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## **Professional Indemnity Insurance**

This is to certify that

**BOTSWANA INSURANCE COMPANY LIMITED**

**(The “Insurers”)**

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, the Insurers are hereby bound to insure in accordance with the terms, Exclusions, Conditions and limitations contained herein or endorsed hereon.

The Insurance Contract is conditional upon and will only come into effect following payment of the Premium by the Insured and the receipt thereof by or on behalf of the Insurers.



1. **PREAMBLE**

The Insured having made a written proposal to Insurers, dated as stated in the Schedule, and/or otherwise submitted particulars and statements constituting the risk profile, which proposal and/or risk profile shall form the basis of this insurance, the Insurers will indemnify the Insured in accordance with the terms, Exclusions, Conditions and limitations contained herein or endorsed hereon.

2. **INSURING CLAUSE**

The Insurers will indemnify the Insured against their legal liability to pay compensation (including claimants' costs, fees and expenses) in accordance with the law of any country but not in respect of any judgement, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part) as a result of any actual or alleged (other than by the Insured) negligent act, error or omission in the performance of the Professional Duties of the Insured undertaken in the course of the Business.

The indemnity granted herein applies only to claims first made against the Insured and notified to the Insurers during the Period of Insurance, subject to the provisions of Condition 7.2.

3. **DEFENCE COSTS (and ancillary claims costs)**

3.1 The Insured shall render at their own cost all such assistance as the Insurers may require in order to investigate defend or settle any claim and shall arrange to be available at their own cost for such interviews as may be required by the Insurers or any advisers or legal representatives appointed by the Insurers.

3.2 The Insurers will pay any expenses incurred by the Insured (excluding such costs mentioned in 3.1) in order to assist with the investigation defence or settlement of any claim made against the Insured and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any claim made or which might be made against the Insured, provided such claim or claims are the subject of indemnity by this Policy and the Insurers prior written consent is obtained.

3.3 All costs, fees and expenses incurred by the Insurers or at their instance in the investigation defence or settlement of any claim made against the Insured and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any claim made or which might be made against the Insured shall be deemed to be costs, fees and expenses incurred by the Insured with the prior consent of the Insurers.

4. **LIMIT OF LIABILITY**

The total liability of the Insurers, in terms of the Insuring Clause:

(a) Per Claim or series of claims arising from one originating cause or source, including interest thereon, all claimants' costs, fees and expenses and Defence Costs;

(b) in respect of all claims Per Policy Period;

shall not exceed the Limit of Liability stated in the Schedule.

5. **DEFINITIONS**

For the purposes of this insurance :

5.1 "The Insured" shall include :



- a) the Company, Partnership, Close Corporation, Association or Person named in the Schedule (hereinafter in this definition referred to as the "Insured");
- b) any present (including appointments made during the Period of Insurance) or former Director, Partner, Member, Principal or "In-house" Consultant of the Insured;
- c) any present or former employee of the Insured in respect of those activities that are conducted within

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the course and scope of that employees employment with the Insured;

d) any predecessors of the Insured but only to the extent that liability attaches to the Insured;

e) in the event of the death, incapacity, insolvency or bankruptcy of any person treated as the Insured (in respect of claims against such person) his estate, legal representatives and/or heirs.

5.2 "Professional Duties" shall mean those duties of a professional nature which the Insured undertakes in the course of their usual "Business" as stated in the Schedule.

5.3 "Documents" shall mean bonds, debentures, scrip certificates, deposit receipts, transfers, coupons, warrants, bills of exchange, promissory notes, title deeds, powers of attorney, deeds, wills, agreements, maps, plans, records (whether on paper, microfilm, magnetic tape or disc) and written and printed documents and forms of any nature, belonging to the Insured or for which the Insured is responsible in connection with the "Business".

5.4 "Deductible" shall mean that first amount of each and every claim to be borne by the Insured, it being understood and agreed that if any expenditure is incurred by the Insurers which, by virtue of the Deductible, is the responsibility of the Insured, then such expenditure shall be forthwith reimbursed by the Insured.

The Deductible shall apply Per Claim or series of claims arising from one originating cause or source.

#### 6(a) **EXCLUSIONS**

The Insurers shall not be liable to indemnify the Insured in respect of claims :

1. arising out of the death of or bodily injury to or illness or disease sustained by any person under a contract of employment or apprenticeship with the Insured where such death, injury, illness or disease arises out of the execution of such contract;
2. arising from breach of contract unless such breach is a breach or alleged breach of professional duty by the Insured or any other person upon whom the Insured has placed reliance;
3. for the costs of replacing or restoring documents;
4. arising out of loss of or distortion of computer data due to:
  - a) the presence of magnetic flux;
  - b) defects in the data tapes or other data media;
  - c) use or processing whilst mounted in or on any machine;
  - d) wear, tear, vermin or gradual deterioration;
  - e) climatic or atmospheric conditions or extremes of temperature;
5. arising out of any property manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured;
6. arising out of :
  - a) loss of money (including postal and money orders and Kruger Rands);
  - b) theft or forgery of cheques and other negotiable documents of title;



7. arising out of defamatory statements in any publication, journal, magazine or newspaper or on radio or television or in any electronic media;
8. brought about or contributed to by the dishonest, criminal or malicious act or omission committed by or on behalf of the Insured;
9. made against the Insured by any associated, parent or subsidiary company or by any person or entity having a financial or executive interest in the Insured unless emanating directly from an independent third party;
10. in respect of which the Insured is entitled to indemnity under any other insurance, and this Policy shall not be called into contribution with such other insurance, except in respect of any excess

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- beyond the amount payable under such insurance;
11. arising from the conduct of the business in the United States of America and/or Canada;
  12. or circumstances which may give rise to a claim, which have been or should have been notified under any other policy or certificate of insurance attaching prior to the inception of this Policy;
  13. for fines, penalties, punitive, vindictive or exemplary damages;
  14. arising out of the insolvency of the Insured;
  15. arising out of any act, error or omission, or such cause of any other risk indemnifiable under this Policy, committed or occurring prior to the Retroactive Date stated in the Schedule;
  16. up to the amount of the Deductible.

6(b) **COMPUTER VIRUS EXCLUSION**

Notwithstanding any provision of this Policy including any special Exclusion or extension or other provision not included herein which would otherwise override a general Exclusion, this Policy does not cover any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or consisting of or arising from the incapacity or failure of any computer, correctly or at all, to capture, save, retain or to process any data as a result of the action of any computer virus, or other corrupting, harmful or otherwise unauthorised code or instruction including any trojan horse, time or logic bomb or worm or any other destructive code, media or programme or interference.

A computer includes any computer, data processing equipment, microchip, integrated circuit or similar device in computer or non-computer equipment or any computer software, tools, operating system or any computer hardware or peripherals and the information or data electronically or otherwise stored in or on any of the above, whether the property of the Insured or not.

6(c) **WAR / TERRORISM EXCLUSION**

The Insurers shall not be liable to indemnify the Insured in respect of claims directly or indirectly caused by, resulting from happening through or in connection with:

- a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, insurrection, rebellion, revolution, military or usurped power;
- b) any action taken in controlling, preventing, suppressing or in any way relating to the excluded situations in above, including, but not limited to, confiscation, nationalization, damage to or destruction of property by or under the control of any Government or Public or Local Authority;
- c) any act of terrorism regardless of any other cause contributing concurrently or in any other sequence to the loss.

For the purpose of this Exclusion, terrorism means an act of violence or any act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear.

In any action suit or other proceedings where the Insurer alleges that by reason of this Exclusion a loss is not covered by this insurance the burden of proving that such loss is covered shall be upon the Insured.



**6(d) NUCLEAR EXCLUSION**

This Policy does not cover any legal liability, loss, damage, cost or expense whatsoever or any consequential loss directly or indirectly caused by or contributed to by or arising from:

- (i) ionising, radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion or use of nuclear fuel;
- (ii) nuclear material, nuclear fission or fusion, nuclear radiation;
- (iii) nuclear explosives or any nuclear weapon;
- (iv) nuclear waste in whatever form;

regardless of any other cause or event contributing concurrently or in any other sequence to the loss. For the purpose of this Exclusion only, combustion shall include any self-sustaining process of nuclear fission.

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#### 6(e) ASBESTOS EXCLUSION

Notwithstanding any provision of this Policy including any Exclusion, exception or extension or other provision which would otherwise override an Exclusion, this Policy does not cover any legal liability, loss, damage, cost or expense whatsoever or any consequential loss 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.

#### 7. CONDITIONS

Conditions 7.1 to 7.7 are Conditions precedent to the liability of the Insurers to provide indemnity under this Policy.

- 7.1 Premium is payable on or before the inception date or renewal date or instalment date as the case may be. The Insurer shall not be obliged to accept premium tendered to them more than 15 days after such date but may do so upon such terms as they in their sole discretion may determine.
- 7.2 The Insured shall give written notice to the Insurers as soon as practicable of any claim made against the Insured (or of any specific event or circumstance which may give rise to a claim being made against the Insured) and which forms the subject of indemnity under this Policy and shall give all such additional information as the Insurers require. Every claim, writ, summons or process and all documents relating to the claim, event or circumstance shall be forwarded to the Insurers immediately they are received by the Insured.

If the Insured notifies the Insurers during the Period of Insurance of any event or circumstance which the Insurers accept may give rise to a claim being made against the Insured, then such claim shall for the purpose of this Policy be treated as having been first made against the Insured during the Period of Insurance.

This policy will allow the Insured the opportunity to notify Insurers of claims made against them or circumstances that may give rise to claims being made against them for up to 30 days after expiry of this insurance provided that the Insured first became aware of the claim or circumstance prior to expiry.

- 7.3 The Insured shall at all times maintain accurate descriptive records of all professional services which records shall be made available for inspection and use by the Insurers or their duly appointed representatives insofar as they pertain to any claim under this Policy.
- 7.4 No admission, offer, promise or payment shall be made or given by or on behalf of the Insured without the written consent of the Insurers who, if they so wish, shall be entitled to take over and conduct, in the name of the Insured, the defence or settlement of any claim or to prosecute, in the name of the Insured, any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Insurers may require.
- 7.5 The Insured shall give notice as soon as reasonably possible of any fact, event or circumstance which materially changes the information supplied to the Insurers at the time when this Policy was effected and the Insurers may amend the terms of this Policy according to the materiality of such change.

Whilst this insurance shall remain fully operative in the event of a change in the constitution of the Insured, notice shall be given as soon as reasonably possible of any change in the Principals, Partners, Members or Directors or in the legal constitution of the Insured and the Insured shall supply such further information as the Insurers may require for reassessment of the risk.





- 7.6 The interpretation and enforcement of the terms, Conditions and Exclusions of this Policy (and any phrase or word contained herein) shall be in accordance with the law of the Republic of Botswana whose courts shall have jurisdiction to the exclusion of the courts of any other country.
- 7.7 The Policy and Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or Schedule shall bear such meaning wherever it may appear.

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- 7.8 The Insurers may at any time pay to the Insured in connection with any claim or series of claims under this Policy to which the Limit of Liability applies the amount of such limit (after deduction of any amounts already paid) or any lesser amount for which such claim or claims can be settled and upon such payment being made the Insurers shall relinquish the conduct and control of and be under no further liability in connection with such claim or claims notwithstanding the fact that the Insured has been only partially reimbursed for their loss due to the amount of any Deductible payable in terms hereof.
- 7.9 Where this Policy has been extended to include dishonest acts or omissions of any person treated as the Insured, in respect of claims arising from such dishonesty, the Insured shall take all possible action to sue for and obtain reimbursement from such person and any money or other property held by the Insured which, but for such dishonesty, would be due to such person shall, to the extent allowable in law, be deducted from the Insured's loss.
- 7.10 All recoveries made in respect of any claim under this Policy shall be applied (after deduction of the costs, fees and expenses incurred in obtaining such recovery) in the following order of priority :
- a) the Insured shall first be reimbursed for the amount by which their liability in respect of such claim exceeded the amount of indemnity provided by the Policy;
  - b) the Insurers shall then be reimbursed for the amount of their liability under the Policy in respect of such claim;
  - c) any remaining amount shall be applied towards the amount of the Deductible borne by the Insured in respect of such claim.
- 7.11 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance, shall declare as soon as possible such details as the Insurers may require. The Premium shall then be adjusted and any difference paid by or allowed to the Insured, as the case may be, subject to any minimum premium that may apply. Unless otherwise stated the premium shown in the Schedule shall be the Minimum Premium.
- 7.12 If indemnity is sought under this Policy by any fraudulent means :
- a) all benefit in respect of such claim shall be forfeited;
  - b) Insurers may cancel the Policy with immediate effect by notice in writing to the last known address of the Insured.
- 7.13 If the Limit of Liability is increased during the Period of Insurance, the liability of the Insurers in respect of claims made against the Insured or for circumstances notified, or which should have been notified, to the Insurers prior to such increase, shall not exceed the Limit of Liability applicable prior to such increase.
- 7.14 Misrepresentation, misdescription or non-disclosure in any material particular shall render the Policy voidable;
- 7.15 Whenever this Policy provides notice to be given to the Insurers such notice shall be given to :

## **COMMUNICABLE DISEASE EXCLUSION**

**(For use on liability policies)**

1. Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
2. For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.
3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - 3.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - 3.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
  - 3.3. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

LMA5396

17 April 2020

## **BOTSWANA INSURANCE COMPANY LIMITED**

### **8. SPECIAL EXTENSIONS**

#### **1. Sub-Contractors**



This Insurance extends to indemnify the Insured in respect of the professional activities and duties necessary to carry out the Business/Profession, sub-contracted and/or sub-let by the Insured, provided always that:

- a) such activities and duties shall only be sub-contracted and/or sub-let to suitably qualified firms, persons or parties;
- b) the Insured shall at all times retain all rights of recourse against such firms, persons or parties and will

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give all reasonable assistance to the Insurers in effecting such rights.



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