

The written **Proposal** made by the **Insured** to the Insurer containing particulars and statements, together with other information provided by the **Insured**, is the basis of and is incorporated into this contract.

1. Insurance Cover

This Policy cover **Claims** made against the **Insured**, by a **Third Party**, for Loss arising due to legal liability provided that the **Claim**:

- 1.1 arises out of an actual or alleged negligent act, error or omission in the provision of the **Professional Services** by the **Insured** as stated in the schedule; and
- 1.2 is made during the **Policy Period** and reported to the Insurer in writing during the **Policy Period** and the act, error or omission first takes place on or after the **Retroactive Date** but before the expiration of the Policy; and

The Insurer shall not be liable under this Policy in respect of any **Claims** or **Circumstances** known to the **Insured** prior to inception of this Policy or that in the **Insurer's** opinion ought to have been known to the **Insured** or notified by the Insured under any other insurance prior to inception of this Policy or disclosed in the latest **Proposal** made to the **Insurer**.

2. Extensions

2.1 Loss of Documents:

If during the **Policy Period** the Insured shall discover and advise the **Insurer** that any **Document** for which the **Insured** is legally responsible, which may be supposed or believed to be in the custody of the **Insured** or in custody of any other person to or with whom such **Documents** have been entrusted, lodged or deposited by the **Insured** in the performance of the **Insured's Professional Services**, has been destroyed, damaged, lost, distorted, erased or mislaid, the **Insurer** will indemnify the **Insured** in respect of all costs and expenses reasonably incurred by the **Insured** in replacing or restoring such **Documents** during the **Policy Period** as shown in the Schedule.

Provided that:

- a. Such **Damage** is sustained while the **Documents** are either in transit or in the custody of the **Insured** or of any person to whom the **Insured** has entrusted them in the ordinary course of their business and where lost or mislaid have been subject of a diligent search by the **Insured**.
- b. The amount of any **Claim** for such costs and expenses shall be supported by bills and accounts which shall be subject to approval by a competent person to be nominated by the **Insurer**.

It is further understood and agreed that the maximum limit of the **Insurer's** liability for all **Claims** under this Extension shall be sub-limited to the amount stated in the schedule each and every **Claim** and in the maximum for the **Policy Period**. This sub-limit shall be part of and not in addition to the **Limit of Liability** as stated in the Schedule of this Policy.

2.2 Intentional/Dishonest Acts

Notwithstanding exclusion 6.5 the **Insurer** will indemnify the **Insured** for any **Claim** made against the **Insured** and notified during the **Policy Period** which the **Insured** becomes legally liable to pay arising out of **Professional Services** brought about, or contributed to, by any dishonest, fraudulent, criminal or malicious act of any **Employee** of the **Insured** other than any partner or **Director**, past or present.

This Extension will be subject to a sub-limit of 25% of the **Limit of Liability**.

2.3 Defamation

The **Insurer** agrees to indemnify the **Insured** in respect of any **Claim** for unintentional defamation by an **Insured** in the conduct of the **Professional Services**.

This Extension will be subject to a sub-limit of 25% of the **Limit of Liability**.

2.4 Intellectual Property Rights

Notwithstanding exclusion 6.7 the **Insurer** agrees to indemnify the **Insured** in respect of any **Claim** that is based upon or arises out of any unintentional breach of or unintentional infringement of or unintentional unauthorised use of any confidential information, copyright, trademark, trade name, trade secret, customer information, database rights, software and data or any other intellectual property rights arising out of the **Professional Services**.

Exclusion:

The **Insurer** shall not be liable under this Policy to make any payment for **Damages** or **Claim Expenses** in respect of any **Claim** arising out of directly or indirectly, based upon, attributable to or in any way connected with a **Claim** for any actual or alleged misappropriation, infringement or violation of any confidential information of patent.

This Extension will be subject to a sub-limit of 25% of the **Limit of Liability**.

3. Limit of Liability

The **Insurer's** liability for **Damages** and **Claim Expenses** combined for each **Claim** and in the aggregate for all **Claims** shall not exceed the amount as stated in the schedule.

4. Deductible

The **Insurer's** obligation to pay **Damages** and **Claim Expenses** in connection with any **Claim** shall only be in excess of the **Deductible** as stated in the schedule.

The **Deductible** shall be paid by the **Insured**. The **Deductible** shall be applicable to each **Claim** and shall include **Damages** and **Claim Expenses**.

The **Insurer** will have no obligation whatsoever, either to the **Insured** or to any other person or entity, to pay any portion of the **Deductible** on behalf of the **Insured**.

5. Definitions

For the purposes of this Policy:

- 5.1 **Personal Injury** means bodily injury, mental injury, mental anguish, shock, sickness, disease or death.
- 5.2 **Circumstances** shall mean an incident, occurrence, fact, matter, act, error or omission, which may give rise to a **Claim**.
- 5.3 **Claim** shall mean any written demand received by the **Insured** for **Damages**, including but not limited to, a civil proceeding commenced by the service of a complaint or similar pleading, or an arbitration or other alternative dispute resolution proceeding, alleging a negligent act, error or omission in the provision of the **Professional Services** by the **Insured**.
- 5.4 **Claim Expenses** shall mean all legal costs and expenses reasonably incurred in the investigation, defence and settlement of any **Claim**, except any internal or overhead expenses or costs incurred by the **Insured** and any salaries of **Employees** of the **Insured** or the **Insurer**.

All **Claim Expenses** shall be included in the **Limit of Liability** and **Deductible**, and shall not be considered as sums payable in addition thereto.
- 5.5 **Damages** shall mean a monetary judgment or award the **Insured** are legally obligated to pay, or a settlement negotiated with the **Insured** and with the **Insurer's** prior written consent, but does not include **Claim Expenses**.
- 5.6 **Deductible** shall mean the amount as stated in the schedule, which shall be the responsibility of the **Insured**, as applicable, in respect of each **Claim** under the Policy.
- 5.7 **Director** or **Officer** shall mean any natural person who was or now is a **Director** or **Officer** of the **Policyholder** or any named Subsidiary of the **Policyholder** (or the equivalent position in any jurisdiction) or who becomes a **Director** or **Officer** of the **Policyholder** or any named Subsidiary of the **Policyholder** (or the equivalent position in any jurisdiction) during the **Policy Period**, including *de jure*, *de facto* and shadow **Directors**.
- 5.8 **Document** includes all **Documents** whether in soft or hard copy form (including stamps, currency coins, bank notes and bullion, traveller's cheques, cheques, postal orders, money orders, securities and the like) belonging to the **Insured** or for which the **Insured** is legally responsible, whilst in custody of the **Insured**, or in the custody of any person to or with whom they have been entrusted, lodged or deposited by the **Insured** in the ordinary course of the **Professional Services** performed by the **Insured**.
- 5.9 **Employee** means any person, other than a **Director** or partner of the **Insured**, who is or has been under a contract of employment or apprenticeship or any work experience or similar scheme with the **Insured**, in connection with the **Professional Services** provided by the **Insured**. This definition does not include **Sub-contractors**.

5.10 **Insured** shall mean the following:

- a. the **Policyholder** and any Subsidiary of the **Policyholder** as stated in the schedule; or
- b. any current or former **Employee**, but only whilst providing **Professional Services** on behalf of the **Policyholder** or any Subsidiary of the **Policyholder**; or
- c. any past or present principal, partner, **Officer, Director**, member, stockholder, **Employee**, contract employee or leased personnel under the direct supervision of the **Insured** but only while acting within the scope of their duties for the **Policyholder**;
- d. any retired principal, partner, **Officer, Director**, member, stockholder, **Employee** of the **Insured** while acting within the scope of his or her duties as a consultant for the **Policyholder**; or
- e. all Subsidiaries created or acquired during the Policy year, subject to the provisions contained in section 7.10 of the Policy.

5.11 The **Insurer** shall mean Bryte Insurance Company Limited.

5.12 **Limit of Liability** shall mean the maximum total amount specified as stated in the schedule, which the **Insurer** may be liable to pay to the **Insured** under this Policy.

5.13 **Policyholder** shall mean the legal entity designated as stated in the schedule.

5.14 **Policy Period** shall mean the period from the Inception Date of this Policy to the Expiration Date as set forth as stated in the schedule or its earlier termination or cancellation, if any.

5.15 **Pollutants** shall mean any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

5.16 **Professional Services** shall mean those activities as stated in the schedule performed by the **Insured** to others for a fee and/or in connection with **Professional Services** of the **Insured** and/or other remuneration as noted by the **Insurer**.

5.17 **Property Damage** shall mean any **Damage** to or destruction of any tangible property including loss of use thereof and any consequential loss directly resulting therefrom.

5.18 **Proposal** shall mean any information and/or statements or materials supplied to the **Insurer** including any application form completed and signed by the **Policyholder** and any attachments thereto.

5.19 **Retroactive Date** shall mean that a negligent act, error or omission must first take place on or after the date as stated in the schedule above and give rise to a **Claim**.

5.20 **Sub-contractors** mean independent consultants or **Sub-contractors** who provide services to the **Insured**. This definition does not include any **Employee**.

5.21 **Third Party** shall mean any natural person or persons, firm or firms, individual, partnership, organisation or corporation, other than the **Insured**, and shall not include any associated, parent or Subsidiary company of the **Insured**, or any other person or entity having a financial or executive interest in the **Insured**.

6. Exclusions

This Policy will not indemnify the **Insured** in respect of any of the following:

6.1 Personal Injury and Property Damage

Any **Claim** directly or indirectly arising out of, based upon, attributable to or as a consequence of, any **Personal Injury** or **Property Damage**. This exclusion does not apply where services are performed for a fee and/or in connection with the **Professional Services** of the **Insured**.

6.2 Delay

Any **Claim** arising out of, based upon, attributable to or as a consequence of a delay in the performance of, and/or non-completion of any contractual obligation to any **Third Party**, unless such a delay and/or non-completion of any contractual obligation arises from an actual or alleged negligent act, error or omission committed by the **Insured** in the execution of such contract. It is understood and agreed that any actual or alleged late delivery or delay shall not in itself constitute an actual or alleged negligent act, error or omission.

6.3 Directors and Officers and Employers Liability

Any **Claim**

- a. brought against a **Director** or **Officer** of the **Insured**, in their capacity as such; or
- b. arising from any obligation owed by the **Insured** as an **employer** or potential employer to any **Employee**, including **Claims** for wrongful dismissal, unfair dismissal or under any contract of employment or under any retainer with any consultant or under any training contract; or
- c. whether from any **Employee** or not, alleging sexual, racial or other harassment and/or sexual molestation and/or sexual and/or racial and/or disability and/or sexual orientation and/or religious and/or age discrimination or victimisation, or discrimination or victimisation of any other kind.

6.4 Punitive Damages

Any **Claim** arising out of, based upon, attributable to or as a consequence of:

- a. fines, taxes, penalties, treble or other multiple compensatory **Damages**; or punitive or exemplary **Damages**; or
- b. the return, restitution, or offset of fees, expenses or costs paid to the **Insured**; or
- c. any other **Damages** deemed uninsurable in law.

6.5 Criminal and Fraudulent Acts

Any **Claim** arising out of, based upon, attributable to or as a consequence of any intentional, dishonest, fraudulent or criminal act committed by the **Insured**.

6.6 Insolvency

Any **Claim** made against the **Insured**, where all or part of such **Claim** is directly or indirectly based upon or attributable to the insolvency of the **Insured** or the suppliers and/or **Subcontractors** of the **Insured**.

6.7 Intellectual Property Rights

Any **Claim** arising out of directly or indirectly, based upon, attributable to or in any way connected with a **Claim** for any actual or alleged misappropriation, infringement of copyright, patent, trademark, trade name, trade secret, customer information, database rights or any other intellectual property rights.

6.8 United States of America, Canada and Australia

any **Claim** made in or under the jurisdiction of the United States of America, Canada, Australia or their territories and/or possessions.

6.9 Joint Ventures

Any **Claim** made against the **Insured** for work carried out by the Insured for and in the name of any other companies, firm(s) or other associations of which the **Insured** form part for the purpose of undertaking any **Joint Ventures** unless the **Insurer's** agreement has been first obtained and an extension made upon this Policy.

6.10 Warranty and Contracted Obligations

Any **Claim** arising under any warranty or under any other contractual obligation to the extent that the obligation gives rise to a **Claim** to which the **Insured** would not have been subject and/or to loss for which the **Insured** would not have been liable in the absence of the warranty or contract.

6.11 Computer Viruses and Hacking

Any **Claim** arising out of:

- a. any computer viruses, worms or similar damaging or malicious electronically transmitted material or code, whether or not created or transmitted (directly or indirectly) by the **Insured**; or

- b. hacking, denial of service, attack or other computer misuse intended to cause damage to the **Insured** or anyone else, whoever the perpetrator.

6.12 Negotiable Instruments, Deterioration and Destruction

Any **Claim**

- a. arising out of, based upon, attributable to or in any way involving, directly or indirectly, the loss, damage, theft, misappropriation or fraudulent use of any securities or negotiable instruments, bank or currency notes, stamps including but not limited to, any bill of lading or any other shipping document; or
- b. arising out of wear and gradual deterioration, moth and vermin on **Documents**; or
- c. **Documents** destruction that is caused by riot or civil unrest.

6.13 Asbestos Nuclear, Pollution and War

Any **Claim**

- a. directly or indirectly, arising out of, or resulting from, asbestos or any actual or alleged asbestos related loss, injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos; or
- b. arising from, based upon, attributable to or as a consequence of, whether direct or indirect, or in any way involving;
 - i. ionising radiation or contamination by radioactivity or from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
 - ii. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- c. arising out of, based upon, attributable to, as a consequence or in any way involving, directly or indirectly the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or
- d. arising out of, based upon, attributable to, as a consequence of or in any way involving war (whether declared or not), civil war, acts of terrorism, sabotage, force of arms, armed international action, civil disorder or terrorist actions.

6.14 Agreement to Pay

Any **Claim** arising out of any agreement to pay or to be found liable to pay liquidated or ascertained damages to the extent that the **Insured's** liability under this Policy would have been exceeded in the absence of such an agreement in contract.

6.15 Other Insurance

Any **Claim** in respect of which the **Insured** is entitled to indemnity under any other insurance policy.

6.16 Failure to Effect or Maintain Insurance

Any **Claim** in respect of any failure or omission on the part of the **Insured** to effect or maintain insurance unless the **Insured** is requested in writing to effect or maintain insurance by clients of the **Insured** or by the **Joint Ventures** or Consortia of which they form part but nevertheless the **Insurer** will not indemnify the **Insured** in respect of any **Claim** made against them arising out of:

- a. the insolvency of any **Insurer**; or
- b. the failure to account for monies; or
- c. the failure to effect insurance when such insurance is unobtainable.

6.17 Professional Services

Any **Claim** arising out of **Professional Services** where the **Insured** contracts to manufacture, construct, erect, install or supply materials or equipments.

7. Conditions

For the purposes of this Policy:

7.1 Notice of Claim

The **Insured** as a condition precedent to payment under this Policy shall provide written notice to the **Insurer** of any **Claim** made against an **Insured** as soon as practicable and in any case during the **Policy Period**.

7.2 Notice of Circumstances

Written notice shall include but not be limited to a description of the **Circumstances** with full particulars as to dates and persons involved, the date and manner in which the **Insured** first became aware of a **Circumstance** and the reasons for anticipating a **Claim**.

7.3 Settlement of Claims and Deductible

The **Insurer** will only handle a **Claim** if it exceeds the agreed **Deductible** amount.

Within one month of a **Claim** being settled, the **Policyholder** undertakes to refund the **Insurer** for all **Claim Expenses** that the **Insurer** shall have incurred and which falls within the amount of the agreed **Deductible**.

7.4 Settlement of Claims and Negotiated Settlements

The **Insurer** undertakes on behalf of the **Insured** the handling and settlement of a **Claim** made against the **Insured** if the amount of **Damages** to be paid is expected to exceed the applicable **Deductible**.

The amount of **Damages** to be paid by the **Insurer** shall be based on a final decision of a court, a judicial authority or an arbitration court wherein an **Insured** person is required to pay compensatory **Damages**. Settlements made under court approval or out of court shall be deemed equivalent if the **Insurer** has consented thereto in writing.

The **Insured** shall neither admit nor settle any liability in whole or in part, nor incur charges and expenses without the prior written consent of the **Insurer** such consent not to be unreasonably withheld. An **Insured** person is obliged to support the **Insurer** in the investigation of the facts and **Circumstances** and not to commit or do anything, which reduces or may reduce the rights of the **Insurer**. In the event of the **Insured** not complying with this requirement, the **Insurer** shall not be liable for any consequences attributable thereto. It is a condition of the **Insured's** right to be indemnified under this Policy that the **Insured** shall give to **Bryte** such information and co-operation as the **Insurer** reasonably requires at the **Insured's** expense.

If the **Insurer** wishes to settle a **Claim** and the **Insured** is opposed to such settlement, the **Insurer's** total aggregate payments for **Damages** and **Claim Expenses** under this Policy shall be limited to the amount which the **Claim** could have been settled for.

Legal fees and costs awarded to the **Insured** in court shall pass to the **Insurer** to the extent of its payments under this Policy.

The choice of legal representation will be left to the **Insured** subject to written approval from the **Insurer**, such approval not to be unreasonably withheld.

7.5 Multiple Insured, Claims and Claimants

All **Claims** which directly or indirectly arise out of or are attributable to one originating source or cause shall be treated as a single **Claim** and shall be subject to one **Limit of Liability** and one **Deductible**.

7.6 Audit and Inspection

The **Insurer** may audit or inspect and have copies of any of the **Insured's** books, records, information and operations at any time upon reasonable notice to the **Insured** as far as such books, records, information and operations relate to any **Claim** or **Circumstance**.

7.7 Termination of Contract

This contract shall commence on the Inception Date and shall terminate on the Expiration Date as specified as stated in the schedule unless specifically endorsed.

7.8 Subrogation

The **Insurer** shall be subrogated to all the **Insured's** rights of recovery against any person or organisation before or after any payment or indemnity under this Policy. The **Insured** will give all such assistance in the exercise of rights of recovery as the **Insurer** may reasonably require. Such subrogated rights will first benefit the **Insurer** and then the **Insured**.

The **Insurer** agrees not to exercise any such right against any of the **Insured's Directors** or **Employees** unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, reckless, criminal or malicious act or omission of the **Director** or the **Employee**.

7.9 Changes to the Policy

The terms and conditions of this Policy may only be altered by an endorsement issued by the **Insurer**.

7.10 Change in Risk

If during the **Policy Period** any of the below occurs, the Insured must give written notice to the **Insurer**:

- a. A major change in the **Professional Services** provided; or
- b. A change in the **Professional Services** provided geographically; or
- c. If the **Insured** is a subject of a merger or acquisition.

The **Insurer** is then entitled to impose additional premium, terms and conditions that they deem necessary.

7.11 Fraudulent Claims

If the **Insured** make any request for payment or indemnity knowing the same to be false or fraudulent as regards amount, or otherwise, this Policy will be void and all payment and indemnity under this Policy shall be forfeited.

7.12 Representations and Warranty

It is warranted that the statements and particulars in the **Proposal** form referred to in the Schedule and any supplementary information pertaining thereto provided by or on behalf of the **Insured** are the basis of this Policy and shall be deemed incorporated herein.

The Insured agrees, by acceptance of this Policy:

- a. that the statements and particulars in the **Proposal** form, and any supplementary information are his representations and that this Policy is issued in reliance upon the truth of such representations; and
- b. that in the event of the **Proposal** form, or any supplementary information, containing misrepresentations which materially affect the acceptance of risk hereunder by the company this Policy shall be void in its entirety and of no effect whatsoever.

This Policy, its Declarations, the Schedule and endorsements embody the whole of the agreement existing between the **Insurer** and the **Insured** relating to this Policy.

7.13 Jurisdiction and Governing Law

The exclusive place of jurisdiction shall be the Republic of South Africa.

This contract shall be governed exclusively by the laws of the Republic of South Africa.

7.14 Arbitration

All disputes or differences concerning the construction or interpretation of the provisions of this Policy, whether arising before or after termination of this Policy, shall be submitted to arbitration in Johannesburg before the Arbitration Federation of South Africa (AFSA) in accordance with the applicable rules and in terms of the applicable Arbitration Act of South Africa.

The language to be used in the arbitration proceedings shall be English. The arbitration shall be conducted by a panel of three arbitrators having knowledge of the legal and insurance issues relevant to matters in dispute. The **Insurer** and the **Insured** shall each name one arbitrator and the third shall be appointed by the AFSA.

In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators shall not be asked to, and shall not award attorneys' fees or other costs. The costs of the arbitrators, mediators and any arbitration fees will be borne equally by the **Insurer** on the one hand and the relevant **Insured's** on the other. Otherwise, each party shall bear its own costs of the arbitration.

In the event that separate disputes arise between the **Insurer** and several **Insured** on related matters, these shall be resolved together or consecutively as the arbitrators or mediator shall consider appropriate.

7.15 Sanctions

Notwithstanding anything agreed to the contrary expressly or implicitly under the terms of this insurance contract, the following covers or activities are excluded under this contract: Insurance cover or any other insurance related service for any exposure or business that would constitute any prohibited, embargoed or otherwise sanctioned transaction under Relevant Sanction Laws, be it for reasons of its geographical location, be it for the involved goods and services or other reasons as defined by the Relevant Sanction Laws, require a payment in connection with any Specifically Designated National, Aircraft or Vessel or other person or entity defined as improper beneficiary, insured exposure or business partner under any of the Relevant Sanction Laws (SDN) or otherwise result in any breach of applicable Relevant Sanction Laws.

Relevant Sanction Laws under this contract are defined as follows:

Any law, regulation or similar rule relating to trade sanctions and/or embargoes imposed by any authority in/of:

- i. countries where any party to this contract is resident, domiciled or otherwise business active,
- ii. the United States of America,
- iii. the United Kingdom,
- iv. the United Nations and
- v. the European Community.

7.16 Headings

The headings to the paragraphs in this Policy are for convenience only and do not have any special meaning. Words in bold type in this Policy have a special meaning and are defined.

Notice supplied in addition to the Statutory Notice supplied with this Policy

Insurance policies are legal contracts entered into between the Insurance Company (we/us) and the Insured (you/your). The Intermediary (broker) used by you, as your agent and in terms of the Financial Advisers and Intermediary Services Act (FAIS), is obliged to bring to your attention all aspects of the insurance policy that affect the coverage purchased, both the positive and negative aspects.

Definitions

To assist all concerned, and in particular you, we have produced/reproduced various definitions utilised by us that could affect you in your understanding of the cover provided by this Policy in the General Definitions Section of the Policy.

These definitions are not a comprehensive list of all those used in this Policy, but we believe that they are of such a nature that we should bring them to your specific attention.

There are other definitions used in this Policy but we are confident that the broker is fully aware of definitions used in the South African Business insurance market upon which this Policy has been based.

These definitions do not necessarily appear in this Policy in the same order as they are listed.

Should you require any additional information, or explanation, as to the application of these definitions, or any aspect of this Policy, it is recommended that you contact the broker that arranged this Policy on your behalf. However, we are always available to assist you should the need arise.