policy is in any respect fraudulent, the benefit afforded under this Policy in respect of such claim shall be forfeited;