

MISCELLANEOUS ERRORS AND OMISSIONS LIABILITY POLICY – “CLAIM(S)” MADE AND REPORTED

THIS IS A “CLAIM(S)”-MADE AND REPORTED POLICY. Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered. Any amounts paid or payable as “Loss” and “Costs, Charges and Expenses” shall reduce and may exhaust the Limit of Liability provided by the Policy. Words and phrases that appear in quotation marks have special meaning.

SECTION I - INSURING AGREEMENTS

In consideration of the payment of the premium, and in reliance upon the statements made in the application, the supplementary applications and any additional document(s) for this insurance which are made a part thereof, the Insurer agrees to provide insurance as follows:

1. BASIC COVERAGE

The Insurer will pay on behalf of the “Insured(s)” all sums which the “Insured(s)” shall become legally obligated to pay as compensatory damages resulting from “Claim(s)” first made against the “Insured(s)” during the “Policy Period” and reported to the Insurer in accordance with Section IV Item 11 – NOTICE OF “CLAIM(S)” by reason of an alleged or actual “Wrongful Act(s)” undertaken in the course of “Professional Service(s)”.

2. DEFENCE AND SETTLEMENT

With respect to “Claim(s)” covered under Section I, Item 1, the Insurer shall have the right and duty to:

- (a) defend any suit or arbitration proceeding against the “Insured(s)” seeking compensatory damages payable under the terms of this Policy even if any of the allegations of the suit are groundless, false or fraudulent;
- (b) investigate and negotiate the settlement of any “Claim(s)” or suit as it deems expedient.

The Insurer shall not settle any “Claim(s)” without the consent of the “Insured(s)”. If, however, the “Insured(s)” does not consent to any settlement recommended by the Insurer and shall elect to contest the “Claim(s)” or continue any legal proceedings in connection with such “Claim(s)”, then the Insurer’s liability for the “Claim(s)” shall not exceed the amount for which the “Claim(s)” could have been so settled with its consent up to the date of such refusal.

3. LIMIT OF LIABILITY AND DEDUCTIBLE

The Limit of Liability stated in the Declarations is the most the Insurer will pay under Section I, Item 1, as compensatory damages for all “Claim(s)” made against the “Insured(s)” during the “Policy Period”, regardless of the number of “Insureds” or the number of claimants.

Any amounts paid or payable under Section I, Item 2 as “Costs, Charges and Expenses” to investigate and defend any suit or arbitration proceeding against the “Insured(s)” and under Section I Item 4 as Supplementary Payments shall reduce the Limit of Liability applicable to each “Claim(s)” as stated in the Declarations.

The Deductible stated in the Declarations will apply to compensatory damages for each “Claim(s)” under Section I, and the Insurer will only be responsible in excess of this amount. The full Limit of Liability will apply over the Deductible.

The Deductible will not apply to Section I, Items 2 and 4.

One or more “Claim(s)” arising out of the same or related “Wrongful Act(s)” in the rendering of “Professional Service(s)” is an “Inter-Related Wrongful Act(s)” and will be considered a single “Claim(s)”, first made as stated in Section IV, Item 11 – Notice of “Claim(s)” and subject to a single Limit of Liability.

4. SUPPLEMENTARY PAYMENTS

With respect to “Claim(s)” covered under Section I, Item 1, the Insurer shall pay or reimburse:

- (a) all premiums on bonds to release attachments for an amount not in excess of the Limit of Liability shown in the Declarations;
- (b) all premiums on appeal bonds required in any defended suit, but without any obligation to apply for or furnish such bonds;
- (c) all costs taxed against the “Insured(s)” in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the Limit of Liability;
- (d) all reasonable expenses (other than loss of earnings) incurred by the “Insured(s)” at the Insurer’s request.

5. TERRITORY & RETROACTIVE DATE

Unless otherwise endorsed hereon, this Policy applies only to “Claim(s)” made in Canada in respect of “Wrongful Act(s)”, which both occur:

- (a) within Canada; and,
- (b) after the retroactive date shown on the Declarations page and before the expiration of the “Policy Period”; and provided always that the “Claim(s)” is first made against the “Insured(s)” during the “Policy Period” and notice given to the Insurer in accordance with Section IV, Item 11.

6. AUTOMATIC EXTENDED REPORTING PERIOD

This policy shall automatically provide the “Insured(s)” an extended reporting period of (30) thirty days, following the termination of this Policy, for the reporting of any “Claim(s)”, but only with respect to any “Wrongful Act(s)” committed after the Retroactive Date and prior to such termination date. It is a condition precedent to coverage pursuant to this clause that the “Insured(s)” report any “Claim(s)” to the Insurer within the extended 30-day reporting period. This extended 30-day reporting period will not apply if the Policy is cancelled because of non-payment of the premium by the “Insured(s)” or if replacement coverage is obtained from the Insurer

7. DISCOVERY PERIOD

If the Insurer or the "Named Insured(s)" shall cancel or refuse to renew this Policy and provided that the premium has been fully paid, the "Insured(s)" shall have the right, upon payment of an additional premium, to an extension of the coverage granted by this Policy in respect of "Claim(s)" first made against the "Insured(s)" during the twelve (12) months after the termination of the Policy, but only with respect to any "Wrongful Act(s)" committed after the Retroactive Date, if specified, and prior to such termination date. Such twelve (12) month period is hereinafter referred to as the Discovery Period. The additional premium to be charged will be determined upon request of this extension and will remain at the discretion of the Insurer; however, such additional premium shall not exceed 100% of the previous annual premium. This right of extension shall cease unless written notice is given to the Insurer within (30) thirty days after the termination date, together with full payment of the premium for this extension. The Discovery Period will be part of the immediately preceding "Policy Period" and a single aggregate Limit of Liability will apply to such "Policy Period", including the Discovery Period.

The additional premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period, once effected, is not cancellable.

For the purposes of this clause, the Insurer's quotation of differing terms is not a refusal to renew this Policy.

SECTION II - EXCLUSIONS

This Policy does not apply to:

1. "Abuse":

- (a) "Claim(s)" arising directly or indirectly from "Abuse" committed or alleged to have been committed by an "Insured(s)", including the transmission of disease arising out of any act of "Abuse";
- (b) "Claim(s)" based on practices of employee hiring, acceptance of volunteer workers or supervision or retention of any person(s) alleged to have committed "Abuse";
- (c) "Claim(s)" alleging knowledge by an "Insured(s)" of, or failure to report, the alleged "Abuse" to the appropriate authorities.

2. Asbestos:

Any actual or alleged liability for any "Claim(s)" related to or arising from any actual or alleged liability for any legal remedy of any kind whatsoever (including but not limited to damages, interest, mandatory or other injunctive relief, statutory orders or penalties, "Cost, Charges and Expenses" or other costs, or expenses of any kind) in respect of actual or threatened loss, damage, cost or expense directly or indirectly caused by, resulting from, in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

3. Bankruptcies or Insolvency:

The insolvency or bankruptcy of the "Insured(s)".

4. Bodily Injury:

Any actual or alleged bodily injury, sickness, disease or death of any person(s).

5. Contractual:

The liability of others assumed by the "Insured(s)" under any contract or agreement unless such liability would have attached to the "Insured(s)" even in the absence of such contract or agreement.

6. "Data":

Loss in connection with any "Claim(s)" based on, attributable to or arising directly or indirectly from the distribution or display of "Data" by means of an Internet Website, the Internet, an Intranet, Extranet or similar device or system designed or intended for electronic communication of "Data".

7. Employment Contract:

Any "Claim(s)" brought by any employee or former employee arising out of a contract of employment with the "Insured(s)" or a sub-contractor of the "Insured(s)".

8. Failure to Maintain Insurance:

Failure to effect or maintain any insurance or bond.

9. Fiduciary:

Breach of fiduciary duty, responsibility or obligation in connection with any employment benefit or pension plan.

10. Former Partnership:

The "Named Insured(s)" participation in a former general partnership, limited liability partnership, joint venture or company unless specifically endorsed hereon.

11. Fraudulent:

Any fraudulent, dishonest, criminal act or wilful error or omission committed by any "Insured(s)".

12. "Fungi":

- (a) Any "Claim(s)" arising directly or indirectly from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any "Fungi" or "Spore(s)" however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of "Fungi" or "Spore(s)";
- (b) Any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with (a) above; or
- (c) Any obligation to pay damages, share damages with or repay someone else who must pay damages because of such injury or damage referred to in (a) or (b) above.

13. Guarantees or Warranties:

Warranties or guarantees or estimates of costs or profits or return on capital.

14. "Insured(s)" vs. "Insured(s)":

Any "Claim(s)" by an "Insured(s)".

15. Nuclear:

- (a) Liability imposed by or arising under the Nuclear Liability Act;
- (b) Any "Claim(s)" with respect to which an "Insured(s)" under this Policy is also insured under a contract of nuclear energy liability insurance (whether the "Insured(s)" is unnamed in such contract or whether or not it is legally enforceable by the "Insured(s)") issued by the Nuclear Insurance Association of Canada or any other Insurer or group or pool of Insurers or would be an "Insured(s)" under any such Policy but for its termination upon exhaustion of its limit of liability;
- (c) Any "Claim(s)" resulting directly or indirectly from the "Nuclear Energy Hazard" arising from:
 - (i) the ownership, maintenance, operation or use of a "Nuclear Facility" by or on behalf of an "Insured(s)";
 - (ii) the furnishing by an "Insured(s)" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "Nuclear Facility"; and,

- (iii) the possession, consumption, use, handling, disposal or transportation of "Fissionable Substance(s)", or of other "Radioactive Material" (except radioactive isotopes, away from a "Nuclear Facility", which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by any "Insured(s)".
16. **Personal Injury:**
- False arrest, detention or imprisonment;
 - Libel, slander or defamation of character;
 - Discrimination;
 - Wrongful entry or eviction, or invasion of any right of privacy;
 - Wrongful dismissal.
17. **Personal Profit or Gain:**
The gaining in fact of any personal profit, gain or advantage to which the "Insured(s)" is not legally entitled, or out of any dispute involving the "Named Insured(s)" fees, commissions or charges.
18. **Pollution:**
- Any "Claim(s)" which arises out of or would not have occurred in whole or in part but for the actual, alleged or threatened spill, discharge, emission, disbursement, seepage, leakage, migration, release or escape of "Pollutant(s)" at any time;
 - Any loss, cost or expense arising out of any:
 - request, demand or order that any "Insured(s)" or others test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "Pollutant(s)";
 - "Claim(s)" or action by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, decontaminating, stabilizing, remediating, neutralizing, or in any way responding to, or assessing the effects of "Pollutant(s)".
19. **Prior Acts:**
Any fact, circumstance or situation indicating the possibility of a "Claim(s)" and already known to the "Insured(s)" prior to the effective date of this Policy.
20. **Property Damage:**
For any actual or alleged property damage, or any actual or alleged damage to or destruction of any tangible property including loss of use thereof.
21. **Retroactive Date:**
Any alleged or actual "Wrongful Act(s)" undertaken that occurred prior to the Retroactive Date stated in the Declarations.
22. **Subsidiary:**
Any "Claim(s)" made by or against any business enterprise which is not shown in the Declaration page as a "Named Insured(s)" and which:
- is wholly or partially owned by any "Insured(s)";
 - is an apparent subsidiary affiliated or sister company of any "Insured(s)";
 - wholly or partially owns any "Insured(s)"; or,
 - controls, operates or manages any "Insured(s)".
- Each exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the alleged or actual "Wrongful Act(s)".
- SECTION III - DEFINITIONS**
- As used in this Policy, the following words or expressions shall mean:
- "Abuse":**
Any act or threat involving molestation, harassment, corporal punishment or any other form of physical, sexual or mental abuse.
 - "Claim(s)":**
 - Any verbal or written demand(s) received by the "Insured(s)" for monetary damages or non-monetary damages, injunctive relief or other relief;
 - Any civil, administrative, arbitration or regulatory proceeding arising out of an alleged "Wrongful Act(s)" undertaken during the provision of "Professional Service(s)".
 - "Cost, Charges and Expenses":**
Any reasonable and necessary legal fees incurred in the investigation and defence of a "Claim(s)", pre-judgment interest and assessable costs and disbursements but shall not include:
 - salaries, wages, fees, overhead or benefit expenses of an "Insured(s)";
 - any amounts incurred in the defence of a "Claim(s)" for which any other insurer has a duty to defend; or
 - "Data":**
Representations of information or concepts, in any form.
 - "Fissionable Substance(s)":**
Any prescribed substances that is, or from which can be obtained a substance capable of releasing atomic energy by nuclear fission.
 - "Fungi":**
Includes, but is not limited to, any form or type of mould, yeast, mushroom or mildew whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any "Fungi" or "Spore(s)" or resultant mycotoxins, allergens or pathogens.
 - "Insured(s)":**
The "Named Insured(s)" and any present or past partner, executive officer, director or employee and, in the event of their death, incompetence, insolvency or bankruptcy, their estate or appointed legal representative while acting within the scope of their duties as such.
 - "Inter-related Wrongful Act(s)":**
Any "wrongful act(s)" that has as a common nexus, any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.
 - "Loss":**
Any "Costs, Charges and Expenses", damages, settlements and judgments including taxable costs, pre-judgment interest and any post-judgment interest provided, however, that "Loss" shall not include:
 - punitive, exemplary or the multiple portion of multiplied damages;
 - criminal or civil fines;
 - penalties imposed by law;
 - liability for matters which are uninsurable under the law pursuant to which this Policy shall be construed.
 - "Named Insured(s)":**
The person(s) or entity(ies) shown in the Declarations.
 - "Nuclear Energy Hazard":**
The radioactive toxic, explosive or other hazardous properties of "Radioactive Material".
 - "Nuclear Facility":**
 - Any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;

- (b) Any equipment or device designed or used for
 - (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them,
 - (ii) processing or utilizing spent fuel, or
 - (iii) handling, processing or packaging waste;
 - (c) Any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the "Insured(s)" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste "Radioactive Material" and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
13. **"Policy Period"**:
The period shown on the Declarations Page. If this Policy is cancelled, the "Policy Period" shall be amended accordingly. If the Discovery Period is exercised in accordance with Section I, Item 7, it shall be part of the last "Policy Period" and not an additional period.
14. **"Pollutant(s)"**:
Any solid, liquid, gaseous or thermal irritant or contaminant including smoke, odour, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
15. **"Professional Service(s)"**:
Services limited to those stated in the Declarations, rendered by the "Insured(s)" to others.
16. **"Radioactive Material"**:
Uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.
17. **"Spore(s)"**:
Includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any "Fungi".
18. **"Wrongful Act(s)"**:
Any actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty by the "Insured(s)" in the discharge of "Professional Service(s)".

SECTION IV – CONDITIONS

1. ACTION AGAINST THE INSURER

No action or legal proceedings may be initiated against the Insurer. All disputes under the Policy shall be resolved by way of arbitration in accordance with Section IV, Item 3.

2. ADJUSTMENT CLAUSE

This Policy is issued and the premium computed on the basis of the information submitted to the Insurer as part of the Application referred to in the Declarations. The Insurer may require premium adjustment and coverage revision in the event:

- (a) the "Named Insured(s)" acquires any other entity or
- (b) the "Named Insured(s)" creates or acquires a subsidiary subsequent to the inception date of this Policy. The "Named Insured(s)" agrees to give notice to the Insurer in writing as soon as practicable of the happening of either of the foregoing and furnish such information in connection therewith as the Insurer may require.

3. ARBITRATION

Any dispute between the "Insured(s)" and the Insurer arising in connection with or relating to this Policy shall be submitted to binding arbitration in accordance with the legislation that applies in the jurisdiction of the "Named Insured(s)" domicile as enumerated in the declarations page. The arbitration panel shall consist of one arbitrator selected by the "Insured(s)", one arbitrator selected by the Insurer and a third independent arbitrator selected by the first two arbitrators. If all parties consent, the arbitration can proceed with a single arbitrator.

In any such arbitration, each party will bear its own legal fees and expenses and the costs and expenses of the arbitration, including the arbitrators, shall be shared equally by the parties to the dispute unless otherwise agreed.

4. ASSIGNMENT

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

5. ASSISTANCE AND CO-OPERATION

The "Insured(s)" shall co-operate with the Insurer in the investigation and defence of any "Claim(s)" or action, give to the Insurer such information and written statements as the Insurer may require, and shall attend examinations for discovery, hearings and trials and give evidence in connection with the defence of such action, all without charge to the Insurer. The "Insured(s)" shall not voluntarily make any payment, assume any liability or obligation or incur any expense, unless with the written consent of the Insurer.

6. AUTHORIZATION CLAUSE

By acceptance of this Policy, all "Insured(s)" agree that the "Named Insured(s)" shall act on their behalf with respect to the giving or receiving of any notice provided for in this Policy, the payment of premiums and the receiving of return premiums and the negotiation and acceptance of any endorsement.

7. CANADIAN CURRENCY

All limits of insurance, premiums and other amounts as expressed in this Policy are in Canadian currency.

8. CANCELLATION

This Policy may be cancelled:

- (a) by the Insurer giving to the "Named Insured(s)" by registered mail notice of cancellation as follows:
 - (i) 15 days' notice of cancellation, if cancellation is due to non-payment of premium;
 - (ii) 30 days' notice of cancellation, if cancellation is due to any other reason, such notice to be accompanied by a pro rata return of premium.
- (b) by the "Named Insured(s)", giving written notice at any time. Cancellation will take effect on the date of the "Named Insured(s)" written notice "is received by the Insurer" or at a later date if specified therein. The Insurer will refund the unearned premium on a short-rate basis, but in no event shall the short-rate premium for the expired time be deemed to be less than any minimum retained premium specified. This Policy may not be cancelled during the Discovery Period.

9. CHANGES

This Policy contains all the agreements between the "Named Insured(s)" and the Insurer concerning the insurance afforded. The "Named Insured(s)" shown in the Declarations is authorized to make changes in the terms of this Policy with the Insurer's consent. The terms of this Policy may be amended or waived only by endorsement issued by the Insurer and made a part of this Policy.

10. "INTER-RELATED WRONGFUL ACT(S)" AND DATE OF "CLAIM(S)" CLAUSE

More than one "Claim(s)" involving either the same "Wrongful Act(s)" or an "Inter-related Wrongful Act(s)" shall constitute a single "Claim(s)" and such single "Claim(s)" shall be deemed to have been first made at the earliest of either:

- (a) the time the earliest "Claim(s)" was made; or
- (b) the earliest time in which notice was given under any insurance Policy of any actual or alleged "Wrongful Act(s)" which is the basis of any "Claim(s)".

11. NOTICE OF "CLAIM(S)"

It is a condition precedent to coverage that the "Insured(s)" shall give immediate notice in writing of any "Claim(s)" first made against the "Insured(s)" to the Insurer. Such notice shall in any event be given not later than 30 days after the expiration of the final "Policy Period".

If during the period of this insurance the "Insured(s)" shall first become aware of any facts or circumstances which might reasonably be expected to give rise to a "Claim(s)" against the "Insured(s)" and shall during the period of this insurance give written notice to the Insurer of such facts or circumstances, then any such "Claim(s)" which is subsequently made shall be deemed to have been made on the date that the Insurer was first advised of the facts or circumstance.

12. OTHER INSURANCE

If other valid and collectable insurance is available to an "Insured(s)" for any loss that is covered under this Policy, the Insurer under this Policy shall be liable for only the excess, if any, of any loss over the applicable limit of the other insurance covering such loss.

This Policy shall not contribute to any "Claim(s)" that is less than or equal to the applicable limit of the other insurance covering such "Claim(s)".

In the event that any part of such other valid and collectible insurance is provided by another Policy of any member company of the Co-operators Group, the Insurer's liability hereon shall be reduced by the amount payable under such other Policy.

13. SEVERABILITY CLAUSE

In the event that the Application contains misrepresentations or material non-disclosures which materially affect either the acceptance of the risk or the hazard assumed by the Insurer under this Policy, this Policy shall be void and of no effect whatsoever, but only as against any "Insured(s)" who completed or signed the Application or had actual knowledge of such misrepresentations. Nothing in this clause shall increase the Insurer's maximum liability as set forth in Section I, Item 3 of this Policy.

14. STATUTORY CONFORMITY

Terms of this Policy, which are in conflict with the statutes of the province where the "Insured(s)" is domiciled as enumerated in the declarations page are hereby amended to conform to such statutes.

15. SUBROGATION

In the event of any "Claim(s)" under this Policy, the Insurer shall be subrogated to all the "Named Insured(s)" rights to recovery thereof, and the "Insured(s)" shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The "Insured(s)" shall do nothing to prejudice such rights.

