



## ANNEXURE B

## THE HOLLARD INSURANCE COMPANY COMMERCIAL UMBRELLA POLICY

INSURER: The Hollard Insurance Company Limited  
 Registration Number: 1952/003004/06  
 VAT Number: 4450117405  
 FSP Number: 17698

BROKER: Bay Union Insurance Brokers (Pty) Ltd

POLICY NUMBER: Annual 001119  
 Monthly 001045

CERTIFICATE NUMBER:

THE INSURED:

BUSINESS DESCRIPTION:

POSTAL ADDRESS:

TERRITORIAL LIMITS: Anywhere in the world but not in connection with

- (i) any business carried on by the insured or from premises outside
- or
- (ii) any contract for the performance of work outside

The Republic of South Africa, Namibia, Botswana, Lesotho, Swaziland, Zimbabwe and Malawi provided the Insured complies with local legislation regarding Insurance in each of these territories.

PERIOD OF INSURANCE: From:  
 To:  
 Both dates inclusive

RENEWAL DATE:

PREMIUM: R

**INSURERS LIMIT OF INDEMNITY:**R20Million in excess of:

**SCHEDULED UNDERLYING INSURANCES:**

<b>TITLE OR NATURE OF UNDERLYING INSURANCE</b>	<b>MINIMUM INDEMNITY LIMITS</b>
General Liability	R 1,000,000.00
Tenants Liability	R 1,000,000.00
Property Owners Liability	R 1,000,000.00
Spread of Fire	
- Farms	R 3,000,000.00
- All Other	R 1,000,000.00
Products Liability	R 1,000,000.00
Defective Workmanship	R 1,000,000.00
Products Inefficacy	R 1,000,000.00
Employers' Liability	R 1,000,000.00
Watercraft Liability	R 2,500,000.00
Motor Third Party	R 2,500,000.00
Statutory Legal Defence Costs and Wrongful Arrest	R 50,000.00

**RETRO-ACTIVE DATE:** As per Underlying Policy

Signed at ..... this ..... day of ..... 201.....

**Responsible person/s:**

David Pearse, Peter Pearse, Chris Treadwell, Elaine Chiassaro, Henry Coxwell, Lynn Wicht, Louise Powell and Cilla Tyler

**Administrators:**

Ian Zangel, Sharon Molloy, Keshnee Naidoo, Gillian Sutherland, Michelle Williams

**Authorised by:**

The Hollard Insurance Company Limited  
 Company Registration Number: 1952/003004/06  
 VAT Number 4450117405  
 FSP Number 17698

## PREAMBLE

In consideration of, and conditional upon, the prior payment of the premium by or on behalf of the Insured and receipt thereof by or on behalf of the Insurers 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 Insurers specified in the Schedule agree to indemnify the Insured in the manner and to the extent stated herein.

### 1. OPERATIVE CLAUSE

The Insurers will indemnify the Insured subject to the terms, exclusions, conditions and Limit of Indemnity as more particularly described under Policy Intention (Clauses 4, 5 & 6) against the insured's legal liability to pay damages and associated claimants' costs in consequence of causing Injury or Damage, and the giving of Negligent Advice arising out of the performance of the Business within the Territorial Limits and in accordance with the law and procedure applicable anywhere in the world but not in respect of any judgement, award or settlement made within countries which operate under the laws of North America (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part).

### 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, defamation, false imprisonment or arrest of/or to any person.
- 2.2. Damage is loss of or damage to tangible property, conversion, trespass, nuisance, infringement of copyright, title, slogan, idea or wrongful interference with the enjoyment of rights over tangible property.
- 2.3. Negligent Advice is incorrect or inadequate advice given in the promotion of the Insured's Products, but without expectation of any other reward.
- 2.4. 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.
- 2.5. "Product" shall mean any tangible property including labels and/or containers (other than a vehicle) 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 but not food and drink provided mainly to the Insured's Employees as a staff benefit.
- 2.6. North America is the United States of America (being the 50 States of the Union plus the District of Columbia), Canada and any territory operating under the laws of or subject to the jurisdiction of courts of the aforementioned territories.
- 2.7. Occurrence/Claim in the absence of a definition of similar effect in an applicable underlying policy.
  - 2.7.1. An accident or event (including continuous or repeated injurious exposure to substantially the same general conditions) which happens during the Period of Insurance, neither expected nor intended from the standpoint of the Insured and which results in Personal Injury or Property Damage.

A series of accidents or events following as a consequence of one original cause or happening at an identifiable moment in time or happening as a result of an identifiable source in respect of Products shall be deemed to be one Occurrence and as having occurred during the Period of Insurance when the first accident or event happened irrespective of the period over which such accidents or events occur.

- 2.7.2. (in either the singular or plural) a written demand or a series of demands arising from one source or original cause made against the Insured for damages insured in terms of this Policy.

For the purposes of this Policy the date of such demand shall represent the date the Claim is first made against the Insured.

### **3. LIMIT OF INDEMNITY**

The Insurer shall only be liable to pay damages and costs as detailed in Clause 1, the excess of either:

- a) The limit of any Scheduled Underlying Insurances which may apply in respect of each Occurrence/Claim indemnified by Excess Layer Protection, or
- b) The amount stated in the Schedule as the Deductible, in respect of each Occurrence/Claim indemnified by Difference in Conditions Protection,

And then limited to a further sum as stated in the Schedule in all in respect of each Occurrence/Claim but in the aggregate during the Period of Insurance when an aggregate limit in the Scheduled Underlying Insurances applies.

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 insuring section of, or more than one of, any Scheduled Underlying Insurances, the total amount of the Insurers' liability in terms of this Policy shall be limited to the Limit of Indemnity stated in the Schedule.

To the extent that the Insured is accountable to the tax authorities for Value Added Tax in respect of any payment in terms of this Policy the Insurers will include the amount of such tax in the final settlement of any claim under this Policy in addition to the Limits of Indemnity.

### **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 Scheduled Underlying Insurances solely because of the inadequacy of the Underlying Limit of Indemnity.

#### **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 Insurer because of a policy term, condition or exclusion.

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. This Clause provides indemnity in respect of claims which are indemnified, during the period of this Policy, by a Scheduled Underlying Insurance:-
- 5.1.1. in excess of the Limit of Indemnity 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).
- 5.1.2. for claimants' costs 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 Limits of Indemnity.
- 5.2. In respect of any claim which forms the subject of indemnity of any Scheduled Underlying Insurance, this Policy is declared to be subject to the same terms, conditions and exclusions as such Scheduled Underlying Insurance and the Insurer agrees to follow the decision of the Underlying Insurer in interpreting such terms, conditions and exclusions.
- 5.3. Any decision of the Underlying Insurer to accept a claim on an "ex gratia" or "without prejudice" basis shall not be binding on the Insurers of this Policy.
- 5.4. No action or decision of the Underlying Insurer which prejudices the rights of the Insurer in the conduct or settlement of any claim under this Policy shall be binding on the Insurer.
- 5.5. Where the Limit of Indemnity of the Scheduled Underlying Insurance is exhausted by reason of a claim which is also indemnified by this Policy, the Insurer 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 Limit of Indemnity 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 Insurer 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 Limit of Indemnity is the aggregate of all indemnifiable claims occurring or made during the underlying period of insurance, then the Limit of Indemnity 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 period of insurance (as the case may be) and as a consequence such claim fails 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 limit of indemnity of the prior policy shall be deemed to be not less than the Limit of Indemnity 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 as far as possible.
- 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 Insurer 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 Insurer 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 Insurer 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 or Damage 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 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 Insurer and not the Underlying Insurer. If the Scheduled Underlying Insurance is on a claims made basis, then the Insurer of this Policy will deal with any claim arising out of an event or circumstance first notified by the Insured to the Insurer 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. 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:-
  - 6.5.1. solely on the grounds that the Injury or Damage was not accidental by nature, or did not arise out of an accident.
  - 6.5.2. 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 provision of exclusions 11.5 and 11.9

## 7. INDEMNITY TO OTHERS

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

- 7.1. 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;
- 7.2. any person or party to the extent that any contract entered into by the Insured required that such indemnity is given;
- 7.3. the personal representatives of any person or party indemnified;

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

## 8. CROSS LIABILITIES

The Insured and persons or parties indemnified by Clause 7 are separately indemnified in respect of claims made by one against the other, subject to the Insurer's total liability not exceeding the Limit of Indemnity.

## 9. CLAUSE 6 EXCLUSION

No indemnity is granted by Clause 6 in respect of liability for or arising out of:

### 9.1. AIRCRAFT OR WATERCRAFT

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

### 9.2. SHIP AND AVIATION REPAIRING

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

### 9.3. 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 9.1 and 9.2 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 10.13

## 10. POLICY EXCLUSIONS

No indemnity is granted by this Policy against liability:-

### 10.1. FINES AND PENALTIES

for fines, penalties, punitive or exemplary damages

### 10.2. POLLUTION

arising out of:-

10.2.1. Seepage, pollution or contamination provided always that this Exclusion shall not apply where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening;

10.2.2. The cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the 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 10.2

**10.3. RETROACTIVE DATE (APPLICABLE ONLY WHERE UNDERLYING INSURANCE IS ON A CLAIMS MADE BASIS)**

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 the 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 Insurer cannot mutually agree when the Injury or Damage occurred, then:-

- 10.3.1. 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.
- 10.3.2. Damage shall be deemed to have occurred when the claimant first became aware of the existence of the Damage.

**10.4. KNOWN EVENTS**

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.

**10.5. 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.

**10.6. EMPLOYEE BENEFITS**

for any benefits for which the Insured is liable under any relevant workmen's compensation, unemployment compensation, disability benefits or similar law scheme.

**10.7. PRODUCT REPLACEMENT**

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

**10.8. PRODUCT RECALL**

arising out of recall of any product or part thereof.

**10.9. PERFORMANCE GUARANTEES**

arising out of performance warranties or guarantees, or clauses stipulating pre-estimated liquidated damages or penalties.

**10.10. GRADUALLY OPERATING CAUSES**

unless contrary to statutory requirements within the relevant territory occupational related diseases caused or contributed to by prolonged exposure to substances, factors or circumstances peculiar to any particular employment or occupation.

**10.11. ASBESTOS EXCLUSION**

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.



**10.12. MOTOR THIRD PARTY LIABILITY**

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

**10.13. CARRIAGE OF FARE PAYING PASSENGERS**

arising out of the carriage of passengers for hire or reward or the carriage of fare paying passengers.

**10.14. CYBER LIABILITY**

Loss of or damage to any Electronic Data howsoever caused including detrimental change thereto and any consequence arising therefrom provided that in respect of:

- 10.14.1. Transmission of Viruses; and
- 10.14.2. Inaccessibility of the Insured's Computer Network by persons otherwise authorised to access such; and
- 10.14.3. Loss of Electronic Data

This exclusion shall apply at all times.

Electronic Data means any information, facts or programmes stored as or on, created or used, or transmitted to or from computer software including systems and application software, disks in whatever form, tapes, cells, data processing devices or any other media which form part of or are used in connection with any electronic equipment.

**10.15. UNFAIR LABOUR PRACTICE**

arising out of any actual or any alleged unfair labour practice as contemplated by the Labour Regulations Act 66 of 1995 (as amended) or any Act passed in substitution thereof.

**10.16. RADIOACTIVE CONTAMINATION**

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 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 or 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.

**10.17. NORTH AMERICAN EXPORTS**

arising out of any Product (including any marketing advisory service in connection with any Product) within North America where such Product was to the knowledge of the Insured intended for sale or resale in North America or such sale or resale could reasonably have been contemplated by the insured.

**10.18. DIRECTORS AND OFFICERS LIABILITY AND PROFESSIONAL INDEMNITY**

for 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 out 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).

**10.19. UNFAIR COMPETITION**

for 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 related 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.

**10.20. 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:

- 10.20.1. war, invasion, acts of foreign enemies, 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, or
- 10.20.2. any act of terrorism  
for the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) or 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.
- 10.20.3. loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken by any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in (1) and (2) 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 that any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

**10.21. HAZARDOUS GOODS**

for the transport of hazardous substances not in compliance with chapter VIII of the Road Traffic Act 1996 (Act 93 of 1996).

**10.22. COMPULSORY MOTOR INSURANCE**

Except for so much of any compensation payable in respect of liability for death of or bodily injury to persons being carried in or upon or getting into or alighting from a vehicle, for injury which:-

- 10.22.1. 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
- 10.22.2. 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
- 10.22.3. 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.

**10.23. VEHICLE, AIRCRAFT AND WATERCRAFT**

Arising out of any Statute governing the ownership, use or licensing of vehicles, aircraft and watercraft.

**11. POLICY CONDITIONS****11.1. LAW AND JURISDICTION**

Any dispute between the Insured and the Insurer 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 court of South Africa.

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

**11.2. PREMIUM**

Unless otherwise stated, the Premium shown in the Schedule is a fixed premium. Should the premium be 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 Insurer 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).

**11.3. INSPECTION AND AUDIT**

The Insurer shall be permitted but not obliged to inspect the Insured's property and operations at any time. Neither the Insurer's 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 Insurer 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.

**11.4. INSURED'S OBLIGATION TO REPORT TO INSURER**

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

- 11.4.1. any and all claims made against the Insured;
- 11.4.2. any circumstance or any other matter or thing which might give rise to a claim by the Insured under this Policy.

The Insurer shall upon receipt of written notice from the Insured in terms of either of the foregoing provisions be entitled to investigate all and any matter which in the absolute discretion of the Insurer are relevant to the foregoing, and the Insured shall do all things necessary and comply with Condition 11.3 to enable the Insurer 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.

**11.5. ASSISTANCE AND CO-OPERATION OF THE INSURED**

The Insurer 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 Insurer shall have the right and shall be given the opportunity to associate with the Insured or their Underlying Insurer, or both, in the defence or control of any claim, suit or proceeding which involves the Insurer or within the Underlying Limit of Indemnity, in which event the Insured, such Underlying Insurer 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 Insurer such information and afford access to such records as the Insurer 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.

**11.6. APPEALS**

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

**11.7. CLAIMS PAYABLE**

Indemnity will not be provided under Clause 4 until the relevant Underlying Insurer has agreed to pay the underlying indemnity limit as defined in 4.1.

**11.8. 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.

**11.9. 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 and nature of cover stated on the Schedule of Underlying Insurances (other than where reduced or exhausted by claims).

**11.10. 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 Insurer 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 Insurer will co-operate with the Insurer 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.

**11.11. 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 Insurer 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 Insurer.

**11.12. ASSIGNMENT**

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

**11.13. CANCELLATION**

This Policy may be cancelled by the Insurer or by the Insured by the giving of 30 days written notice of such cancellation and provided that the Insurer has not been notified of any claim under the Policy or any circumstance, matter or thing which may give rise to such a claim there shall be a pro-rata refund premium.

**11.14. CURRENCY**

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

**11.15. 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 Insurer relating to this Insurance.

**11.16. DUE OBSERVANCE**

The due observance and fulfillment 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 Insurer in respect of any occurrence for which the Insured makes a claim under this Policy.

**11.17. PAYMENT OF PREMIUM**

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

**11.18. 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.