



THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. CLAIMS MUST BE REPORTED TO THE COMPANY IN ACCORDANCE WITH SECTION VI. DEFENSE COSTS ARE WITHIN THE LIMITS OF LIABILITY.

PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

Terms in bold face type have special meaning. See the definitions sections of this Policy.

The Insurer and the **Insureds** agree as follows, in consideration of the payment of the premium and in reliance upon all statements made in the **Application** furnished to the Insurer designated in the Declarations, a stock insurance corporation, hereafter called the "Insurer."

I. INSURING AGREEMENTS

1. **Management Liability (Individual)**

The Insurer shall pay on behalf of the **Insured Persons** that **Loss** resulting from any **Claim** first made against them during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act**, except and to the extent that the **Insured Entity** has indemnified them for such **Loss**.

2. **Management Liability (Reimbursement)**

The Insurer shall pay on behalf of the **Insured Entity** that **Loss** for which the **Insured Entity** has indemnified the **Insured Persons** and which results from any **Claim** first made against the **Insured Persons** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act**.

3. **Insured Entity Securities Liability**

The Insurer shall pay on behalf of the **Insured Entity** that **Loss** resulting from any **Securities Claim** first made against the **Insured Entity** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act**.

II. DEFINITIONS

Application means all signed applications, any attachments to such applications, other materials submitted therewith or incorporated therein, and any other documents submitted in connection with the underwriting of this Policy by the Insurer, or any other policy underwritten by the Insurer or its affiliates of which this Policy is a direct or indirect renewal or replacement. **Application** also means any public documents filed by the **Insured Entity** prior to inception of this Policy, with any federal, provincial, local or foreign regulatory agency (including, but not limited to, any securities commissions).

Claim means:

1. a written demand for monetary damages or non-monetary relief;
2. a civil proceeding in a court of law or equity or arbitration; or
3. a criminal proceeding,
including any appeal therefrom.

A **Claim** also includes a regulatory proceeding (civil, criminal or administrative) against or formal investigation of an **Insured Person**.

Damages means:

1. compensatory damages, Canadian federal, provincial or territorial law;
2. punitive or exemplary damages first rendered by a court in Canada;
3. punitive or exemplary damages first rendered by a court in the United States, except for those arising from **Claims** for an **EPL Wrongful Act**;

which the **Insured Persons** are legally obligated to pay as a result of a judgement, settlement or assessment, including pre- and post-judgement interest and costs taxed against the **Insured**. **Damages** shall not include fines, penalties or damages that may be deemed uninsurable under the law pursuant to which this policy shall be construed.

However, it is agreed that the insurability of punitive or exemplary damages and statutory liability-related penalties shall be governed by such applicable law of the jurisdiction that most favours coverage for punitive or exemplary damages and statutory liability-related penalties provided such jurisdiction has a substantial relationship to the relevant **Insured persons**, to the **Entity** or to the **Claim** giving rise to the **Damages**.

Defense Costs means reasonable and necessary fees, costs and expenses, consented to in advance by the Insurer (such consent not to be unreasonably withheld) and incurred by the **Insureds** in the investigation, adjustment, defense or appeal of any covered **Claim**, and includes premium for appeal bonds, attachment bonds or similar bonds arising out of a covered judgment. The Insurer has no obligation to provide such bonds. **Defense Costs** shall not include salaries, wages, fees, overhead or benefit expenses associated with the directors, officers, and employees of the **Insured Entity**.

Domestic Partner means any person qualifying as such under any federal, provincial or local laws or under the **Insured Entity's** employee benefit plans.

Employee means any past, present or future full-time, part-time, seasonal or temporary employee of the **Insured Entity**. **Employee** does not include any **Executive**.

Employment Practices Claim means a **Claim** alleging any **Wrongful Employment Practice**.

Entity means:

1. the entity named in the Declarations;
2. any **Subsidiary** at the inception date of this policy and any former **Subsidiary**; however, coverage is afforded only with respect to **Wrongful Act** occurring during its currency as a **Subsidiary**;
3. any **Subsidiary** acquired or created after the inception date of this policy on condition that:
 - (a) written notice, together with full information thereof, is provided to **CNA** within ninety (90) days of the acquisition or creation of any new **Subsidiary** whose total consolidated assets exceed thirty-five per cent (35%) of the total consolidated assets of the **Entity** as reflected in the **Entity's** most recent audited consolidated financial statements prior to such acquisition or creation;
 - (b) coverage shall apply only to **Wrongful Act** occurring subsequent to the effective date of such acquisition unless the **Insurer** agrees, after presentation of a complete application and all appropriate information, to provide coverage for **Wrongful Act** occurring prior to such acquisition; and
 - (c) and additional premium as may be required by the **Insurer** be paid;
4. the **Entity** as debtor-in-possession; or
5. an **Outside Entity** for the purposes of Section IV.

EPL Wrongful Act means any actual or alleged:

1. wrongful termination of employment;
2. discrimination or harassment adversely affecting any **Employee** of or applicant for employment with the **Entity**;
3. wrongful deprivation of a career opportunity or failure to employ or promote;
4. employment-related wrongful demotion, wrongful discipline, denial of training, negligent evaluation, misrepresentation or defamation;
5. retaliatory treatment against an **Employee** on account of such **Employee's** exercise of his/her rights under law; or
6. discrimination or harassment with respect to any past, present or prospective customers, clients, vendors or suppliers of the **Entity**.

ERISA or any Similar Act means any Canadian federal or provincial pension benefit legislation, the U.S. Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of Canada, its territories and provinces, of the United States or its states, or of any other jurisdiction anywhere in the world.

Executive means any past, present or future:

1. duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture or **Manager** of a limited liability company;
2. official in an **Insured Entity** organized and operated in a **Foreign Jurisdiction** who is holding a position that is equivalent to an executive position listed in 1.; or
3. In-House General Counsel or Risk Manager (or equivalent position) of the **Named Insured**.

Financial Insolvency means, with respect to the **Insured Entity**:

1. the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Insured Entity**; or such **Insured Entity** becoming a debtor in possession; and
2. the inability of such **Insured Entity** financially or under applicable law to advance **Defense Costs** or indemnify the **Insured Persons** for **Loss**.

Foreign Jurisdiction means any jurisdiction, other than the Canada or any of its territories or provinces.

Insured means the **Insured Person** and **Insured Entity**.

Insured Entity means the **Named Insured** and any **Subsidiary**, including any such entity as a debtor in possession under United States bankruptcy law or an equivalent status under the law of Canada or any other country.

Insured Person means any:

1. **Executive** of an **Insured Entity**;
2. **Employee** of an **Insured Entity**; or
3. **Outside Entity Executive**.

Interrelated Wrongful Acts means any **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction or event.

Loss means:

1. Damages, settlements, judgments (including any award of pre-judgment and post-judgment interest on a covered judgment); and
2. unpaid tax liabilities and other unpaid statutory liabilities of the **Entity**, arising under the laws of Canada, any province of Canada, or any municipality therein, which the **Insured Persons** are legally obligated to pay and which the **Entity** is unable to pay due to **Financial Insolvency**; and
3. **Defense Costs** for which the **Insured** is legally obligated to pay on account of a covered **Claim**.

However, **Loss** shall not include:

4. criminal or civil fines, penalties or taxes imposed by law, unless such fines, penalties or taxes are within the meaning of paragraph 2 of the definition of "Loss";
5. matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed;
6. any amount for which an **Insured Person** is absolved from payment by reason of any covenant, agreement or court order; or
7. the payment of any dividends or other distributions of corporate profits of the **Insured Entity** to any shareholder of the **Insured Entity**.

Notwithstanding the foregoing paragraph, **Loss** shall include (subject to this Policy's other terms, conditions and limitations, including but not limited to exclusions relating to profit or advantage, deliberate fraud or deliberate

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criminal acts), punitive, exemplary and multiplied damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages.

In the event of a **Claim** alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all the ownership interest in or assets of an entity is inadequate, **Loss** with respect to such **Claim** shall not include any amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased; provided, however, that this paragraph shall not apply to **Defense Costs** or to any **Non-Indemnifiable Loss** in connection with such **Claim**.

Manager means any natural person manager, member of the Board of Managers or equivalent executive of an **Insured Entity** that is a limited liability company.

Management Control means:

1. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company; or
2. having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Insured Entity**, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.

Named Insured means the company named in Item 1 of the Declarations, including such company as a debtor in possession under Canadian bankruptcy law or an equivalent status under the law of any other country.

Non-Indemnifiable Loss means **Loss** which an **Insured Entity** fails or refuses to indemnify an **Insured Person**:

- a. because of **Financial Insolvency**; or
- b. because it is not permitted by law to indemnify the **Insured Entity**.

Not-For-Profit Outside Entity means any entity, other than an **Insured Entity**, exempt from federal income taxation pursuant to Canada Not-for-profit Corporations Act (S.C. 2009, c. 23), as amended.

Outside Entity means any **Not-For-Profit Outside Entity**.

Outside Entity Executive means an **Executive** of an **Insured Entity** who is or was acting as an **Executive** in any **Not-For-Profit Outside Entity**, provided and so long as such service is at the specific request, consent or direction of the **Insured Entity**.

Policy Period means the period from the effective date of this Policy to the Policy expiration date stated in Item 2 of the Declarations, or its earlier cancellation date.

Pollutants means any substance exhibiting hazardous characteristics as is or may be defined or identified on any list of hazardous substances issued under the Canadian Environmental Protection Act (1999) or its regulations, or under any provincial, local or foreign counterpart. **Pollutants** also means, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed), as well as any air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos, asbestos products, or any noise.

Securities Claim means a **Claim**, other than an administrative or regulatory proceeding against or investigation of an **Insured Entity**, made against any **Insured** and:

1. brought by:
 - a. any person or entity and alleging, arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell any securities of an **Insured Entity**; or
 - b. a security holder of an **Insured Entity** with respect to such security holder's interest in securities of such **Insured Entity**; or
2. brought derivatively on the behalf of an **Insured Entity** by a security holder of such **Insured Entity**.

Notwithstanding the foregoing, the term “**Securities Claim**” shall also include a formal civil, criminal, administrative or regulatory proceeding or formal investigation against an **Insured Entity**, but only if and only during the time that such proceeding or formal investigation is also commenced and continuously maintained against an **Insured Person**.

Subsidiary means:

1. any entity (other than a partnership) in which the **Named Insured** has **Management Control** directly or indirectly through one or more other **Subsidiaries**:
 - a. on or before the effective date of this Policy; or
 - b. after the effective date of this Policy by reason of being created or acquired by the **Insured Entity** after such date, if and to the extent coverage with respect to the entity is afforded pursuant to Section XV.1; or
2. any not-for-profit entity under Canada Corporations Act, R.S.C. 1970, c. C-32, as amended) sponsored exclusively by the **Insured Entity**

Takeover means:

1. the acquisition by another entity or person, or group of entities or persons acting in concert, of:
 - a. the ownership or control of voting stock of the **Named Insured** resulting in such entity, person or group owning or controlling more than 50% of the voting stock of the **Named Insured**, or
 - b. assets of the **Named Insured** resulting in such entity, person or group owning more than 50% of the total consolidated assets of the **Named Insured** as of the date of the **Named Insured's** most recent audited consolidated financial statement prior to such acquisition;
2. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity; or
3. the consolidation of the **Named Insured** with another entity.

Wrongful Act means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed or attempted by:

1. an **Executive** in his or her capacity as such or any matter claimed against such **Executive** solely by reason of his or her status as such;
2. an **Employee** in his or her capacity as such, but solely in regard to any **Securities Claim**;
3. with respect to any **Outside Entity Executive**, by such **Outside Entity Executive** in his or her capacity as such or any matter claimed against such **Outside Entity Executive** solely by reason of his or her status as such; or
4. an **Insured Entity**, but solely in regard to a **Securities Claim**.

Wrongful Employment Practice means any **Wrongful Act** constituting or relating to:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of any federal, provincial or local laws (whether common-law or statutory) concerning employment or discrimination in employment;
4. sexual harassment or other unlawful harassment;
5. wrongful deprivation of career opportunity, failure to grant tenure, demotion, or failure to employ or promote;
6. wrongful discipline;
7. retaliation;
8. negligent evaluation of employees;
9. failure to adopt adequate workplace or employment policies and procedures;
10. employment-related defamation, humiliation or invasion of privacy; or
11. with respect to any of the foregoing items (1) through (10) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights;



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but only if such **Wrongful Employment Practice** relates to an **Executive** of, an **Employee** of or an applicant for employment with an **Insured Entity** or to an **Outside Entity Executive**, whether committed directly, indirectly, intentionally or unintentionally. In addition, with respect to any natural person customer or client, **Wrongful Employment Practice** shall mean only actual or alleged discrimination, sexual harassment or violation of an individual's civil rights relating to such discrimination or sexual harassment, whether committed directly, indirectly, intentionally or unintentionally.

III. EXCLUSIONS

The Insurer shall not be liable to pay that part of **Loss** under this Policy in connection with any **Claim** made against the **Insured Persons** or the **Insured Entity**:

1. **Bodily Injury/Property Damage**

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, libel, slander or defamation of any person, or damage to or destruction of any tangible property including loss of use, except that this exclusion shall not apply to allegations of emotional distress, mental anguish, libel, slander or defamation by a claimant in an **Employment Practices Claim**;

2. **ERISA or any Similar Act**

for any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by **ERISA or any Similar Act**;

3. **Prior Notice**

based upon or arising out of:

- a. any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event, notice of which was given by an **Insured** under any policy of which this Policy is a direct or indirect renewal or replacement; or
- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

4. **Prior or Pending**

based upon or arising out of or constituting any civil, criminal, administrative or regulatory proceeding, investigation or arbitration against any of the **Insureds** which was pending on or prior to the Prior or Pending Date set forth in Item 8 of the Declarations or the same or essentially the same fact, circumstance, situation, transaction or event underlying or alleged in such proceeding, investigation or arbitration;

5. **Prior Knowledge of Outside Entity Executives**

with respect to any **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the date the **Insured Entity** requested, consented to or directed such **Outside Entity Executive** to serve in such capacity, if the **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this Policy;

6. **Nuclear and Pollution**

based upon or arising out of: any nuclear reaction, radiation or contamination; or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or any actual or alleged property damage, or bodily injury, sickness,

disease or death of any person, or financial loss to the **Insured Entity** or any **Outside Entity**, their security holders, or their creditors resulting from any of the aforementioned matters; provided, however, this exclusion shall not apply to a **Non-Indemnifiable Loss** incurred by **Insured Persons** resulting from a **Securities Claim**;

7. **Illegal Profits/Deliberate Acts**

based upon or arising out of:

- a. the gaining of any profit, remuneration or advantage to which the **Insured** was not legally entitled if a judgment, ruling or other finding of fact in any proceeding adverse to the **Insured** establishes the **Insured** was not legally entitled to such profit or advantage; or
- b. the committing of any deliberate fraudulent or deliberate criminal act by the **Insured** if a judgment, ruling or other finding of fact in any proceeding establishes that such act was committed.

For purposes of determining the applicability of Exclusion 7:

- a. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
- b. only facts pertaining to and knowledge possessed by any past, present or future chair of the Board, president, chief executive officer, chief financial officer, chief operating officer or general counsel (or equivalent position) of an **Insured Entity** shall be imputed to the **Insured Entities**.

8. **Wrongful Acts of Executives of other Entities**

for any **Wrongful Act** by such **Insured Person** while serving in the capacity, or solely by reason of their status, as a director, officer, trustee, governor, manager, employee or similar position in any entity, other than an **Insured Entity** or an **Outside Entity**;

9. **Claims by Insureds**

by or on behalf of:

- a. any **Insured Person** in any capacity; or
- b. the **Insured Entity**; or
- c. any security holder or member of an **Insured Entity**, whether directly or derivatively, unless such security holder's or member's **Claim** is brought and maintained solely by persons acting totally independent of and totally without the solicitation, assistance, participation or intervention of the **Insured Entity** or any **Insured Person**;

provided, however that this Exclusion shall not apply to:

- i. any **Employment Practices Claim** brought by an **Insured Person**, other than an **Insured Person** who is a director on the Board of Directors (or its equivalent) of the **Named Insured**; or
- ii. any **Claim** that is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy;
- iii. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver or rehabilitator for an **Insured Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator;
- iv. any **Claim** brought by any past **Executive** of an **Insured Entity** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for an **Insured Entity** for at least four (4) years prior to such **Claim** being first made against any person;

10. **Outside Entity vs. Insured Persons**

made against an **Outside Entity Executive** by or on behalf of the **Outside Entity** or one or more of the **Outside Entity's** directors, officers, trustees, governors or equivalent executives; or which is brought by any security holder of the **Outside Entity**, whether directly or derivatively, unless such security holder's **Claim** is brought and maintained solely by persons acting totally independent of, and totally without the solicitation, assistance, participation or intervention of the **Outside Entity**, any director or officer of the **Outside Entity** or an **Insured Entity** or any **Executive** of an **Insured Entity**;

11. **Prior Wrongful Acts of Subsidiaries**

based upon or arising out of:

- a. any **Wrongful Act** by **Insured Persons** of any **Subsidiary** or by such **Subsidiary**, occurring before the date such entity became a **Subsidiary**, or
- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**.

IV. LIMIT OF LIABILITY/RETENTION/PRESUMPTIVE INDEMNIFICATION

1. **Aggregate Limit of Liability**

The Limit of Liability stated in Item 6 of the Declarations is the aggregate limit of the Insurer's liability for all **Loss** under this Policy arising out of all **Claims** first made against **Insureds** during the **Policy Period** and the Extended Reporting Period (if applicable). The Limit of Liability for the Extended Reporting Period shall be part of and not in addition to the Limit of Liability for the **Policy Period**. Further, a **Claim** which is made subsequent to both the **Policy Period** and the Extended Reporting Period (if applicable), and which pursuant to Section VI. is considered made during the **Policy Period** or Extended Reporting Period, shall also be subject to the aggregate Limit of Liability stated in Item 6 of the Declarations.

Defense Costs are part of **Loss** and as such are subject to the Limit of Liability for **Loss**.

2. **Retention**

The Insurer shall only be liable for the amount of **Loss** arising from each **Claim** which is in excess of the applicable Retention amount stated in Item 7 of the Declarations. The Retention amount shall apply to **Loss** arising from each **Claim** and from all **Claims** alleging the same **Wrongful Act** or **Interrelated Wrongful Acts**. The Retention shall be uninsured. The Insurer will have no obligation to pay all or any portion of any applicable retention. No retention applies with respect to **Non-Indemnifiable Loss**.

3. **Presumptive Indemnification**

If the **Insured Entity** fails or refuses to indemnify an **Insured Person** for **Loss**, other than **Non-Indemnifiable Loss**, or to advance **Defense Costs** to the fullest extent permitted by law, then any payment by the Insurer of such **Loss** or such **Defense Costs**, shall be subject to the retention amount stated in Item 7 of the Declarations applicable to Insuring Agreement 2.

V. SETTLEMENT/DEFENSE OF CLAIMS/ALLOCATION OF LOSS/ADVANCEMENT OF DEFENSE COSTS

1. **Settlement/Insurer's Consent**

The **Insureds** shall not admit or assume any liability, consent to any judgment, agree to any settlement or make any settlement offer without the Insurer's prior written consent, such consent not to be unreasonably withheld. The Insurer shall not be liable for any **Loss** incurred by an **Insured** to the extent the **Loss** results from such **Insured** admitting liability, consenting to any judgment, agreeing to any settlement or making any settlement offer without the Insurer's prior written consent. The **Insureds** agree that they shall



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not knowingly take any action while a **Claim** is pending which increases the Insurer's exposure for **Loss** under this Policy.

Notwithstanding the above, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the Insurer's consent shall not be required for the settlement of such **Claims**.

2. **Defense of Claims**

The **Insureds** and not the Insurer have the duty to defend **Claims**. The Insurer shall be entitled to effectively associate in the defense and the negotiation of any settlement of any **Claim** that involves or appears reasonably likely to involve the Insurer.

3. **Allocation of Loss**

If a **Claim** made against the **Insureds** includes both covered and uncovered matters, or if a **Claim** is made against **Insureds** who are extended coverage and against others (including the **Insured Entity** for **Claims** other than **Securities Claims**) who are not extended coverage, the **Insureds** agree that there must be an allocation between insured **Loss** and uninsured loss. The allocation shall be based on the relative legal and financial exposures of, and the relative benefits obtained by, the **Insureds** and the Insurer in connection with the insured **Loss** and the uninsured loss.

4. **Conditions for Advancement of Defense Costs**

The Insurer, on behalf of the **Insureds**, shall advance **Defense Costs** no later than ninety (90) days after the receipt by the Insurer of itemized defense bills in excess of the applicable Retention. However, advancement of **Defense Costs** shall be subject to the following conditions:

- a. if the **Insureds** and the Insurer agree on an allocation of insured and uninsured **Defense Costs**, the Insurer shall advance the amount of insured **Defense Costs**;
- b. if the **Insureds** and the Insurer cannot, after exerting their best efforts, agree on an allocation of insured and uninsured **Defense Costs**, the Insurer then shall advance the percentage of **Defense Costs** which the Insurer states to be fair and proper until a different allocation is agreed upon or determined pursuant to the provisions of this Policy and applicable law;
- c. the **Insureds** shall provide a written undertaking satisfactory to the Insurer to repay the Insurer any **Defense Costs** finally established not to be insured; and
- d. any allocation or advancement of **Defense Costs** shall not apply to or create any presumption with respect to the allocation of other **Loss**.

VI. **REPORTING/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE**

1. **Notice of Claim**

The **Insureds** shall, as a condition precedent to the obligations of the Insurer under this Policy, give written notice to the Insurer of a **Claim** as soon as practicable after the **Named Insured's** Risk Manager or General Counsel (or equivalent position) first become aware of such **Claim**, but in no event later than thirty (30) days after the end of the **Policy Period** or the Extended Reporting Period if applicable.

2. **Notice of Circumstance**

If during the **Policy Period** the **Insureds** first become aware of any facts or circumstances which may reasonably be expected to give rise to a **Claim** and during such period give written notice to the Insurer of:

- a. the **Wrongful Act** allegations anticipated as the basis of the potential **Claim** and the names of any potential claimants;



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- b. the identity of the specific **Insureds** allegedly responsible for such specific **Wrongful Act**,
 - c. the consequences which have resulted or may result from such specific **Wrongful Act**,
 - d. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Act**, and
 - e. the circumstances by which **Insureds** first became aware of such specific **Wrongful Act**,
- then any **Claim** otherwise covered pursuant to this Policy which is subsequently made and which arises out of such **Wrongful Act** shall be deemed to have been first made against the **Insured** and reported to the Insurer by the **Insureds** at the time such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Claim**.

3. When a Claim is Deemed Made

Except as provided in 2 above, a **Claim** shall be deemed made:

- a. in the case of a written demand for monetary damages or non-monetary relief, on the earlier of the **Insured's** or Insurer's receipt of notice of such demand;
- b. in the case of a civil proceeding in a court of law or equity or arbitration, on the date of service upon or other receipt by any **Insured** of a complaint against the **Insured** in such proceeding or arbitration;
- c. in the case of a criminal proceeding, on the date of the return of an indictment, information or similar document against the **Insured**;
- d. in the case of a regulatory proceeding (civil, criminal or administrative) or a formal investigation against an **Insured Person**, on the earliest of the date of service upon or other receipt by the **Insured Person** of a complaint or similar document against the **Insured Person**, a notice of charges against the **Insured Person**, or a written notice or subpoena from the regulatory or investigating authority identifying such **Insured Person** as an individual against whom a regulatory or formal investigative proceeding may be commenced.

4. Interrelated Claims

More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered as one **Claim** which shall be deemed to have been first made on the earlier of:

- a. the date on which the earliest such **Claim** was first made, or
- b. the first date valid notice was given by the **Insureds** to the Insurer under this Policy of any **Wrongful Act** or under any prior policy of any **Wrongful Act** or any fact, circumstance, situation, event or transaction which underlies any such **Claim**.

5. To Whom Notices are Sent

The **Insureds** shall give written notice to the Insurer under this Policy as specified in Item 4 of the Declarations. If mailed, the date the Insurer receives such notice shall constitute the date such notice was given. Proof of mailing shall be sufficient proof of notice.

VII. EXTENDED REPORTING PERIOD

1. Optional Extended Reporting Period

If the Insurer does not renew this Policy, the **Named Insured** shall have the right to purchase, upon payment of an additional premium determined as described in Item 5b of the Declarations, an extension of this Policy for the period described in Item 5a of the Declarations, but only to the extent a **Claim** is first made or deemed to be first made during such period for **Wrongful Acts** committed before the earlier of the end of the **Policy Period** or the effective date of any **Takeover**.

This period shall be referred to as the Extended Reporting Period.

2. Payment of Extended Reported Period Premium



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As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this Policy must have been paid. The right to purchase the Extended Reporting Period shall end unless the Insurer receives written notice of the **Named Insured's** election to purchase the Extended Reporting Period and full payment of the premium for such period within 30 days after the end of the **Policy Period**.

3. **Non-Cancelable/Premium Fully Earned**

If the Extended Reporting Period is purchased, it is non-cancelable and the entire premium shall be deemed fully earned at its commencement without any obligation by the Insurer to return any portion thereof.

4. **No Separate Limit**

The Extended Reporting Period is subject to the Aggregate Limit of Liability set out in Section IV. There is no separate or additional Limit of Liability for the Extended Reporting Period.

VIII. CANCELLATION

1. **Insurer's Right to Cancel**

We may cancel this policy or any of its individual Coverage Forms at any time by sending to the first Named Insured a notice 90 days (15 days in the event of non-payment of premium) in advance of the termination date. Our notice of cancellation will be mailed to the first Named Insured's last known mailing address, and will indicate the date on which coverage is terminated. If notice of termination is mailed, proof of mailing will be sufficient proof of notice. When we cancel this contract, we shall refund, as soon as practicable, the excess premium paid by you over the pro-rata premium for the expired time, but in no event will the pro-rata premium for the expired time be less than any minimum retained premium specified, if any, in the contract. The refund will accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund will be made as soon as practicable.

The refund may be made by money, postal or express company money order or cheque payable at par.

2. **Named Insured's Right to Cancel**

The **Insureds** grant the exclusive authority to cancel this Policy to the **Named Insured**. The **Named Insured** may cancel this Policy by providing the Insurer written notice stating when thereafter such cancellation shall be effective. The mailing or delivery of such notice shall be sufficient. The unearned premium shall be computed in accordance with customary short rate provisions and premium adjustment may be made at the time cancellation is effected or as soon as practicable.

IX. TERRITORY

Coverage shall apply to **Claims** made and **Wrongful Acts** committed worldwide.

X. APPLICATION

The **Insureds** represent and acknowledge that the statements contained in the **Application** and any materials submitted or required to be submitted therewith (which shall be maintained on file by the Insurer and be deemed attached to and incorporated into this Policy as if physically attached), are true and:

- (i) are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; and



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- (ii) shall be deemed material to the acceptance of this risk or the hazard assumed by the Insurer under this Policy.

This Policy is issued in reliance upon the truth of such representations.

In the event the statements, representations or information in the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under this Policy:

1. with respect to Insuring Agreement 1, this Policy shall be void from inception as to the **Insured Person** who knew as of the effective date of this Policy the facts that were misrepresented or omitted, whether or not such person knew of such untruthful disclosure in the **Application**. For purposes of this paragraph, the knowledge of any **Insured** shall not be imputed to any **Insured Person**;
2. with respect to Insuring Agreement 2 and Insuring Agreement 3, coverage under this Policy shall be void from inception as to the **Insured Entity** if any past, present or future chair of the Board, president, chief executive officer, chief financial officer, chief operating officer or general counsel (or equivalent position) knew as of effective date of the Policy the facts that were misrepresented or omitted, whether or not such person knew of such untruthful disclosure in the **Application**.

XI. OTHER INSURANCE

1. If any **Loss** resulting from any **Claim** is insured under any other insurance, this Policy shall apply only as excess over any other valid and collectible insurance unless such other insurance is written only as specific excess insurance over the limit of liability provided by this Policy. This Policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this Policy may be obligated to pay **Loss**.
2. Any coverage under this Policy for **Claims** against any **Insured Person** while acting as an **Outside Entity Executive** shall be specifically excess of any insurance and/or indemnification available to such **Outside Entity Executive** from the **Outside Entity**. Payment by the Insurer or any affiliate of the Insurer under another policy as a result of a **Claim** against an **Insured Person** while acting as an **Outside Entity Executive** shall reduce, by the amount of such payment, the Insurer's Limit of Liability under this Policy with respect to such **Claim**.

XII. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and any **Domestic Partner** of **Insured Persons** shall be considered **Insureds** under this Policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns and spouses only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All terms and conditions of this Policy, including without limitation the Retention, applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

XIII. NO ACTION AGAINST INSURER

1. No action shall be taken against the Insurer unless, as a condition precedent, there shall have been full compliance with all the provisions of this Policy nor until the amount of the **Insureds'** obligation to pay shall have been finally determined either by final and nonappealable judgment against the **Insureds** after trial or by written agreement of the **Insureds**, the claimant and the Insurer.



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2. No person or organization shall have any right under this Policy to join the Insurer as a party to any **Claim** against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives in any such **Claim**.

XIV. ASSIGNMENT OF INTEREST

Assignment of interest under this Policy shall not bind the Insurer unless the Insurer's consent to such assignment is endorsed to this Policy.

XV. COVERAGE FOR NEW SUBSIDIARIES

1. If, after the effective date of this Policy the **Insured Entity** first has **Management Control** of any entity, then such entity and any subsidiaries, directors, officers, trustees or employees of such entity who otherwise would thereby become an **Insured** shall be covered under this Policy, subject to its terms and conditions, provided that if the total assets (as reflected in the most recent audited consolidated financial statements of such entity and the **Insured Entity**) exceeds ten percent (10%) of the combined total assets of all **Insured Entities**, as of the inception date of this Policy, then the Insurer, at its sole option upon submission of such information as the Insurer may require, and payment of any additional premium or amendment of the provisions of the Policy, may agree to provide coverage for such subsidiaries, directors, officers or employees.
2. There shall be no coverage under this Policy for any **Wrongful Act** by such entity, or by any persons or entities considered to be **Insureds** pursuant to Section XV.1 above, where such **Wrongful Act** occurred in whole or in part before the date the **Insured Entity** first has such **Management Control** or for any **Wrongful Act** occurring on or after such date which, together with any **Wrongful Acts** occurring before such date, would be considered **Interrelated Wrongful Acts**.

XVI. CHANGE OF STATUS OF INSUREDS

1. **Takeover of the Named Insured**

In the event of a **Takeover** of the **Named Insured**, coverage under this Policy shall continue until this Policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Acts** occurring before the effective date of the **Takeover**, unless (i) the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date, and (ii) the **Named Insured** accepts any special terms, conditions and exclusions or and pays any additional premium charge required by the Insurer. This Policy may not be canceled after the effective date of the **Takeover** and the entire premium for this Policy shall be deemed earned as of such effective date.

2. **Cessation of Subsidiary**

If any organization ceases to be a **Subsidiary**, coverage under this Policy shall continue until this Policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Acts** occurring before the effective date of such cessation, unless (i) the Insurer is notified in writing of such cessation prior to the effective date thereof and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date, and (ii) the **Insured Entity** accepts any special terms, conditions and exclusions and pays any additional premium charge required by the Insurer.

XVII. ASSISTANCE AND COOPERATION

Each **Insured** shall give the Insurer full cooperation and shall furnish the Insurer with copies of reports, investigations, pleadings, and all related papers, and such other information, assistance and cooperation as the Insurer may reasonably request. The **Insureds** shall do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery.

XVIII. SUBROGATION AND RECOVERY

To the extent it pays any **Loss**, the Insurer shall be subrogated to all the **Insureds'** rights of recovery therefore, including without limitation an **Insured Person's** right to indemnification or advancement from the **Insured Entity**. The **Insureds** shall execute all papers necessary to secure such rights, including executing any documents necessary to enable the Insurer effectively to bring suit in their name, and shall take no action which impairs the Insurer's rights of subrogation or recovery.

XIX. NOTICES TO THE NAMED INSURED

Any notices to the **Named Insured** under this Policy shall be provided to the **Named Insured** at the last known address and to its insurance agent or broker. If properly mailed to the **Named Insured** at such address, the date of mailing shall constitute the date such notice was given.

XX. CHANGES

Notice to or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this Policy or stop the Insurer from asserting any right under the provisions of this Policy, nor shall the provisions be waived or changed except by written endorsement issued to form a part of this Policy.

XXI. COMPANY AUTHORIZATION

The **Insureds** agree that the **Named Insured** will act on behalf of the **Insureds** with respect to giving of all notice to the Insurer (except notices provided in Section VI.1 or 2), the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XXII. ENTIRE AGREEMENT

The **Insureds** agree that this Policy, including the **Application** and any materials submitted or required to be submitted therewith, and any written endorsement attached, constitute the entire contract existing between them and the Insurer or any of its agents relating to this insurance.

XXIII. BANKRUPTCY

Bankruptcy or insolvency of any **Insured Entity** or any **Insured Person** shall not relieve the Insurer of any of its obligations hereunder.

Coverage provided under this Policy is intended to protect and benefit the **Insured Persons**. Further, if a liquidation or reorganization proceeding is commenced by the **Named Insured** and/or any other **Insured Entity** (whether voluntarily or involuntarily) under the Companies' Creditors Arrangement Act (as amended), the Bankruptcy and Insolvency Act (as amended), or under any similar federal, provincial, local or foreign law (collectively "Bankruptcy Law") then, in regard to a covered **Claim** under this Policy, the **Insureds** hereby:

1. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this Policy under such Bankruptcy Law; and
2. agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.

XXIV. ALTERNATIVE DISPUTE RESOLUTION PROCESS



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All disputes or differences between the **Insured** or Insurer which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of **Loss**, shall be submitted to the alternative dispute resolution ("**ADR**") process set forth in this Section.

Either the Insurer or an **Insured** may elect the type of **ADR** process discussed below; provided, however, that such **Insured** shall have the right to reject the Insurer's choice of the type of **ADR** process at any time prior to its commencement, in which case such **Insured's** choice of **ADR** process shall control.

The Insurer and each and every **Insured** agrees that there shall be two choices of **ADR** process:

1. non-binding mediation administered by the American Arbitration Association, in which the Insurer and any such **Insured** shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or
2. arbitration submitted to the American Arbitration Association in accordance with its then-prevailing Commercial Arbitration Rules, in which the arbitration panel shall consist of three disinterested individuals.

In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator or arbitrators shall also give due consideration to the general principles of the law of the jurisdiction in which the **Named Insured** is incorporated in the construction or interpretation of the provisions of this policy. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorney's fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 60 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the **ADR** process.

Either choice of **ADR** process may be commenced either in Toronto or in the province indicated in the Declarations as the mailing address for the **Named Insured**.

XXV. ORDER OF PAYMENTS

If the amount of any covered **Loss** which is otherwise due and owing by the Insurer under this Policy exceeds the then-remaining Limit of Liability of this Policy, the Insurer shall pay such **Loss** (subject to such Limit of Liability) in the following priority:

1. first, the Insurer shall pay **Loss** for which coverage is provided under Insuring Agreement 1 of this Policy; then
2. only after payment of **Loss** has been made pursuant to 1. above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, at the written request of the chief executive officer of the **Named Insured**, the Insurer shall either pay or withhold payment of such other **Loss** for which coverage is provided under Insuring Agreements 2 and 3 of this Policy.

In the event the Insurer withholds payment pursuant to 2. above, then the Insurer shall at such time and in such manner as shall be set forth in written instructions from the chief executive officer of the **Named Insured** remit such payment to an **Insured Entity** or directly to or on behalf of an **Insured Person**. The Insurer's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

The bankruptcy or insolvency of any **Insured Entity** or any **Insured Person** shall not relieve the Insurer of any of its obligations to prioritize payment of covered **Loss** under this Policy pursuant to this Section.



XXVI. HEADINGS

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

XXVII. VALUATION

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in Canadian currency. If any judgment, settlement or any part of **Loss** is expressed or calculated in any other currency, payment of such **Loss** due under this Policy will be made in the currency of the United States of America, at the rate of exchange published in The Globe and Mail on the date the Insurer's obligation to pay such **Loss** is established, or, if not published on that date, on the date of next publication.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be executed by its Chairman and Secretary, but this Policy shall not be binding upon us unless completed by the attachment of the Declarations.