

## PROFESSIONAL INDEMNITY INSURANCE

In Consideration of payment of the Premium by the **Insured** and subject to all the terms, conditions and exclusions, including all definitions, all covers and extensions under this policy is afforded solely with respect to **Claims** first made against the **Insured** during the **Policy Period** and reported to the **Insurer** as required by this policy. All covers and extensions are subject to the **Limit of Liability**, the **Sublimits of Liability** and the **Retentions** specified at Item 3, 4, 5 of the **Schedule** respectively.

### 1. INSURING CLAUSE

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| 1.1 Professional Liability | The <b>Insurer</b> will pay on behalf of an <b>Insured</b> all <b>Loss</b> resulting from any <b>Claim</b> against an <b>Insured</b> for a civil liability arising from an <b>Insured's Professional Services</b> . |
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### 2. EXTENSIONS

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All cover under Breach of Confidentiality, Compensation for Witness Attendance, Defamation, Fraud/Dishonesty, Intellectual Property Rights, Reputation Protection and Vicarious Liability clauses is afforded solely with respect to **Claim** first made against an **Insured** during the **Policy Period** and notified to the **Insurer** as required by this policy.

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| 2.1 Automatic Acquisition | <p>If during the <b>Policy Period</b> the <b>Policyholder</b> obtains, either directly or indirectly:</p> <ul style="list-style-type: none"><li>(a) control of the composition of the board of directors;</li><li>(b) control of more than half of the voting power; or</li><li>(c) a holding of more than half of the issued share capital;</li></ul> <p>of another entity then the definition of <b>Subsidiary</b> shall be extended to include such entity provided that:</p> <ul style="list-style-type: none"><li>(i) the entity has annual revenue for the last complete accounting period prior to the acquisition, of less than 10% of the total annual revenue of the <b>Policyholder</b> declared in the latest Annual Report and Accounts as at inception;</li><li>(ii) the entity is not incorporated, domiciled or providing <b>Professional Services</b> in the United States of America or Canada or any of their territories;</li><li>(iii) the entity is not regulated by the US Securities and Exchange Commission;</li></ul> |
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- (iv) the entity is not aware of any claims (either paid or notified) or circumstances within the preceding five years of a type which may have been covered had they been notified under a professional liability policy similar in scope and breadth of coverage to the cover afforded hereunder; and
- (v) the business activities of the entity fall within the definition of **Professional Services**.

In all other circumstances, the **Policyholder** may request an extension of this policy for such entity. The Insurer shall have the right but not the duty to offer cover for such entity and the **Policyholder** shall give the **Insurer** sufficient details to permit the **Insurer** to assess and evaluate the potential increase in exposure. In the event that coverage is provided, the **Insurer** shall be entitled to amend the policy terms and conditions, during the **Policy Period**, including but not limited to, the charging of a reasonable additional premium.

- 2.2 Breach of Confidentiality of The **Insurer** will pay on behalf of an **Insured** all **Loss** resulting from **Claim** alleging any breach of confidentiality or misuse of information in the performance of the Professional Services.
- 2.3 Compensation for Witness Attendance for The **Insurer** will pay on behalf of an **Insured** for the cost of attendance at any court, arbitration or adjudication hearing by any **Insured Person** as a witness for any **Claim** covered by this policy, where such attendance is required by the court or arbitrator.  
The **Sublimit of Liability** for this clause is the amount specified in Item 10 of the **Schedule** per person and in the aggregate during the **Policy Period**. No **Retention** shall apply to this clause.
- 2.4 Continuous Cover Notwithstanding the Prior **Claims/Circumstances** Exclusion, cover is provided under this policy for any **Claim** arising from a **Wrongful Act**, fact or circumstance which could or should have been notified under any earlier policy with the **Insurer**, provide always that:
  - (a) the **Insurer** has continuously and without interruption been the **Insurer** of the **Company** for Professional Indemnity since that date; and
  - (b) cover provided under this clause shall be subject to the **Insurer's** discretion to apply the terms, conditions, exclusions and limitations of the policy with the **Insurer** under which the relevant fact or circumstance could or should have been notified.
- 2.5 Defamation The **Insurer** will pay on behalf of an **Insured** all **Loss** resulting from **Claim** alleging any libel, slander or defamation or injurious falsehood by the **Insured** in the performance of **Professional Services**. No cover is provided

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under this extension where it is established by a judgment, award, finding or other final adjudication of a court, tribunal, commission or arbitrator that such **Claim** is arising from any intentional libel, slander defamation or injurious falsehood.

- 2.6 Discovery Period If this policy is neither renewed nor replaced with Professional Indemnity Insurance at or after the expiry of the **Policy Period**, the **Policyholder** shall be entitled to a **Discovery Period** of:
- (a) 30 days, granted automatically with no additional premium payable; or
  - (b) 12 months, upon payment of an additional premium, as specified in Item 10 of the **Schedule** as a percentage of the annual premium in effect immediately prior to the expiry of the **PolicyPeriod**.

If the **Policyholder** elects to purchase a **Discovery Period**, per item (b) above, then the **Policyholder** must make any request for a **Discovery Period** in writing, and pay any applicable additional premium, within 30 days after the expiry of the **Policy Period**. A **Discovery Period** is not cancellable by the **Policy holder** and any premium payable for a **Discovery Period** is non-refundable. No **Discovery Period** is available if this policy is cancelled or avoided, or there has been a **Transaction** prior to the expiry of the **PolicyPeriod**.

- 2.7 Emergency Costs Advancement If the written consent of the **Insurer** cannot be reasonably obtained before **Defence Costs** or **Legal Representation Costs** are incurred by an **Insured**, the **Insurer** agrees to give retrospective approval for such amounts incurred by the **Insured** to the point in time when the **Insured** could reasonably have sought the **Insurer's** written consent. The **Sublimit of Liability** for this clause is the amount specified in Item 10 of the **Schedule** in the aggregate for all **Defence Costs** and **Legal Representation Costs**.

Notwithstanding the above,

- (a) if it is established that there is no entitlement to indemnity under the policy for the specific **Defence Costs** or **Legal Representation Costs**, such amounts shall be repaid to the **Insurer** immediately, according to the several interests of the **Insured** and the **Company**; and
- (b) the **Company** or the **Insured** shall give written notice to the **Insurer** of the **Claim** or **Inquiry** which was the subject of the

emergency as soon as practicable, together with reasons why an emergency existed.

- 2.8 Fraud and Dishonesty      The **Insurer** will pay on behalf of any **Insured**, who is not the actual perpetrator, all **Loss** resulting from any **Claim** for **Fraud/Dishonesty** of any **Employee(s)** of the **Company** provided that the relevant fraudulent or dishonest conduct occurred before the date of discovery by any principal, partner or director of a **Company** of reasonable cause of suspicion of **Fraud/Dishonesty** on the part of the **Employee(s)**, whether or not it is possible at that date to identify the **Employee(s)** involved in the **Fraud/Dishonesty**.
- 2.9 Intellectual Property Rights      The **Insurer** will pay on behalf of any **Insured** all **Loss** resulting from **Claim** alleging any infringement of **Intellectual Property Rights** in the performance of **Professional Services**.
- 2.10 Joint Ventures      The **Insurer** will pay on behalf of any **Insured** all **Loss** resulting from any **Claim** where liability results directly from a **Wrongful Act** of an **Insured** arising out of the **Professional Services** carried out by an **Insured** for and in the name of any joint venture of which an **Insured** forms part, provided that an **Insured** has declared in the **Submission** all fees/turnover received from any joint venture.

The liability of the **Insurer** shall be proportionate to the lowest of:

- (a) the percentage of the share capital of the joint venture owned by an **Insured**; or
- (b) the percentage of the voting control of the joint venture exercised by an **Insured**;

unless the **Insurer's** written agreement has been first obtained to an alternative proportion and an endorsement made upon this policy.

This clause shall provide cover to an **Insured** only. No other participant in such joint venture, and no other **Third Party**, shall have any rights under this policy, and neither shall the **Insurer** be liable to pay a contribution to any insurer of any other participant in such joint venture.

- 2.11 Legal Representation Costs      In respect of any **Inquiry**, the **Insurer** will pay **Legal Representation Costs** to or on behalf of the **Insured**. This cover only applies when the notice of any **Inquiry** is first served and reported to the **Insured** during the **Policy Period** or **Discovery Period** if applicable.
- This cover will be subject to the **Sublimit of Liability** specified in Item 10 the **Schedule** in the aggregate during the **Policy Period**. No **Retention** shall apply to this clause.

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2.12 Loss of Documents The **Insurer** will pay on behalf of the **Insured** the costs the **Insured** incurs with the prior written consent of the Insurer for replacing or restoring any **Documents** which are destroyed, damaged or after diligent search cannot be found.

Such destruction, damage or loss must result solely from the performance of **Professional Services** by the **Insured** and be discovered for the first time and reported to the Insurer during the **Policy Period**.

The Insurer will not pay for any destruction, damage or loss resulting from;

- (a) Wear and tear or gradual deterioration;
- (b) Any computer virus; or
- (c) An act, error or omission committed or allegedly committed by any person who is not a director, partner or employee of the **Insured** at the time the destruction, damage or loss of such **Documents** first discovered.

This cover will be subject to the **Sublimit of Liability** specified in Item 10 of the **Schedule** in the aggregate during the **Policy Period**. A **Retention** specified in Item 5 shall apply to this cover.

2.13 Management buyouts If a **Subsidiary** ceases to be owned by the **Policyholder** due to a buy-out by existing management of the **Company**, the **Insurer** will extend the existing cover, subject to all terms, conditions and exclusions of the policy to the **Insured** in respect of such **Subsidiary** for a period of up to 30 days from the date of the buy-out for **Wrongful Acts** committed subsequent to the buy-out, such period not to extend beyond the expiry date of this policy. This clause shall not apply where there is other insurance in respect of such **Wrongful Acts**.

2.14 Mitigation Where the **Insured** first makes a determination during the **Policy Period** that it has committed a **Wrongful Act** requiring remediation or mitigation, the **Insurer** will pay the reasonable and direct cost of any remediation or mitigation, provided that:

- (a) the **Insurer** shall during the **Policy Period** have been informed in writing of the **Wrongful Act** and the work that is required to rectify it or mitigate its consequences;
- (b) the **Insurer** shall be reasonably satisfied that an **Insured** has committed a **Wrongful Act** requiring remediation or mitigation and that such costs are necessary to prevent or reduce the amount of a **Claim** covered under the Professional Liability Cover, and that the amount of **Damages** prevented or reduced would be greater than the cost of the work;

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- (c) such costs are supported by evidence of expenditure which shall be subject to approval by a competent person to be nominated by the **Policyholder** with the consent of the **Insurer**;
- (d) such costs shall not include any element of profit or loss of profit, nor any element of overheads, staff remuneration, standing idle time or management time of an **Insured**;
- (e) this extension shall only apply to the extent that such mitigation costs (or part thereof) exceed the cost that the **Insured** would have incurred in carrying out the works without the relevant **Wrongful Act**; and
- (f) the **Insurer** has consented in writing to the payment of such costs before work is carried out, such consent not to be unreasonably withheld.

2.15 Reputation  
Protection

The **Insurer** will pay on behalf of an **Insured** for any costs and expenses reasonably incurred with Insurer's prior consent for the services of a public relations consultants for the sole purpose of protecting the Insured's reputation that has been brought to question as a direct result of a **Claim** covered under this policy, provide that the Insured notify the Insurer within thirty (30) days of first being aware of the Insured's reputation being brought into question and provide the Insurer with full written details outlining the circumstances surrounding the event.

This cover will be subject to the **Sublimit of Liability** specified in Item 10 of the **Schedule** in the aggregate during the **Policy Period**. No **Retention** shall apply to this clause.

2.16 Vicarious Liability

The **Insurer** will pay on behalf of an **Insured** all **Loss** resulting from any **Claim** for any **Wrongful Act** of **Agent** who are engaged in the performance of **Professional Service**.

The **Insurer** will only pay **Loss** to the extent that an **Insured** has not waived or otherwise impaired any rights of recourse against such **Agent**.

### 3. DEFINITIONS

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- 3.1 **Agent** means a natural person, or company or other entity who has or had a written contract with the **Company** under which the **Company** engages the natural person or company or other entity to act for or on behalf of the **Company** in the performance of **Professional Services**.
- 3.2 **Bodily Injury** means physical injury, sickness, disease or death of a natural person; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.
- 3.3 **Claim** means any:
- (a) written demand for compensation in respect of a **Wrongful Act** of an Insured; or
  - (b) civil, regulatory or administrative proceedings whereby a **Wrongful Act** of an **Insured** is alleged.
- 3.4 **Company** means the **Policyholder** or any **Subsidiary** (including any predecessor business).
- 3.5 **Damages** means any amount that an **Insured** shall be legally liable to pay to a **Third Party** for a **Claim** in respect of judgments or arbitral awards rendered against an **Insured**, or for settlements negotiated by the **Insurer** with the consent of the **Policyholder**.
- 3.6 **Defence Costs** means reasonable fees, costs and expenses incurred by or on behalf of an **Insured**, with the prior written consent of the **Insurer**, in the investigation, defence, adjustment, settlement or appeal of any **Claim**. It shall not include any element of an **Insured's** own time costs or lost profits incurred in dealing with a **Claim**.
- 3.7 **Discovery Period** means the period immediately after expiry of the **Policy Period**, during which (subject to the provisions of **Discovery Period**) the Insured may notify **Claims** made, or **Inquiry** commenced, in that period in respect of **Wrongful Acts** or, in the case of **Inquiry**, conduct occurring before expiry of the **Policy Period**.

- 3.8 **Documents** means all documents of any nature whatsoever including computer records and electronic or digitised data in the possession or control of the **Insured** or the property of the **Insured** but does not include any currency, negotiable instruments or records thereof.
- 3.9 **Employee** means any natural person who was, now is, or during the **Policy Period** becomes expressly engaged under a contract of employment with the **Company**.
- Employee** shall not include any principal, partner or director of any **Insured** in their capacity as such.
- 3.10 **Fraud/ Dishonesty** means fraudulent or dishonest conduct:
- (a) not condoned, expressly or implicitly by any principal, partner or director of the **Company**; and
  - (b) that results in liability of the **Company** to any **Third Party**.
- 3.11 **Inquiry** means an official investigation, official examination or official inquiry, in relation to the performance of or failure to perform **Professional Services** by the **Insured** for which the notice or process compelling attendance or provision of information or documents by an **Insured** is first served during the **Policy Period**. It is not necessary that a **Wrongful Act** be alleged against the **Insured**.
- 3.12 **Insured** means the **Company** or any **Insured Person**.
- 3.13 **Insured Person** means:
- (a) any natural person, who was, now is or during the **policy period** becomes a principal, partner or director of the **Company** in their capacity as such ;
  - (b) any **Employee**;
  - (c) any spouse, civil partner, estate or legal representative of any **Insured Person** for **Loss** arising from a **Claim** for a **Wrongful Act** of such an **Insured Person** listed in (a), (b) above.
  - (d) the administrator, heirs, legal representatives or executor of a deceased, incompetent, insolvent or bankrupt **Insured Person's**



estate for **Loss** arising from a **Claim** for a **Wrongful Act** of such **Insured Person** listed in (a), (b) above.

- 3.14 **Insurer** means the **Insurer** stated in the schedule.
- 3.15 **Intellectual Property Rights** means all existing and future intellectual property rights throughout the world in whatever media, whether registered or unregistered and whether or not capable of registration, including but not limited to all copyright, patents, trade marks, trade names, domain names, brand names, slogans, logos, emblems and designs (and all applications or renewals for the protection or registration of these rights) CAD drawings, architectural designs together with all confidential information including trade secrets, know-how, formulae, methods, routines and other proprietary technology.
- 3.16 **Jurisdiction** as stated in the schedule.
- 3.17 **Legal Panel** means the firms of solicitors/lawyers appointed from time to time by the **Insurer** to provide representation on behalf of an **Insured** under this policy.
- 3.18 **Legal Representation Costs** means the reasonable legal costs and expenses for which an Insured is legally liable and which are incurred, with the prior consent of the Insurer, for legal representation in connection with any attendance at an Inquiry, including legal costs and expenses in providing information or documents related to a raid or on-site visit to a **Company** by any official Governmental body or authority, regulator, governmental or administrative agency or any self-regulatory body in respect of such **Inquiry**.
- 3.19 **Limit of Liability** means the amount specified as such in the **Schedule**.
- 3.20 **Loss** means **Damages** or **Defence Costs**, however **Loss** shall not include and this policy shall not cover any:
- (a) taxes;
  - (b) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages;
  - (c) fines or penalties unless insurable by law;
  - (d) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief;

- (e) benefits or overheads of, or charges or expenses incurred by any **Insured** including but not limited to the cost of any **Insured's** time;
  - (f) fees or commissions, for any **Professional Services** rendered or required to be rendered by an **Insured** or that portion of any settlement or award in an amount equal to such fees, commissions, or other compensation; or
  - (g) any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a **Claim** is brought.
- 3.21 **Policy Period** means the period of time specified in the Schedule.
- 3.22 **Policyholder** means the entity specified as such in the Schedule.
- 3.23 **Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance, or contaminant, including but not limited to, lead, smoke, vapour, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste. Such waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- 3.24 **Professional Services** means those activities described as "professional services" on the schedule to this policy, and which are performed within the territorial limit
- 3.25 **Properly Qualified Person** means any **Insured Person** recognised and properly registered with their appropriate professional body as an architect, engineer, surveyor, quantity surveyor or other person having equivalent professional qualifications more appropriate to the work undertaken.
- 3.26 **Property Damage** means damage to or loss of or destruction of tangible property or loss of use thereof.
- 3.27 **Related Claim** means any **Claims** alleging, arising out of, based upon or attributable to the same facts or alleged facts, or circumstances or the same **Wrongful Act**, or a continuous repeated or related **Wrongful Act**.
- 3.28 **Retention** means the amount specified as such in the Schedule.
- 3.29 **Retroactive Date** means the date specified as such in the Schedule.

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- 3.30 **Settlement Value** means in respect of any **Claim** covered under this policy:
- (a) the full amount claimed; or
  - (b) any settlement offer from the claimant(s) which is capable of acceptance.

Where the claimant(s)' costs, if applicable, are not quantified by the claimant, the **Insurer** will also pay a reasonable sum to an **Insured** to represent these costs.

- 3.31 **Schedule** means the document entitled "**Schedule**" that attached to and forms part of this policy.

- 3.32 **Sublimit(s) of Liability** means the amount(s) specified as such as Item 10 of the **Schedule**.

- 3.33 **Submission** means:
- (a) each and every signed proposal form, the statements, warranties, and representations therein, its attachments;
  - (b) the financial statements of any **Company**; and
  - (c) other documents of any **Company** filed with a regulator and all other material information;
- submitted to the Insurer in connection with this policy.

- 3.34 **Subsidiary** means any entity in which the **Policyholder**, either directly or indirectly through one or more entities;
- (a) controls the composition of the board of directors;
  - (b) controls more than half of the voting power; or
  - (c) holds more than half of the issued share capital;

on or before the inception date of this policy.

For any **Subsidiary** or any **Insured** thereof, cover under this policy shall only apply to **Wrongful Acts** committed while such entity is a **Subsidiary** of the **Policyholder**.

- 3.35 **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 organization(s) or government(s), committed for political, religious, ideological or similar purpose including the intention to influence any government and/or to put the public or any section of the public in fear.
- 3.36 **Third Party** means any entity or natural person except (i) any **Insured**; or (ii) any other entity or natural person having a financial interests or executive role in the **Company**.
- 3.37 **Transaction** means any one of the following events;
- (a) the **Company** consolidates with or merges into any other entity; or
  - (b) the **Company** sells 90% or more of its assets to any other person or entity or group of persons and/or entities acting in concert; or
  - (c) any person or entity or group of persons and/or entities acting in concert acquire more than 50% of the issued share capital of the **Company**; or
  - (d) an administrator, liquidator or receiver is appointed to the **Company**.
- 3.38 **Wrongful Act** means any actual or alleged act, error or omission committed solely in the performance of or failure to perform **Professional Services**.

#### 4. EXCLUSIONS

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The **Insurer** shall not cover **Loss** in connection with any **Claim** under this policy, including any endorsements:

- 4.1 **Asbestos** arising out of, based upon or attributable to the presence or release or possible release of asbestos or asbestos containing materials in whatever form or quantity.
- 4.2 **Bodily Injury / Property Damage** arising out of, based upon or attributable to **Bodily Injury** or **Property Damage** unless arising from an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing **Professional Services**.

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- 4.3 Contractual Liability arising out of, based upon or attributable to any:
- (a) liability assumed or accepted by an **Insured** under any contract or agreement; or
  - (b) guarantee or warranty;
- except to the extent such liability would have attached to an **Insured** in the absence of such contractual duty, term or agreement.
- 4.4 Costs Assessment arising out of, based upon or attributable to any failure by any **Insured** or other party acting for an **Insured** to make an accurate pre-assessment of the cost of performing **Professional Services**.
- 4.5 Director's and Officer's Liability arising out of, based upon or attributable to any **Claim** made against an **Insured** in their capacity as a director, officer, trustee or partner of the **Company** in respect of the performance or non-performance of their duties as a director, officer, trustee or partner of the **Company**.
- 4.6 Employer's Liability by any person for bodily injury, sickness, disease or death incurred, contracted or occurring whilst under a contract of service or apprenticeship with an **Insured** or for any breach of any obligation owed by an **Insured** as an employer.
- 4.7 Employment Practice Violation arising out of, based upon or attributable to any act, error or omission with respect to any employment or prospective employment of any past, present, future or prospective **Employee** or **Insured Person** of any **Company**.
- 4.8 Fraud and Dishonesty Conduct arising out of, based upon or attributable to any:
- (a) dishonest, malicious, fraudulent, willfully reckless or criminal conduct committed or allegedly committed by the **Insured**;
  - (b) any actual or alleged payments, commissions, gratuities, bribes, political contributions, benefits or any other favours to or for the benefits of any domestic or foreign governments, government officials or agents
- This exclusion shall not apply to Fraud and Dishonesty cover.
- This exclusion will only apply where it is established by an admission of such **Insured** or by a judgment, award, finding or other adjudication of a court, tribunal, commission or arbitrator that such conduct did in fact occur.
- 4.9 Infrastructure arising out of, based upon or attributable to:

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- (a) software or mechanical failure;
  - (b) electrical failure, including any electrical power interruption, surge, brown out or black out; or
  - (c) telecommunications or satellite systems failure;
- outside the direct control of an **Insured**.
- 4.10 Insolvency arising out of, based upon or attributable to the insolvency, liquidation, administration or receivership of the **Company**.
- 4.11 Jurisdiction arising out of, based upon or attributable to:
- (a) Legal or regulatory proceedings brought outside of the Jurisdiction;
  - (b) The enforcement of any judgment, award or regulatory order obtained within or determined pursuant to the laws of any country or jurisdiction outside of the Jurisdiction; or
  - (c) legal or regulatory proceedings in which the laws of any country or jurisdiction outside of the Jurisdiction are applicable even if only to a limited extent.
- 4.12 Manufacturing Liability arising out of, based upon or attributable to any goods or products sold, supplied, made, constructed, installed, maintained, repaired, altered or treated by or on behalf of the Insured, except a **Claim** that is a direct result of negligent design and/or specification by the **Insured** or any other person, company or firm directly appointed by and acting on behalf of the **Insured**.
- 4.13 Pollution arising out of, based upon or attributable to any direction, request or effort to:  
(a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or (b) respond to or assess the effects of **Pollutants**.
- 4.14 Prior Claims/  
Circumstances  
/Professional  
Inquiry made prior to the inception of this policy including any **Related Claims** thereto, or arising out of, based upon or attributable to a circumstance which has been properly notified under any other policy or certificate of insurance attaching prior to the inception of this policy including any **Related Claims** thereto
- 4.15 Prior Acts arising out of based upon, attributable to or in any way involving any **Wrongful Act** which first takes place before the **Retroactive Date**.

- 4.16 Trade Debts arising out of, based upon or attributable to any: (a) trading debt incurred by an **Insured** or (b) guarantee given by an **Insured** for a debt.
- 4.17 War/ Terrorism arising out of, based upon or attributable to any war (declared or otherwise), **Terrorism**, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation.
- 4.18 Watercraft/ Aircraft and Motor Vehicle arising out of, based upon or attributable to the ownership maintenance, operation, possession, use, loading or unloading by or on behalf of the **Insured** of any watercraft, aircraft, motor vehicle or trailer.
- 4.19 Workmanship arising out of defective workmanship (including without limitation, defective physical construction work, erection, installation, or repair) defective materials, defective products, or any defective materials, workmanship or production techniques used in the actual manufacture of any product. This exclusion shall not apply where such liability solely arises from the performance of **Professional Services**.

## 5. LIMIT of LIABILITY & RETENTION

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- 5.1 Limit of Liability
- (a) The total amount payable by the **Insurer** under this policy for all **Claims** in the aggregate during the **Policy Period** shall not exceed the **Limit of Liability**.
  - (b) Sub-limits of liability, Extensions and **Defence Costs** are part of that amount and are not payable in addition to the **Limit of Liability**.
  - (c) Each **Sublimit of liability** specified in the policy is the most the **Insurer** will pay in the aggregate under this policy as **Loss** in respect of any insurance cover or extension to which it applies.
  - (d) The inclusion of more than one **Insured** under this policy does not operate to increase the total amount payable by the **Insurer** under this policy.

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- 5.2 Other Insurance / Indemnification / Unless otherwise required by law, cover under this policy is provided only as excess over any self-insurance or other valid and applicable insurance, unless such other insurance is written only as specific excess insurance over the **Limit of Liability**. This policy shall not cover **Defence Costs** of any **Claim** where another insurance policy imposes upon another **Insurer** a duty to defend such **Claim**.
- 5.3 Retention / The **Insurer** shall only pay the amount of any **Loss** which is in excess of the **Retention**. For the avoidance of doubt, the **Retention** also applies to **Defence Costs**. The **Retention** is to be borne by the **Insured** and shall remain uninsured. A single **Retention** shall apply to **Loss** arising from **Related Claims**. The **Insurer** may, in its sole and absolute discretion, advance all or part of the **Retention**, and, in that event, such amounts shall be reimbursed to the **Insurer** by the **Insureds** forthwith. The Loss of Documents Extension excess rather than the **Retention** specified in the schedule shall apply to each and every **Claim** solely covered by that Extension.



## 6. CLAIMS

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6.1 Allocation In the event that any **Claim** involves both covered matters and matters or persons not covered under this policy, a fair and proper allocation of any cost of defence, damages, judgments and/or settlements shall be made between each **Insured** and the **Insurer** taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

6.2 Circumstances The **Policyholder** shall as soon as reasonably practicable during the **Policy Period** notify the **Insurer** at the address listed in the **Claims** Notifications Clause below of any circumstance of which any **Insured** becomes aware during the **Policy Period** which is reasonably expected to give rise to a **Claim**. The notice must include at least the following:

- (a) a statement that it is intended to serve as a notice of a circumstance of which an **Insured** has become aware which is reasonably expected to give rise to a **Claim**;
- (b) the reasons for anticipating that **Claim** (including full particulars as to the nature and date(s) of the potential **Wrongful Act(s)**);
- (c) the identity of any potential claimant(s);
- (d) the identity of any **Insured** involved in such circumstance; and
- (e) the date on and manner in which an **Insured** first became aware of such circumstance.

Provided that notice has been given in accordance with the requirements of this clause, any later **Claim** arising out of such notified circumstance (and any **Related Claims**) shall be deemed to be made at the date when the circumstance was first notified to the **Insurer**.

6.3 Claim Notification The **Policyholder** shall give written notice to the **Insurer** of any **Claim** first made against an **Insured** as soon as practicable and during the **Policy Period**. All notifications must be in writing to the address stated in Item 11 of the schedule.

If posted, the date of posting shall constitute the date that notice was given, and proof of posting shall be sufficient proof of notice.

- 6.4 Cooperation An **Insured** will at their own cost:
- (a) render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim** and the assertion of indemnification and contribution rights;
  - (b) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Loss** under this policy; and
  - (c) give such information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any **Loss** or determine the **Insurer's** liability under this policy.
- 6.5 Defence The **Insurer** does not assume any duty to defend, and an **Insured** shall defend and contest any **Claim** made against them unless the **Insurer**, in its sole and absolute discretion, elects in writing to take over and conduct the defence and settlement of any **Claim**. If the **Insurer** does not so elect, it shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer**. In the event that the **Insurer** decides that representation by a solicitor is necessary (such decision to be at the sole discretion of the **Insurer**) then an **Insured** shall select one of the **Legal Panel** to provide such legal representation.
- 6.6 Insured's Consent The **Insurer** may make any settlement it deems expedient of any **Claim** against any **Insured**, subject to such **Insured's** written consent. Where an **Insured** does not consent, the **Insurer** may elect to pay to an **Insured** the **Settlement Value** less the applicable **Retention** that the **Insurer** wishes to accept. Upon such payment being made there is no further cover available under the policy for that **Claim**.
- 6.7 Insurer's Consent No **Insured** shall admit or assume any liability, enter into any settlement agreement, or consent to any judgment without the prior written consent of the **Insurer**, other than where provided for under the terms of Mitigation Cover.
- 6.8 Fraudulent Claims If any **Insured** shall give any notice or **Claim** cover for any **Loss** under this policy knowing such notice or **Claim** to be false or fraudulent as regards amounts or otherwise, such **Loss** shall be excluded from cover under the policy, and the **Insurer** shall have the right, in its sole and absolute discretion, to avoid its obligations under or void this policy in its entirety, and in such case, all cover for **Loss** under the policy shall be forfeited, all premium shall be deemed fully earned and non-refundable and the **Policyholder** shall reimburse the **Insurer** for any payments made under this policy.

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- 6.9 Advance Payment of Defence Costs The **Insurer** shall pay **Defence Costs** covered by this policy within thirty (30) days after sufficiently detailed invoices for those costs are received by the **Insurer**. The **Policyholder** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this policy. This clause shall be applied in the same manner to **Professional Inquiry** Extension in respect of any **Inquiry**.
- 6.10 Related Claims If during the **Policy Period** a **Claim** is made or a circumstance is notified in accordance with the requirements of this policy any **Related Claim** made after expiry of the **Policy Period** will be accepted by the **Insurer** as having been:
- (a) made at the same time as the notified **Claim** was made or the relevant circumstance was notified; and
  - (b) notified at the same time as the notified **Claim** or circumstance.
- All **Related Claims** shall be deemed to be one single **Claim** and deemed to be made at the date of the first **Claim** of the series or at the first circumstance notified, whichever is first.
- 6.11 Settlement The **Insurer** shall be under no obligation (save where requested by the **Policyholder**) to make any payment to an **Insured** other than the **Policyholder** and shall unless otherwise requested by the **Policyholder** make payment of all **losses** insured hereunder to the **Policyholder** and such payment shall constitute a full and complete release and discharge of the **Insurer's** liabilities in respect of all and any such **loss** whether suffered directly by the **Policyholder** or not.

## 7. GENERAL CONDITIONS

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- 7.1 Assignment This policy and any rights under or in respect of it cannot be assigned by an **Insured** without the prior written consent of the **Insurer**.
- 7.2 Cancellation This policy may be cancelled:
- (a) by the **Insurer** pursuant to the Premium Payment clause for non-payment of premium; or

- (b) if no notice of a **Claim** or circumstance which is reasonably expected to give rise to a **Claim** has been provided to the **Insurer** under this policy, by the **Policyholder** with effect immediately upon the **Insurer's** receipt of written notice of such cancellation; the **Insurer** shall retain the customary short rate proportion (unexpired portion of premiumless handling charges) of the premium. If notice of a **Claim** or circumstance which is reasonably expected to give rise to a **Claim** has been provided to the **Insurer** under this policy, the premium shall not be returnable and shall be deemed fully earned at cancellation;
- (c) by mutual agreement between the **Insurer** and the **Policyholder**.
- 7.3 Change of Control The **Insurer** shall not be liable to make any payment or to provide any services in connection with any **Claim** arising out of, based upon or attributable to a **Wrongful Act** committed after the occurrence of a **Transaction**.  
  
If during the **Policy Period** an administrator, liquidator or receiver is appointed to a **Subsidiary**, then the cover provided under this policy with respect to such **Subsidiary** is amended to apply only to **Wrongful Acts** committed prior to the date of such appointment.
- 7.4 Contract Rights Nothing in this policy is intended to confer an enforceable benefit on any **Third Party**, whether pursuant to legislation equivalent to Singapore Contract (Rights of Third Parties) Act 2002 or otherwise.
- 7.5 Currency All premiums, **Limit of Liability**, **Retention**, **Loss** and other amounts under this policy are expressed and payable in the currency stated in Item 12 of the **Schedule**. If judgement is rendered, settlement is denominated, or any element of **Loss** under the policy is stated, in a currency other than the **Schedule** one, then payment under this policy shall be made at the middle rate of exchange published in Bloomberg.com web site on the date the **Claim** is made, or if it no longer current, a currency conversion web site selected by the **Insurer**.
- 7.6 Dispute Resolution Where, following receipt by the **Insurer** of all information reasonably required to provide such decision;
- (a) a final decision has been given by the **Insurer** regarding any aspect of this policy or any matter relating to cover thereunder;
- (b) that decision is disputed between the **Insurer** and an **Insured**; and

- (c) such dispute cannot be resolved within 14 days of the date on which such decision is communicated to the **Policyholder** or its insurance broker,

the dispute shall be referred to arbitration in the manner set forth in the Arbitration Endorsement which is attached to and hereby made a part of this policy.

- 7.7 Governing Law An interpretation of this policy relating to its construction, validity or operation shall be made exclusively in accordance with the laws of the country as stated in Item 13 of the **Schedule** and in accordance with the English text as it appears in this policy.
- 7.8 Plurals, Headings and Titles The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in italic typeface have special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them.
- 7.9 Premium Payment The **Policyholder** undertakes that the premium shall be paid to the **Insurer** before the inception of this policy.
- 7.10 Sanctions This policy does not provide any cover or benefit for any business or activity to the extent that:
- (a) Such cover or benefit and/or
- (b) Such business or activity
- would violate any applicable economic or trade sanction law or regulations of the UN and/or EU and/or United States of America and/or any other applicable national economic or trade sanction law or regulations.
- 7.11 Severability and Non-Imputation If there are more than one Insured under this policy, or if any one Insured is comprised of more than one party:
- (a) any failure on the part of any of the parties to:
- (i) comply with their duty of disclosure; or

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- (ii) comply with any term or condition in this policy; or
- (b) the misrepresentation in **Submission** by any of the parties to the Insurer before this contract of insurance was entered into; or
- (c) the commission by any of the parties of any act that would be excluded by Exclusion 4.7 Fraud and Dishonesty Conduct,

will not prejudice the rights of the other parties to the cover provided under this policy provided that such other parties:

- (i) are entirely innocent and had no prior knowledge of any of the failure of or commission of the acts mentioned above; and
- (ii) inform the Insurer as soon as practicable in writing with all relevant information and circumstances after becoming aware of the failure of or commission of the acts mentioned above.

#### 7.12 Subrogation

An **Insured** shall take all steps necessary or such steps as are required by the **Insurer** before or after any payment by the **Insurer** under this policy to preserve the rights and remedies which an **Insured** may have to recover the **Loss**. If any payment is to be made under this policy in respect of a **Claim**, the **Insurer** shall be subrogated to all rights of recovery of an **Insured** whether or not payment has in fact been made and whether or not an **Insured** has been fully compensated for its actual **Loss**. The **Insurer** shall be entitled to pursue and enforce such rights in the name of an **Insured**, who, both before and after payment under this policy, shall provide the **Insurer** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. An **Insured** shall do

nothing to prejudice the **Insurer's** rights under this subrogation clause.

The **Insurer** agrees not to exercise any such rights of recovery against any **Employee** unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, intentional criminal or malicious act or omission of the **Employee**. In its sole discretion, the **Insurer** may, in writing, waive any of its rights set forth in this Subrogation Clause.

Any amounts recovered in accordance with this clause shall be applied in the following order:

- (a) to compensate the **Insurer** and an **Insured** for the costs incurred in making the recovery (such payment to be allocated between the **Insurer** and an **Insured** in the same proportions as they have borne the costs thereof); and
- (b) to the **Insurer** up to the amount of the **Loss** paid by the **Insurer**; and

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- (c) to an **Insured** in respect of any uninsured element of the **Claim** (including the **Retention** under this policy).

7.13 Policy  
Administration

The **Policyholder** shall act on behalf of each and every **Insured** with respect to:

- (a) negotiating the terms and conditions of and binding cover; and
- (b) the exercise of all rights of **Insured's** under this policy; and
- (c) all notices; and
- (d) premiums; and
- (e) endorsements to this policy; and
- (f) the appointment of a member of the **Legal Panel** to defend a **Claim**; and
- (g) dispute resolution; and
- (h) the receipt of all amounts payable to an **Insured** by the **Insurer** under this policy.