



## MODULAR FINANCIAL LINES LIABILITY INSURANCE POLICY

*Underwritten by Sovereign General Insurance Company – herein referred to as the “Insurer”*



<b>D. Crime Coverage Section</b>	<b>Insuring Agreement</b> (per Occurrence)	<b>Limit of Insurance</b> (per Occurrence)	<b>Deductible</b> (per Occurrence)	<b>Premium</b>
	A1 – Employee Theft			
	A2 – Forgery or Alteration			
	A3 – Inside the Premises (Theft of Money and Securities)			
	A4 – Inside the Premises (Robbery or Safe Burglary of Other Property)			
	A5 – Outside the Premises			
	A6 – Computer Fraud			
	A7 – Funds Transfer Fraud			
	A8 – Money Orders and Counterfeit Paper Currency			
	<b>Limit of Insurance</b>			

**Item 4. Extra Limits and Sub-Limits of Liability**

A. D&O Coverage Section

<b>Side A Excess Coverage Extension</b>	\$1,000,000 Excess of the Policy Aggregate Limit of Liability listed in Item 5 of the Declarations and of the Limit of Liability listed in Item 3.A. of the Declarations, and in any other insurance that is excess of the D&O Coverage Section.
<b>Inquiry Defence Costs</b>	\$100,000 sub-limit part of the Policy Aggregate Limit of Liability listed in Item 5 of the Declarations and part of the Limit of Liability listed in item 3.A. of the Declarations.
<b>Investigative Costs</b>	\$100,000 sub-limit part of the Policy Aggregate Limit of Liability listed in Item 5 of the Declarations and part of the Limit of Liability listed in item 3.A. of the Declarations.

**Item 5. Policy Aggregate Limit of Liability**

\$5,000,000 in the Annual Aggregate

**Item 6. Total Policy Premium**

\$7,900 CAD  USD

**Item 7. Extended Reported Period**

Term	One (1) Year	Two (2) Years	Three (3) Years	Six (6) Years
Premium	% of the Annual Premium	% of the Annual Premium	% of the Annual Premium	250% of the Annual Premium

**Item 8. Notice**

All notices are to be reported to TruStar Financial Lines Claims:

Telephone: (647) 795-8128

Email: [flclaims@trustar.ca](mailto:flclaims@trustar.ca)

**Item 9. Pending and Prior Litigation Date**

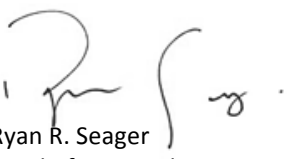
Coverage Section	Date
D&O Coverage Section	April 1, 2021
EPL Coverage Section	April 1, 2021
Fiduciary Coverage Section	April 1, 2021
Crime Coverage Section	Not Applicable

**Item 10. Forms and Endorsements**

Endorsements attached at inception: 5

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its President and countersigned by a duly authorized representative of the Insurer.

DATE: April 5, 2021

  
Ryan R. Seager  
Head of Financial Lines  
TruStar Underwriting Inc.

## D&O COVERAGE SECTION

This is a Claims Made policy. In consideration of the payment of premium, and in reliance upon the **Application**, and subject to the **Declarations** and the terms and conditions and limitations of this **Policy**, the **Insured** and the **Insurer** agree as follows:

### SECTION 1. INSURING AGREEMENTS

#### A. Directors and Officers Coverage

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Insured Organization** and which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against the **Insured Persons** during the **Policy Period** or, if applicable, during the **Extended Reporting Period**, for a **Wrongful Act**.

#### B. Named Organization Indemnification Coverage

The **Insurer** shall pay on behalf of the **Insured Organization** all **Loss** for which the **Insured Organization** provides indemnification to **Insured Persons**, as permitted or required by law, and which the **Insured Persons** have become legally obligated to pay on account of any **Claim** first made against the **Insured Persons** during the **Policy Period** or, if applicable, during the **Extended Reporting Period**, for a **Wrongful Act**.

#### C. Insured Organization Liability Coverage

The **Insurer** shall pay on behalf of the **Insured Organization** all **Loss** which the **Insured Organization** becomes legally obligated to pay on account of any **Claim** first made against the **Insured Organization** during the **Policy Period** or, if applicable, during the **Extended Reporting Period**, for a **Wrongful Act**.

#### D. Employment Practice Liability Coverage

If no EPL **Coverage Section** has been purchased with this **Policy**, as shown in Item 3 of the **Declarations**, the **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against the **Insured Persons** during the **Policy Period** or, if applicable, during the **Extended Reporting Period**, for an **Employment Practice Wrongful Act**.

#### E. Outside Directorship Liability

The **Insurer** shall pay on behalf of the **Outside Entity Insured Persons** all **Loss** which the **Outside Entity Insured Persons** become legally obligated to pay on account of any **Claim** first made against any **Outside Entity Insured Persons** during the **Policy Period** or, if applicable, during the **Extended Reporting Period**, for a **Wrongful Act**. Provided, however, that this coverage shall only apply excess of any indemnification provided by the **Outside Entity**, and excess of any other insurance coverage available to the **Outside Entity** or the **Outside Entity Insured Persons** for such **Claim**.

### SECTION 2. COVERAGE EXTENSIONS

#### A. Investigative Costs Coverage

The **Insurer** shall pay on behalf of the **Insured** all **Investigative Costs** arising from an **Investigation** in response to a **Derivative Demand** first made during the **Policy Period** or, if applicable, during the **Extended Reporting Period**, for a **Wrongful Act** by any **Director and Officer**, up to the sublimit of coverage as stated in Item 4 A. of the **Declarations**.

#### B. Inquiry Costs Coverage

The **Insurer** shall pay on behalf of the **Insured** all **Inquiry Defence Costs** arising from an **Inquiry** first commenced during the **Policy Period** or, if applicable, during the **Extended Reporting Period**,

up to the sublimit of coverage as stated in Item 4 A. of the Declarations.

### C. Side A Excess Coverage

The **Insurer** will provide an **Excess Limit of Liability** for **Loss** that **Insured Persons** may become legally obligated to pay solely by reason of a **Claim** for a **Wrongful Act** for which the **Insured Persons** are not indemnified by the **Insured Organization**.

This **Excess Limit of Liability** shall be specifically excess of:

- a) the **Policy Aggregate Limit** and any **Shared Limit of Liability** or **Separate Limit of Liability** applicable to this **Coverage Section** as stated in Item 3. of the **Declarations**; and
- b) any insurance that is excess of this **Coverage Section**, in which case such excess insurance must be completely exhausted by payment of **Loss** made by the Underlying Insurers thereunder and/or the **Insured** before the **Insurer** shall have any obligation to make any payment for **Loss** under this Side A Excess Coverage extension.

### D. Retired/Removed Executive Automatic Extended Reporting Period

If this **Policy** is:(i) terminated; (ii) not renewed for any reason other than for non- payment of premium; or (iii) not replaced with a directors' & officers' liability policy on terms substantially the same as this **Policy**, then solely with respect to any **Director and Officer** of the **Insured Organization** who has ceased to act in his capacity as a **Director and Officer**, other than where directly related to a **Change in Control** prior to the effective date of such termination, non-renewal, or non-replacement, there shall be an automatic extension of coverage granted by this **Policy** for a period of 12 months immediately following the effective date of such termination, non-renewal, or non-replacement that allows the **Director and Officer** to provide notice, but only in respect of **Claims** for **Wrongful Acts** first committed, **Derivative Demands** first made, or an **Inquiry** first commenced prior to the effective date of such termination, non-renewal or non-replacement.

## SECTION 3. DEFINITIONS

Notwithstanding any definitions given in the **General Terms and Conditions**, when used in this **Coverage Section**:

### 3.1 "Claim" shall mean:

- a) any written demand made against any **Insured** for monetary damages or non-monetary or injunctive relief, including, but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process;
- b) a civil proceeding commenced against any **Insured** by issuance or filing of a Notice of Action, Statement of Claim, Writ of Summons, Complaint, or similar pleading;
- c) a criminal proceeding commenced against any **Insured** by an arrest, summons to appear, return of an indictment, laying of an information, service of a statement of offence, or similar document;
- d) a mediation or arbitration proceeding against any **Insured** commenced by the receipt by an **Insured** of a notice of request or intent to mediate or arbitrate, or similar document;
- e) any formal inquiry, administrative or regulatory investigation or proceeding commenced against any **Insured** pursuant to a court order, order of a regulatory authority, notice of charges, or by reason of a subpoena, or any similar document, issued to any **Insured**, except any professional disciplinary proceeding, or any inquiry, investigation, commission, or hearing involving, relating to, or in connection with labour relations or collective bargaining; or
- f) an **Extradition Proceeding** whereby there is a lawful request (including a warrant issued for the arrest) of any **Director and Officer**.

Notwithstanding Section 5.4 of the **General Terms and Conditions**, if a **Claim** is made in respect of the same **Wrongful Acts**, **Employment Practices Wrongful Acts**, **Fiduciary Wrongful Acts** or **Interrelated Wrongful Acts** which are the subject of a **Derivative Demand**, **Inquiry** or **Investigation** under this **Coverage Section**, the **Derivative Demand**, **Inquiry** or **Investigation** and **Claim** shall be deemed to constitute a single **Claim** for the purposes of this **Coverage Section**, and

shall be deemed to have been made as of the earliest date that such **Derivative Demand, Inquiry, Investigation or Claim** was first made.

- 3.2 **"Complainant"** shall have the meaning as defined in Section 238 of the Canada Business Corporations Act, RSC 1985, c C-44 or similar provision of any Canadian provincial or territorial business corporation statute.
- 3.3 **"Derivative Action"** shall mean a civil action purportedly brought derivatively on behalf of the **Insured Organization** by a **Complainant** against any **Director and Officer** for any actual or alleged wrongdoing on the part of such **Director and Officer**.
- 3.4 **"Derivative Demand"** shall mean any written demand by any **Complainant** upon the board of directors (or equivalent management body) of the **Insured Organization** to commence a civil action on behalf of the **Insured Organization** against any **Director and Officer** for any wrongdoing on the part of such **Director and Officer**, or the commencement of any such civil action by the **Complainant** or the **Insured Organization** in the event no prior written demand was made.
- 3.5 **"Director and Officer"** shall mean any natural person serving as a past, current or future duly elected or appointed director (including any de facto or "deemed" director), officer, trustee, management committee or board member, general partner or partnership manager, General Counsel, risk manager, or governor of the **Insured Organization**, and all persons serving in a functionally equivalent or foreign equivalent role for the **Insured Organization**.
- 3.6 **"Employment Practices Wrongful Act"** shall mean any of the following conduct by an **Insured Person** in relation to any **Employee** or **Director and Officer**, or to applicants for employment with the **Insured Organization**:
- a) wrongful dismissal, termination or discharge of employment, whether actual or constructive;
  - b) breach of any employment contract, whether written, express or implied;
  - c) workplace or sexual harassment;
  - d) workplace or employment related discrimination;
  - e) retaliation in response to any **Whistleblower Conduct**, exercise of legal rights, or compliance with any court order by any **Employee, Director and Officer**, or applicant for employment with the **Insured Organization**;
  - f) wrongful discipline;
  - g) employment related misrepresentation;
  - h) employment related libel, slander, humiliation, defamation or invasion of privacy;
  - i) wrongful failure to employ, promote, or grant tenure;
  - j) wrongful deprivation of career opportunity, wrongful demotion, or negligent employment evaluation, including the provision of negative or defamatory statements in connection with an employment reference; or
  - k) wrongful failure to provide or enforce adequate or consistent corporate policies or procedures relating to any of the above.
- 3.7 **"Excess Limit of Liability"** shall mean an additional limit of liability, up to the amount shown in Item 4.A. of the **Declarations**, applicable solely to Insuring Agreement A of this **Coverage Section**, which shall apply in addition to, and excess of, the **Policy Aggregate Limit** and any **Shared Limit of Liability** or **Separate Limit of Liability** applicable to this **Coverage Section**.
- 3.8 **"Extradition Proceeding"** shall mean any formal process by which an **Insured Person** located in any country is sought to be surrendered to any other country for trial or otherwise to answer any criminal accusations, and any related appeal or judicial review applications challenging any extradition decision by the responsible governmental authority.
- 3.9 **"Inquiry"** shall mean:
- a) a request or demand for an **Insured Person** to appear at a meeting, deposition or interview, or produce documents, relating to the business of the **Insured Organization** or the **Insured Person's** capacity as such, or by virtue of their status as such, where such request or demand is:
    - i. by an **Official Body**; or

- ii. by or on behalf of the **Insured Organization**, it's board of directors (or similar management body), or any committee of it's board of directors (or similar management body), arising out of a request or demand set forth in i) above; or which is part of the **Insured Organization's** investigation and evaluation of a **Derivative Action**; or
- b) the arrest or confinement of an **Insured Person**, whether residential or custodial, by a law enforcement authority, relating to the business of the **Insured Organization** or the **Insured Person's** capacity as such.

**Inquiry** shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in the normal review or compliance process of the **Insured Organization**, by an **Official Body**.

3.10 "**Inquiry Defence Costs**" shall mean reasonable and necessary costs, charges, fees (including but not limited to legal fees and experts' fees) and expenses incurred by an **Insured** solely in connection with an **Inquiry**. **Inquiry Defence Costs** shall not include regular or overtime wages, salaries, fees, or costs of travel or accommodation of any **Insured Person**. **Inquiry Defence Costs** shall be part of and not in addition to the **Policy Aggregate Limit** or any **Shared Limit of Liability** or **Separate Limit of Liability** applicable to this **Coverage Section**.

3.11 "**Insured**" shall mean:

- a) any **Insured Person**; or
- b) any **Insured Organization**.

3.12 **Insured Organization** shall mean the **Named Organization** and any **Subsidiary**.

3.13 "**Insured Person**" shall mean any natural person who was, is or who becomes during the **Policy Period**:

- a) a **Director and Officer**;
- b) an **Employee**;
- c) an **Outside Entity Insured Person**, but solely for the purposes of coverage under Insuring Agreement E;
- d) any family member of a **Director and Officer** or of an **Employee**, including but not limited to the lawful spouse (including **Common Law Partners** if recognized by law in the **Insured Organization's** country of domicile) of a **Director and Officer** or of an **Employee**, but only where recovery against such family member is sought solely because property is held jointly with, or owned by the family member on behalf of such **Director and Officer** or such **Employee**, and solely in relation to **Wrongful Acts** by such **Director and Officer** or such **Employee**;
- e) the legal representatives, heirs, assigns or estates of any deceased **Director and Officer** or **Employee**, but solely in relation to **Wrongful Acts** by such **Director and Officer** or such **Employee**; or
- f) the legal representatives or assigns of any **Director and Officer** or **Employee** in the event of the **Director and Officer's** or **Employee's** incompetency, insolvency or bankruptcy, but solely in relation to **Wrongful Acts** by such **Director and Officer** or such **Employee**.

There is no coverage hereunder for any **Claim, Inquiry, or Investigation** that alleges wrongful conduct by a family member, legal representative, heir, assign or estate of any **Director and Officer** or **Employee**.

3.14 "**Investigation**" shall mean an investigation by or on behalf of an **Insured Organization** by its board of directors (or any special committee thereof), in response to a **Derivative Demand**.

3.15 "**Investigative Costs**" shall mean reasonable and necessary costs, charges, fees (including but not limited to legal fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of any **Insured Person**) incurred by the **Insured** or on behalf of the **Insured** by the **Insured Organization's** board of directors (or equivalent thereof), or any special committee thereof, solely in connection with an **Investigation**. The sublimit of liability available for all **Investigations** combined



during the **Policy Period** or the **Extended Reporting Period** if applicable, shall be the sublimit of liability as specified in Item 4.A. of the **Declarations** and this amount shall be part of and not in addition to the **Policy Aggregate Limit** or any **Shared Limit of Liability** or **Separate Limit of Liability** applicable to this **Coverage Section**.

- 3.16 "**Joint Venture Entity**" shall mean any corporation, partnership, association or entity other than a **Subsidiary** over which the **Insured Organization** exercises management or voting control and which is identified by an endorsement to this **Policy**.
- 3.17 "**Loss**" shall mean the amount that an **Insured** is legally obligated to pay, including but not limited to damages, settlements, judgments (including pre/post-judgment interest on a covered judgment), awards of costs (including claimant's legal costs and expenses). **Loss** shall also include:
- a) costs incurred by the **Insured** in connection with the defence or appeal of an **Extradition Proceeding**, and the premium for a bail bond, if bail is available for an **Extradition Proceeding** in the country at issue, but the **Insurer** shall be under no obligation to provide such bail bond;
  - b) unpaid tax and other unpaid statutory liabilities of the **Insured Organization** arising under the laws of Canada, the laws of any province or territory of Canada or the laws of any municipality therein, which an **Insured Person** becomes legally obligated to pay by virtue of a **Claim** against any **Insured Person** arising out of the failure of an **Insured Organization** as a result of its **Financial Insolvency**) to: (i) deduct, withhold or remit taxes (including but not limited to non-resident withholding taxes, goods and services taxes, salary or withholding taxes and employee source deductions), employment insurance contributions or pension plan contributions; or (ii) pay debts for services performed by an **Employee** in respect of salary, wages, commissions, earned bonuses and expenses incurred by an **Employee** on behalf of the **Insured Organization**, unpaid vacation pay, and interest on outstanding wages, including any penalties and interest related to those items in (i) and (ii).
  - c) civil penalties and civil fines (when insurable) assessed against any **Insured Person**, pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2(g)(2)(B) or Section 4(2) and 5.5(2) of the Corruption of Foreign Public Officials Act of Canada; and
  - d) **Defence Costs, Investigative Costs and Inquiry Defence Costs.**

However, **Loss** does not include:

- e) taxes (except statutory remittances as provided for in Section 3.17 (b) of this **Coverage Section**);
- f) fines or penalties (except civil penalties and civil fines as provided in Section 3.17(c) of this **Coverage Section**);
- g) matters uninsurable under the law pursuant to which this **Policy** is construed;
- h) costs or expenses of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising, or assessing the effects of **Pollutants**;
- i) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**;
- j) punitive, exemplary or multiplied damages (except where insurable under the applicable law most favourable to the insurability of such damages provided such jurisdiction has a substantial relationship to the **Insured**);
- k) any portion of damages, judgments, or settlements in respect of any **Claim** alleging that the amount an **Insured** paid or proposed to pay for the acquisition or completion of all or substantially all of the ownership interest in, or assets of, an entity was inadequate. However, this paragraph shall not apply to **Loss** as is otherwise covered under Insuring Agreement A of this **Coverage Section**;
- l) salary, wages, termination payments, commissions, employment-related benefits of any kind including but not limited to deferred payments (including insurance premiums in connection with an **Employee Benefit Plan**), stock, stock options or warrants, or similar rights in securities or rights to purchase securities, or the value thereof, profit sharing, or other prerequisites;
- m) the future salary or benefits of a claimant who has been hired, promoted or reinstated to employment, whose employment has been or shall be continued or whose salary or benefits have been increased pursuant to a settlement, order or other resolution;
- n) salary, wages or commissions payable to a claimant for services performed for any **Insured Organization** while employed with any **Insured Organization**; or

- o) any amount incurred to comply with an order or agreement to provide non-monetary or injunctive relief.

Notwithstanding the foregoing, the **Insurer** shall not assert that, in a **Claim** alleging violations of Section 130 of the Securities Act (Ontario), or Section 11, 12, or 15 of the U.S. Securities Act of 1933, or alleging violations under any similar provisions of other Canadian, federal, provincial or territorial securities laws promulgated thereunder, the portion of any amounts incurred by **Insureds** which are attributable to such violations constitutes uninsurable loss and shall treat that portion of all such settlements, judgments and **Defence Costs** as constituting **Loss** under this **Policy** (unless the **Insurer** is precluded from doing so by court order).

3.18 "**Outside Entity**" shall mean any organization other than the **Insured Organization** in which the **Insured Organization** maintains a financial interest as a sponsor, an equity investor, creditor or executor, including any non-profit organization, corporation, **Joint Venture Entity**, partnership, trust or limited liability company. **Outside Entity** shall not include the following:

- a) any financial services company including any bank, credit union, finance company, insurance company, stock exchange, brokerage, investment fund or trust;
- b) any information technology services company active in design, development, manufacture, installation, maintenance, servicing or repairing of computer software, hardware or firmware, including those companies which provide related systems analysis, systems programming, data processing, systems integration, internet related services, or sales, licensing, distribution of computer software, hardware or firmware;
- c) any pharmaceutical research or biotechnology company, those organizations which are active in the fields of life sciences, biological sciences, the medical products industry, the healthcare industry; or
- d) any organization which is currently, or has at any time in the past two years, been subject to regulation by the U.S. Securities and Exchange Commission.

3.19 "**Outside Entity Insured Person**" shall mean any duly elected or appointed **Director and Officer**, acting in a similar capacity for an **Outside Entity**:

- a) in the case of a not-for profit organization, with the prior approval of the **Insured Organization**; or
- b) in the case of an entity other than a not-for-profit organization, at the specific request or direction of the **Insured Organization**.

3.20 "**Wrongful Act**" shall mean any:

- (a) actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty or act allegedly committed or attempted by an **Insured Person** acting in his or her capacity as such;
- (b) matter claimed against any **Insured Person** solely by reason of his or her status as an **Insured Person**; or
- (c) actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty or act allegedly committed or attempted by the **Insured Organization**.

## SECTION 4. EXCLUSIONS

The **Insurer** shall not be liable for **Loss** on account of any **Claim, Investigation, Inquiry** or **Derivative Demand**:

### 4.1 Conduct

based upon, arising from, directly or indirectly resulting from, or in consequence of:

- (a) any deliberately fraudulent or criminal act or omission or any willful violation of any statute, law or regulation by an **Insured Person**, if a final, non-appealable adjudication in an underlying action adverse to the **Insured Person** establishes such conduct; or

- (b) the gaining of any profit, remuneration or advantage to which an **Insured** was not legally entitled, if established by a final, non-appealable adjudication in an underlying action adverse to the **Insured**, however the **Insurer** agrees this subparagraph will not be applied to **Defence Costs** arising out of a **Claim** against an **Insured Person** alleging a violation of section 304 of the U.S. Sarbanes- Oxley Act.

#### 4.2 Prior Noticed Circumstances

based upon, arising from, directly or indirectly resulting from, or in consequence of any circumstances notified in writing to, and accepted by, any insurer under a policy of which this **Policy** is a renewal or replacement and which provides coverage ( or would afford such coverage except for the exhaustion of its limits of liability) for such **Loss**.

#### 4.3 Prior Claims, Proceedings

for any written demand, action or other proceeding, order, decree or judgment entered for or against any **Insured** prior to or pending at the applicable date stated in Item 9 of the **Declarations**, or which arises from matters substantially the same as alleged in or forming the subject matter therein.

#### 4.4 Fiduciary Liability

for any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by any employee benefit, retirement or pension legislation anywhere in the world, including but not limited to the Income Tax Act (Canada) , the Pension Benefits Standards Act, 1985, R.S.C. c. 32 (2nd Supp,) Pension Benefits Act, R.S.O. 1990, c. P.8, the UK Pensions Act 1995 and the Employee Retirement Income Security Act of 1974 (USA).

#### 4.5 Bodily Injury & Property Damage

for:

- a) bodily injury, sickness, disease or death of any person howsoever caused or damage to or destruction of any tangible property, including loss of use thereof; or
- b) mental anguish or emotional distress or disturbance, however this subsection 4.5b) shall not apply to that part of any **Claim, Inquiry** or **Investigation** alleging an **Employment Practices Wrongful Act**.

Provided, however, that this exclusion shall not apply to **Defence Costs** on account of any criminal proceeding against any **Insured Person** on account of any **Claim** which is: (i) pursuant to section 217.1 of the Canadian Criminal Code R.S.C. 1985, c.C-46, or any similar provision of any criminal code in any jurisdiction; or (ii) a criminal proceeding for manslaughter (or any similar offense).

#### 4.6 Insured Organization v. Insured

which is brought by or on behalf of an **Insured Organization** against any **Insured** or any **Outside Entity** against any **Outside Entity Insured Person**; provided, however, that this exclusion shall not apply to:

- (a) **Defence Costs** under Insuring Agreement A;
- (b) any **Derivative Action** brought by or maintained on behalf of the **Insured Organization** or any **Outside Entity**, so long as the **Claim** is brought or continued without the material assistance, solicitation, active participation, intervention or willing co-operation of any **Insured Person**, any **Outside Entity Insured Person**, the **Insured Organization** or any **Outside Entity**;
- (c) any **Claim** brought and maintained by a liquidator, receiver, administrative receiver, trustee in bankruptcy, monitor or similar official of the **Insured Organization** or **Outside Entity** in the event of **Financial Insolvency** of the **Insured Organization** or **Outside Entity**;
- (d) any **Claim** against an **Insured Person** brought by or on behalf of an **Insured Organization** or any **Outside Entity** formed and operating in a foreign jurisdiction, provided that such **Claim** is required to be brought and maintained outside Canada, the United States, or any other common law country (including any territories thereof).

For the purposes of exception (b) above, **Whistleblower Conduct** by an **Insured Person** shall not be considered solicitation, assistance, active participation, intervention or willing co-operation of an **Insured Person**.

#### 4.7 Outside Entity Prior Wrongful Acts

with respect to an **Outside Entity Insured Person**, for any **Wrongful Act** prior to the date upon which such **Outside Entity Insured Person** is elected or appointed to the board of such **Outside Entity**, if the **Outside Entity Insured Person**, as of such date, knew or reasonably could have known that such **Wrongful Act** could lead to a **Claim** under this **Policy**.

#### 4.8 Publicly Traded Securities

based upon, arising from, directly or indirectly resulting from, or in consequence of any actual or attempted offering, solicitation, sale, distribution or issuance of securities by any **Insured Organization** or **Outside Entity** to the public at large for trading on a securities exchange, including but not limited to by way of an initial public offering, whether or not a prospectus has been issued or other disclosure requirements have been met; provided, however, if at least thirty (30) days prior to such event, the **Insurer** is given written notice of such event by the **Named Organization** together with any information requested by the **Insurer**, the **Insurer** shall offer to provide coverage for such event, subject to such terms, conditions and additional premium as the **Insurer** may require.

#### 4.9 Breach of Contract, Intellectual Property, Product Defect, Professional Liability, Wage & Hour

with respect to Insuring Agreement C only:

- a) for any direct or assumed liability or obligation of the **Insured**, under any contract or agreement, except and to the extent the **Insured** would have been liable in the absence of such contract or agreement. Provided however this exclusion shall not apply to **Loss** on account of that part of any **Claim** alleging an **Employment Practices Wrongful Act**; or
- b) for any actual or alleged infringement, plagiarism, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services; or
- c) for any actual or alleged defect, deficiency, inadequacy, malfunction or dangerous condition of any of the **Insured Organization's** or **Outside Entity's** product or in its design or manufacture, including warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of such products; or
- d) for actual or alleged liability of an **Insured Organization** arising out of or attributable to the **Insured Organization's** performance of or failure to perform professional services for others; or
- e) arising out of or attributable to any actual or alleged violation of the responsibilities, obligations or duties imposed by that part of the Canadian Labour Code, or the United States Fair Labour Standards Act, or any similar laws that govern wage, hour and payroll policies and practices.

#### 4.11 Antitrust, Competition Act or Unfair Trade Practices

with respect to Insuring Agreements A, B, C and E only:

for any actual or alleged price fixing, restraint of trade, monopolization, deceptive or unfair trade, or any actual or alleged violation of the Competition Act, R.S.C. 1985. C.C-34, or of the same or similar provisions of any federal, state, provincial or territorial statutory or common law, including any rules or regulation promulgated thereunder. Without limiting the generality of the foregoing, such same or similar provision shall include those in the Federal Trade Commission Act, the Sherman Anti-Trust Act and the Clayton Act, all of the United States of America.

#### 4.12 Entity Employment Liability

against the **Insured Organization** for an **Employment Practices Wrongful Act**.

#### 4.13 Where EPL Coverage Purchased

for an **Employment Practices Wrongful Act** if coverage under the **EPL Coverage Section** has been purchased as shown in Item 3 of the **Declarations**, in which case the **EPL Coverage Section** shall apply in lieu of Insuring Agreement D of this **Coverage Section**.

For purposes of determining the application of the above exclusions, facts pertaining to or knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**. For the purposes of coverage under Insuring Agreement C., only facts pertaining to or knowledge possessed by the past, present or future chief executive officer or chief financial officer of the **Insured Organization** shall be imputed to such **Insured Organization**.

### SECTION 5. RETENTION

- 5.1 Notwithstanding SECTION 5. RETENTION in the **General Terms and Conditions**, no **Retention** will apply to a **Claim** where coverage is provided under Insuring Agreement A of this **Coverage Section**.

### SECTION 7. GENERAL CONDITIONS

#### 7.1 Other Insurance

**General Terms and Conditions** SECTION 8.5. OTHER INSURANCE does not apply to this **Coverage Section**.

This **Policy** shall apply only in excess of any other valid and collectible insurance, other than insurance written as specific excess insurance over the **Policy Aggregate Limit**, or over the **Shared Limit of Liability** or **Separate Limit of Liability** applicable to this **Coverage Section**; provided, however, that the **Excess Limit of Liability** shall apply in accordance with Section 2C of this **Coverage Section**.

## EPL Coverage Section

This is a Claims Made policy. In consideration of the payment of premium, and in reliance upon the **Application**, and subject to the **Declarations** and the terms and conditions and limitations of this **Policy**, the **Insured** and the **Insurer** agree as follows:

### SECTION 1. INSURING AGREEMENTS

#### A. Employment Practice Liability Coverage

The **Insurer** shall pay on behalf of the **Insured** all **Loss** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against the **Insured** during the **Policy Period** or, if applicable, during the **Extended Reporting Period**, for an **Employment Practice Wrongful Act**.

#### B. Third Party Employment Practice Coverage

If Item 3 B of the **Declarations** indicates that Third Party Employment Practice Coverage is covered, the **Insurer** shall pay on behalf of the **Insured** all **Loss** which the **Insured** becomes legally obligated to pay on account of any **Claim** by a **Third Party** first made against the **Insured** during the **Policy Period** or, if applicable, during the **Extended Reporting Period**, for a **Third Party Wrongful Act**.

### SECTION 2. DEFINITIONS

Notwithstanding any definitions given in the **General Terms and Conditions**, when used in this **Coverage Section**:

#### 3.1 "Claim" shall mean:

- a) any written demand made against any **Insured** for monetary damages or non-monetary or injunctive relief, including, but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process;
- b) a civil proceeding against any **Insured** commenced by issuance or filing of a Notice of Action, Statement of Claim, Writ of Summons, Complaint, or similar pleading;
- c) a mediation or arbitration proceeding against any **Insured** commenced by the receipt by an **Insured** of a notice of request or intent to mediate or arbitrate, or similar document;
- d) an administrative, tribunal or regulatory proceeding against any **Insured** commenced by the filing of a notice of charges or similar document, or
- e) a criminal or penal proceeding against any **Insured** commenced by an arrest, summons to appear, laying of an information, return of an indictment, service of a statement of offence, or similar document.

#### 3.2 "Employee" shall mean any past, present, or future employee engaged and directed by the **Insured Organization** (other than a **Director and Officer**), including any full-time, part-time, seasonal or temporary employee of the **Insured Organization**, and including temporary placement staff providing services to the **Insured Organization** through a temporary staffing agency.

#### 3.3 "Employment Practices Wrongful Act" shall mean any of the following actual or alleged conduct by an **Insured** solely in relation to any **Employee** or **Director and Officer**, or to applicants for employment with the **Insured Organization**:

- a) wrongful dismissal, termination or discharge of employment, whether actual or constructive;
- b) breach of any employment contract, whether written, express or implied;
- c) workplace or sexual harassment;
- d) workplace or employment related discrimination;
- e) retaliation in response to any **Whistleblower Conduct**, exercise of legal rights, or compliance with any court order by any **Employee, Director and Officer**, or applicant for employment with the **Insured Organization**;
- f) wrongful discipline;
- g) employment related misrepresentation;
- h) employment related libel, slander, humiliation, defamation or invasion of privacy;
- i) wrongful failure to employ, promote, or grant tenure;

- j) wrongful deprivation of career opportunity, wrongful demotion, or negligent employment evaluation, including the provision of negative or defamatory statements in connection with an employment reference; or
- k) wrongful failure to provide or enforce adequate or consistent corporate policies or procedures relating to any of the above.

3.4 “**Insured**” shall mean:

- a) any **Insured Person**; or
- b) any **Insured Organization**.

3.5 “**Insured Person**” shall mean any natural person who was, is or who becomes during the **Policy Period**:

- a) a **Director and Officer**;
- b) an **Employee**;
- c) any family member of a **Director and Officer** or of an **Employee**, including but not limited to the lawful spouse (including **Common Law Partners** if recognized by law in the **Insured Organization’s** country of domicile) of a **Director and Officer** or of an **Employee**, but only where recovery against such family member is sought solely because property is held jointly with, or owned by the family member on behalf of such **Director and Officer** or such **Employee**, and solely in relation to **Employment Practices Wrongful Acts** by such **Director and Officer** or such **Employee**;
- d) the legal representatives, heirs, assigns or estates of any deceased **Director and Officer** or **Employee**, but solely in relation to **Employment Practices Wrongful Acts** by such **Director and Officer** or such **Employee**; or
- e) the legal representatives or assigns of any **Director and Officer** or **Employee** in the event of the **Director and Officer’s** or **Employee’s** incompetency, insolvency or bankruptcy, but solely in relation to **Employment Practices Wrongful Acts** by such **Director and Officer** or such **Employee**.

There is no coverage hereunder for any **Claim** that alleges an **Employment Practices Wrongful Act** by a family member, legal representative, heir, assign or estate of any **Director and Officer** or **Employee**.

3.6 “**Loss**” shall mean the amount that an **Insured** is legally obligated to pay, including but not limited to damages, settlements, judgments (including pre/post-judgment interest on a covered judgment), awards of costs (including claimant’s legal costs and expenses) and **Defence Costs**.

However, **Loss** does not include:

- a) taxes, fines or penalties;
- b) matters uninsurable under the law pursuant to which this **Policy** is construed;
- c) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**;
- d) punitive, exemplary, or multiplied damages (except where insurable under the applicable law most favourable to the insurability of such damages provided such jurisdiction has a substantial relationship to the **Insured**);
- e) the future salary or benefits of a claimant who has been hired, promoted or reinstated to employment, whose employment has been or shall be continued or whose salary or benefits have been increased pursuant to a settlement, order or other resolution;
- f) salary, wages or commissions payable to a claimant for services performed for any **Insured Organization** while employed with any **Insured Organization**;
- g) amounts incurred by an **Insured** to comply with an order or agreement to provide injunctive or non-monetary relief, including but not limited to actual or anticipated costs and expenses associated with or arising from an **Insured’s** obligations to provide reasonable accommodation under, or otherwise comply with the Accessibility for Ontarians with Disabilities Act, 2005 or any similar or related federal, provincial, territorial or local, by-law or regulations; or
- h) salary, wages, termination payments, commissions, employment-related benefits of any kind including but not limited to deferred payments (including insurance premiums in connection with an **Employee Benefit Plan**), stock, stock options or warrants, or similar rights in securities or rights to purchase securities, or the value thereof, profit sharing, or other prerequisites.

3.7 “**Third Party**” shall mean any natural person who is a customer, vendor, service provider, client, or other business invitee of the **Insured Organization**, or any other natural person or group of natural persons, provided, however **Third Party** shall not include any **Employee**.

3.8 “**Third Party Wrongful Act**” shall mean any actual or alleged:

- a) harassment of a **Third Party**, including but not limited to any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment; or
- b) discrimination against a **Third Party**, including but not limited to any such discrimination on account of race, colour, religion, age, disability or national origin;

by the **Insured Organization** or by an **Insured Person** acting in his or her capacity as such.

## SECTION 4. EXCLUSIONS

The **Insurer** shall not be liable for **Loss** on account of any **Claim**:

### 4.1 Conduct

based upon, arising from, directly or indirectly resulting from, or in consequence of:

- a) any deliberately fraudulent or criminal act or omission or any willful violation of any statute, law or regulation by an **Insured Person**, if a final, non-appealable adjudication in an underlying action adverse to the **Insured Person** establishes such conduct; or
- b) the gaining of any profit, remuneration or advantage to which an **Insured** was not legally entitled, if established by a final, non-appealable adjudication in an underlying action adverse to the **Insured**.

### 4.2 Prior Noticed Circumstances

based upon, arising from, directly or indirectly resulting from, or in consequence of any circumstances notified in writing to, and accepted by any insurer under a policy of which this **Policy** is a renewal or replacement and which provides coverage( or would afford such coverage except for the exhaustion of its limits of liability) for such **Loss**.

### 4.3 Prior Claims, Proceedings

for any written demand, action or other proceeding, order, decree or judgment entered for or against any **Insured** prior to or pending at the applicable date stated in Item 9 of the Declarations, or which arises from matters substantially the same as alleged in or forming the subject matter therein.

### 4.4 Fiduciary Liability

for any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by any employee benefit, retirement or pension legislation anywhere in the world, including but not limited to the Income Tax Act (Canada), the Pension Benefits Standards Act, 1985, R.S.C. c. 32 (2nd Supp,) Pension Benefits Act, R.S.O. 1990, c. P.8, the UK Pensions Act 1995 and the Employee Retirement Income Security Act of 1974 (USA) and any amendments thereto.

### 4.5 Bodily Injury & Property Damage

for bodily injury, sickness, (except mental anguish, emotional distress or disturbance), disease or death of any person howsoever caused or damage to or destruction of any tangible property, including loss of use thereof.

### 4.6 Contractual Liability

- a) for any direct or assumed liability or obligation of the **Insured**, or liability of others assumed



- by the **Insured**, under any contract or agreement, except to the extent the **Insured** would have been liable in the absence of such contract or agreement; or
- b) for any dispute with respect to the valuation of a written employment contract or agreement, provided that this exclusion shall not apply to **Defence Costs**.

#### 4.7 Labour Management Relations

for violation of the Canada Labour Code, Parts I and II, including any of the following: a lockout, strike, picket line, hiring of replacement workers, outsourcing or other similar actions in connection with labour disputes or labour negotiations.

#### 4.8 Workers' Compensation, Employment Insurance, Disability Benefits

for any actual or alleged obligation of the **Insured** under any statute or law providing for workers' compensation, disability benefits, employment insurance, or similar benefits. However, notwithstanding the foregoing, the **Insurer** shall pay **Loss** arising from a **Claim** for retaliatory treatment of the claimant on account of the claimants' exercising of rights pursuant to any such law.

#### 4.9 Employee Benefits Program

for an actual or alleged violation of the responsibilities, obligations or duties imposed by the Canada Labour Code, Part III, or any similar law anywhere in the world governing any employee benefits program, policy, plan or scheme of any kind. Provided however that this exclusion shall not apply to a **Claim** for any retaliatory treatment of the claimant on account of the claimants' exercising of rights pursuant to any such law, or any claim for pay equity.

#### 4.10 Workplace Safety

for any violation of responsibilities, obligations or duties imposed under the Canada Labour Code, Part III, or any similar law anywhere in the world governing workplace safety and health, provided this exclusion shall not apply to the extent the **Claim** is for retaliatory treatment of the claimant on account of the claimant's exercise of rights pursuant to any such law.

#### 4.11 Wage and Hour

arising out of or attributable to any actual or alleged violation of the responsibilities, obligations or duties imposed by that part of the Canadian Labour Code, or the United States Fair Labour Standards Act, or any similar laws that govern wage, hour and payroll policies and practices.

For purposes of determining the application of the above exclusions, facts pertaining to or knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**. Only facts pertaining to or knowledge possessed by the past, present or future chief executive officer or chief financial officer of the **Insured Organization** shall be imputed to such **Insured Organization**.

## FIDUCIARY COVERAGE SECTION

This is a Claims Made policy. In consideration of the payment of premium, and in reliance upon the **Application**, and subject to the **Declarations** and the terms and conditions and limitations of this **Policy**, the **Insured** and the **Insurer** agree as follows:

### SECTION 1. INSURING AGREEMENTS

#### A. Fiduciary Liability Coverage

The **Insurer** shall pay on behalf of the **Insured** all **Loss** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against the **Insured** during the **Policy Period** or, if applicable, during the **Extended Reporting Period**, for a **Fiduciary Wrongful Act**.

### SECTION 2. DEFINITIONS

Notwithstanding any definitions given in the **General Terms and Conditions**, when used in this **Coverage Section**:

#### 2.1 "Administration" shall mean:

- a) giving counsel, advice, or notice to **Employees**, participants, or beneficiaries with respect to **Employee Benefit Plans**;
- b) providing interpretations with respect to any **Employee Benefit Plans**;
- c) handing records in connection with **Employee Benefit Plans**;
- d) effecting enrolment, termination or cancellation of **Employees**, participants, or beneficiaries under any **Employment Benefit Plans**.

#### 2.2 "Claim" shall mean:

- a) any written demand made against any **Insured** for monetary damages or non-monetary or injunctive relief, including, but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process; or
- b) a civil proceeding commenced against any **Insured** by issuance or filing of a Notice of Action, Statement of Claim, Writ of Summons, Complaint, or similar pleading;
- c) a mediation or arbitration proceeding against any **Insured** commenced by the receipt by an **Insured** of a notice of request or intent to mediate or arbitrate, or similar document; or
- d) an administrative or regulatory proceeding against any **Insured** commenced by the filing of a notice of charges or similar document, or a criminal or penal proceeding against any **Insured** commenced by an arrest, summons to appear, laying of an information, return of an indictment, service of a statement of offence, or similar document.

#### 2.3 "Employee Benefit Plan" means the following plans, funds or programs which are sponsored, operated, maintained or administered by the **Insured Organization** and existed before the effective date of this **Policy**:

- a) any plan providing pension, retirement or savings benefits as contemplated by the Income Tax Act of Canada, R.S.C., 1985, c.1(5<sup>th</sup> Supp) and applicable provisions of provincial pension standards legislation or similar provincial or foreign legislation, which is operated for the benefit of the **Insured Persons**,
- b) any medical or welfare benefit plan or disability benefit plan as defined by the Canada Health Act, R.S.C. 1985, c. C-6, the Ontario Health Insurance Act, R.S.O. 1990, c. H.6, or, any other similar provincial or foreign legislation;
- c) any plans as defined in the Ontario Insurance Act, R.S.O. 1990, c. 1.8, or, similar provincial or foreign legislation;
- d) any retirement compensation agreement, flexible employee benefit plan or registered supplementary unemployment benefit or stock ownership plan not subject to Canadian

legislation if sponsored by the **Insured Organization** for the benefit of the **Insured Persons**;

- e) in the United States of America, any plan, including a welfare benefit plan, as defined in **ERISA**, but only if shown as "covered" in Item 3C. of the **Declarations**;
- f) any other plan, fund or program specifically included as an **Employee Benefit Plan** by endorsement to this **Policy**;

provided, however, **Employee Benefit Plan** shall not include any plan, fund or program which is operated by the **Insured Organization** jointly with any other employer or labour organization, or is a multi-employer plan as defined in the Pension Benefits Standards Act, R.S. 1985, c.32 (2nd Supp.), the Ontario Pension Benefits Act, R.S.O 1990, c. P.8 or **ERISA** or by the common, civil or statutory law of Canada, or any province, territory, state or other jurisdiction anywhere in the world.

**Employee Benefit Plan** shall also include any plans within the meaning of subparagraphs a)-d) above which are acquired or created by the **Insured Organization** subsequent to the effective date of this **Policy**.

Coverage for an **Employee Benefit Plan** shall apply to any **Fiduciary Wrongful Act** committed or allegedly committed by the **Insured** after the effective date that the **Employee Benefit Plan** became an **Employee Benefit Plan** and such coverage shall extend to any past **Employee Benefit Plan** to the extent that the **Fiduciary Wrongful Act** is committed or allegedly committed prior to the date the **Employee Benefit Plan** ceased to be an **Employee Benefit Plan**.

2.4 "ERISA" shall mean the Employee Retired Income Security Act of 1974, including any amendments thereto and regulations promulgated thereunder.

2.5 "Fiduciary" shall mean any person or entity having fiduciary responsibilities with respect to the governance or management of an **Employee Benefit Plan** or the disposition of its assets.

2.6 "Fiduciary Wrongful Act" shall mean:

- a) any actual or alleged breach of the responsibilities, obligations or duties imposed upon any **Insured** in their capacity as a **Fiduciary** of any **Employee Benefit Plan** by common, civil or statutory law anywhere in the world;
- b) any actual or alleged negligent act, error or omission by an **Insured** in the **Administration** of an **Employee Benefit Plan**;
- c) any other matter claimed against any **Insured Person** or **Insured Organization** solely by reason of their status as a **Fiduciary** of an **Employee Benefit Plan**; or
- d) any matter falling within the meaning of subparagraph a), b) or c) above which is committed or allegedly committed by any person for whose **Fiduciary Wrongful Acts** the **Insured** is legally responsible.

2.7 "Insured" shall mean:

- a) any **Insured Person**;
- b) any **Insured Organization**; or
- c) any **Employee Benefit Plan**.

2.8 "Insured Person" shall mean any person who was, is or who becomes during the **Policy Period**:

- a) a **Director and Officer** or natural person serving in a similar capacity with any **Employee Benefit Plan**;
- b) an **Employee** or natural person serving in a similar capacity with any **Employee Benefit Plan**;
- c) a **Fiduciary**; or
- d) with respect to any **Director and Officer**, **Employee** or **Fiduciary**, and solely in relation to **Fiduciary Wrongful Acts** by such **Director and Officer**, **Employee** or **Fiduciary**:
  - i. any family member, including but not limited to the lawful spouse (including **Common Law Partners** if recognized by law in the **Insured Organization's** country of domicile) but only where recovery against such family member is sought solely because property is held

- jointly with, or owned by the family member on behalf of such **Director and Officer, Employee or Fiduciary**;
- ii. the legal representatives, heirs, assigns or estates of any deceased **Director and Officer, Employee or Fiduciary**;
  - iii. the legal representatives or assigns in the event of the **Director and Officer's, Employee's or Fiduciary's** incompetency, insolvency or bankruptcy.

2.9 "**Loss**" shall mean the amount that an **Insured** is legally obligated to pay, including but not limited to damages, settlements, judgments (including pre/post-judgment interest on a covered judgment), awards of costs (including claimant's legal costs and expenses), and **Defence Costs**.

However, **Loss** does not include:

- a) taxes, fines or penalties;
- b) matters uninsurable under the law pursuant to which this **Policy** is construed;
- c) punitive, exemplary damages or multiplied damages (except where insurable under the applicable law most favourable to the insurability of such damages provided such jurisdiction has a substantial relationship to the **Insured**);
- d) amounts incurred by an **Insured** to comply with an order or agreement to provide injunctive or non-monetary relief;

## SECTION 3. EXCLUSIONS

The **Insurer** shall not be liable for **Loss** on account of any **Claim**:

### 3.1 Conduct

based upon, arising from, directly or indirectly resulting from, or in consequence of:

- (a) any deliberately fraudulent or criminal act or omission or any willful violation of any statute, law or regulation by an **Insured Person**, if a final, non-appealable adjudication in an underlying action adverse to the **Insured Person** establishes such conduct; or
- (b) the gaining of any profit, remuneration or advantage to which an **Insured** was not legally entitled, if established by a final, non-appealable adjudication in an underlying action adverse to the **Insured**.

### 3.2 Prior Noticed Circumstances

based upon, arising from, directly or indirectly resulting from, or in consequence of any circumstances notified in writing to, and accepted by, any insurer under a policy of which this **Policy** is a renewal or replacement and which provides coverage ( or would afford such coverage except for the exhaustion of its limits of liability) for such **Loss**;

### 4.1 Prior Claims, Proceedings

for any written demand, action or other proceeding, order, decree or judgment entered for or against any **Insured** prior to or pending at the applicable date stated in Item 9 of the **Declarations**, or which arises from matters substantially the same as alleged in or forming the subject matter therein.

### 3.3 Bodily Injury & Property Damage

for bodily injury, sickness, disease or death of any person howsoever caused or damage to or destruction of any tangible property, including loss of use thereof. Provided, however, that this exclusion shall not apply to that part of a **Claim** alleging mental anguish or emotional distress.

### 3.4 Contractual Liability of Others

for any direct or assumed liability or obligation of others which the **Insured** has assumed under any contract or agreement except to the extent that:

- a) the **Insured** would have been liable in the absence of such contract or agreement; or
- b) the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Employee Benefit Plan** was established.

### 3.5 Contributions Owed

based upon, arising out of, directly or indirectly resulting from, or in consequence of the failure to collect from the **Insured Organization** contributions it owed to any **Employee Benefit Plan**, or the failure to fund an **Employee Benefit Plan** in accordance with **ERISA**, any similar state, federal, provincial or local law, or the **Employee Benefit Plan** instrument. However, this exclusion shall not apply to **Defence Costs**, and shall not apply if the failure is due to the negligence of an **Insured Person**.

### 3.6 Benefits Due

for benefits due or to become due under any **Employee Benefit Plan**, benefits which would be due under any **Employee Benefit Plan** if such **Employee Benefit Plan** complied with all applicable law, or that portion of any settlement or judgment which constitutes such benefits. However, this exclusion shall not apply to **Defence Costs** or to the extent that recovery for such benefit is based upon a covered **Fiduciary Wrongful Act** by an **Insured Person** and such benefits are payable as a personal obligation of such **Insured Person**.

### 3.7 Contribution Reversion

based upon, arising out of, directly or indirectly resulting from, or in consequence of the actual or alleged return or reversion to the **Insured** of any contribution or asset of any **Employee Benefit Plan**.

### 3.8 Discrimination

for discrimination on the basis of race, creed, gender or age, however, this exclusion shall not apply to **Defence Costs**.

For purposes of determining the application of the above exclusions, facts pertaining to or knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**. Only facts pertaining to or knowledge possessed by the past, present or future chief executive officer or chief financial officer of the **Insured Organization** shall be imputed to such **Insured Organization**.

## GENERAL TERMS AND CONDITIONS

IMPORTANT NOTICE: THIS POLICY CONTAINS A CLAUSE WHICH MAY LIMIT THE AMOUNT PAYABLE.

In consideration of the payment of premium, and in reliance upon the **Application**, and subject to the **Declarations** and the terms and conditions and limitations of this **Policy**, the **Insured** and the **Insurer** agree as follows:

### SECTION 1. APPLICATION OF GENERAL TERMS AND CONDITIONS

- 1.1 These **General Terms and Conditions** shall apply to the **D&O Coverage Section, EPL Coverage Section, and Fiduciary Coverage Section** of this **Policy**, unless specifically deemed not to apply by the terms and conditions of any individual **Coverage Section**. Only Sections 1 and 2, and subsections 4.1, 8.6, 8.8, 8.11, 8.12, 8.14 and 8.16 of these **General Terms and Conditions** shall apply to the **Crime Coverage Section** of this **Policy**.
- 1.2 The terms and conditions contained within each individual **Coverage Section** apply only to the **Coverage Section** in which they are found and shall not be construed to apply to any other **Coverage Section**.
- 1.3 Terms that appear in bold font in these **General Terms and Conditions**, which are not defined in Section 2 of these **General Terms and Conditions**, shall have the meanings provided for such terms in the applicable **Coverage Section** for the purpose of coverage provided under such **Coverage Section**.
- 1.4 In the event of any conflict between these **General Terms and Conditions** and the terms and conditions of any individual **Coverage Section**, the terms of the individual **Coverage Section** shall apply.

### SECTION 2. DEFINITIONS

Whenever used in this **Policy**, the terms that appear in bold font in this Section 2 of the **General Terms and Conditions** shall have the meanings set forth below, unless a different definition is given in a **Coverage Section** for such term, in which case, the definition in the **Coverage Section** shall apply for the purpose of that **Coverage Section** only.

- 2.1 "**Application**" shall mean all signed applications, any attachments to such applications, other materials submitted therewith or incorporated therein, and any other documents submitted to the **Insurer** in connection with the underwriting of this **Policy** or any policy of which this **Policy** is a renewal or replacement. All such **Applications** are deemed attached to and incorporated into this **Policy**.
- 2.2 "**Change in Control**" shall mean the **Named Organization** is merged, consolidated with or acquired by another entity, or entities acting in concert, such that the acquiring party has the right to elect at least fifty percent (50%) of the directors of the **Named Organization**, and/or all or substantially all of the **Named Organization's** assets are acquired by another entity.
- 2.3 "**Common Law Partners**" shall mean two persons who:
  - a) cohabited continuously in a conjugal relationship outside of marriage for a period of at least one year; or
  - b) cohabited continuously in a conjugal relationship of some permanence outside of marriage if they are the natural or adoptive parents of a child.
- 2.4 "**Coverage Section**" shall mean each of the following **Coverage Sections** attached to and forming a part of this **Policy**, including the **D&O Coverage Section, EPL Coverage Section, Fiduciary Coverage Section** and/or the **Crime Coverage Section**, as purchased by the **Insured** and listed in Item 3 of the **Declarations**.
- 2.5 "**Declarations**" shall mean the Declarations attached to and forming part of this **Policy**.
- 2.6 "**Defence Costs**" shall mean all reasonable and necessary costs, charges, fees (including but not limited to legal fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of

any **Insured Person**) incurred by the **Insurer**, or by the **Insured** with the prior written consent of the **Insurer**, in the defence, investigation, adjustment, settlement or appeal of any **Claims** for which coverage is afforded under this **Policy**, and the premium for appeal, attachment, advancement of costs or similar bonds arising out of covered judgements. **Defence Costs** are part of and not in addition to all limits of liability applicable to this **Policy**, except where required by the laws of the Province of Quebec, including the **Policy Aggregate Limit** and any applicable **Shared Limit of Liability** or **Separate Limit of Liability**.

- 2.7 “**Director and Officer**” shall mean any natural person who is a past, current or future duly elected or appointed director (including any de facto or “deemed” director), officer, trustee, management committee or board member, general partner or partnership manager, General Counsel, risk manager, or governor of the **Insured Organization** and all persons serving in a functionally equivalent or foreign equivalent role for the **Insured Organization**.
- 2.8 “**Early Settlement Opportunity**” shall mean an offer to settle or a proposed settlement of a **Claim** under this **Policy** which meets all of the following criteria:
- a) notification of the **Claim** is given by the **Insured** to the **Insurer** within thirty (30) days from the date the **Claim** was first made;
  - b) the settlement offer or proposed settlement is made by any party, recommended by the **Insurer**, and agreed to by the claimant, all within ninety (90) days from the date the **Claim** was first made; and
  - c) the total amount of the settlement offer or proposed settlement is within the limits of liability applicable to such **Claim** and any **Claim** alleging **Interrelated Wrongful Acts** under this **Policy**.
- 2.9 “**Employee**” shall mean any past, present, or future employee of the **Insured Organization** (other than a **Director and Officer**), engaged and directed by the **Insured Organization** including any full-time, part-time, seasonal or temporary employee of the **Insured Organization**. **Employee** also includes an independent contractor but only to the extent such individual performs work or services for or on behalf of the **Insured Organization**, and only to the extent they are indemnified by the **Insured Organization** in the same manner as the **Insured Organization’s** own employees, and in such case coverage hereunder shall be specifically excess of any indemnification or insurance otherwise available to such independent contractors.
- 2.10 “**Extended Reporting Period**” shall mean the period referred to in Section 3. of the **General Terms and Conditions**.
- 2.11 “**Financial Insolvency**” shall mean bankruptcy or insolvency as defined by the provisions of the Bankruptcy and Insolvency Act R.S.C. 1985, c.B-3, Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, Winding up and Restructuring Act, R.S.C. 1985, c. W-11, or Chapters 7 or 11 of the United States Bankruptcy Code, and includes liquidation pursuant to the Canada Business Corporations Act R.S.C. 1985, c.C-44 or any similar provincial or territorial legislation, and the appointment of a receiver, receiver manager, or monitor.
- 2.12 “**General Terms and Conditions**” shall mean these **General Terms and Conditions** which are attached to and form a part of the **Policy**.
- 2.13 “**Insured Organization**” shall mean the **Named Organization** and any **Subsidiary**.
- 2.14 “**Insurer**” shall mean the Insurance Company stated in the **Declarations**.
- 2.15 “**Interrelated Wrongful Acts**” shall mean two or more **Wrongful Acts, Employment Practices Wrongful Acts, Third Party Wrongful Acts, or Fiduciary Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event or transaction, or any series of facts, circumstances, situations, events or transactions.
- 2.16 “**Named Organization**” shall mean the entity named in Item 1 of the **Declarations**.
- 2.17 “**Official Body**” shall mean any regulator, prosecuting authority, government body, government agency, parliamentary commission, official trade body, law enforcement agency or any other professional body with powers to investigate, regulate or discipline an **Insured Organization** or an **Insured Person**.

- 2.18 **"Policy"** shall mean the **Declarations**, this policy form including the **General Terms and Conditions** and all **Coverage Sections**, any endorsements attached to the **Policy**, and the **Application**.
- 2.19 **"Policy Aggregate Limit"** means the **Policy Aggregate Limit** stated in Item 5 of the **Declarations**.
- 2.20 **"Policy Period"** shall mean the period of time specified in Item 2 of the **Declarations**, or any other period as may be mutually agreed in writing by the **Named Organization** and **Insurer**.
- 2.21 **"Pollutant"** shall mean solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or **Waste** and any air emission, odor, waste water, oil or oil products, infectious, biological or medical waste, asbestos or asbestos products, silica, noise, fungus, including mold, mildew and any mycotoxins, spores, scents or by products produced or released by fungi, but not any fungi intended by the **Insured** for consumption, and electric or magnetic or electromagnetic fields. **"Waste"** includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- 2.22 **"Retention"** shall mean the amount stated in Item 3 of the **Declarations**.
- 2.23 **"Separate Limit of Liability"** means the **Separate Limit of Liability** applicable to any **Coverage Section**, as stated in Item 3 of the **Declarations**.
- 2.24 **"Shared Limit of Liability"** means the **Shared Limit of Liability**, if any, which shall be applicable to and shared between two or more **Coverage Sections**, as listed below such **Shared Limit of Liability** in Item 3 of the **Declarations**.
- 2.25 **"Subsidiary"** shall mean any entity, including but not limited to any corporation, income trust, joint venture, limited liability company, unlimited liability company, or partnership of which the **Insured Organization** either directly or indirectly, (i) holds or controls more than 50% of the outstanding securities representing the right to vote for the election of such entity's directors or; (ii) has the right, pursuant to written contract, certificate of incorporation, charter, by-laws, articles of association, limited liability company agreement, partnership agreement or other organizational or similar documents of an entity to elect, appoint, or designate a majority of such entity's directors, officers, general partners, managing members, members of the Board of Managers or their equivalent (hereinafter deemed as management control),
- a) on or before the effective date of this **Policy**; or
- b) subsequent to the effective date of this **Policy**, by reason of it being acquired or created by the **Insured Organization**.
- Subsidiary** shall include coverage for any past **Subsidiary** that is otherwise covered under Section 8.1 of the **General Terms and Conditions**.
- 2.26 **"Whistleblower Conduct"** shall mean actions of an **Employee** or **Director and Officer** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, provincial, local or foreign common or statutory law, or any rule or regulation promulgated thereunder.

### SECTION 3. EXTENDED REPORTING PERIOD

- 3.1 If; i) this **Policy** is terminated or not renewed for any reason other than for non-payment of premium; or, ii) there is a **Change in Control**; and, iii) in the case of both i) and ii) if this **Policy** is neither renewed nor replaced with a directors' & officers' liability policy on terms substantially the same as this **Policy**, then the **Insured** will be entitled to an **Extended Reporting Period** automatically of 60 days for no additional premium or, the **Named Organization** may elect to purchase an **Extended Reporting Period**. The **Extended Reporting Period** provides an additional period, which commences upon the **Policy** termination or expiry of the **Policy Period**, or in the case of a **Change in Control** from the effective date of such event, and continues for 60 days (if automatic), or for the term selected from the options indicated in Item 7 of the **Declarations** (if purchased), during which the **Insured** may provide notice, but only in respect of **Claims, Derivative Demands, Investigations** or **Inquiries** first made during the **Extended Reporting Period** for **Wrongful Acts, Employment Practices Wrongful Acts, Third Party Wrongful Acts** or **Fiduciary Wrongful Acts** committed or alleged to have been committed prior to the end of the **Policy Period**, or in the case of a **Change in Control** prior to the effective date of such event. The additional premium associated with the purchase of the **Extended Reporting Period** is calculated at the percentage shown in Item 7 of the **Declarations** to this **Policy** multiplied by the total Annual Premium as shown in Item 6 of the **Declarations**.



- 3.2 It is specifically agreed that the purchase of the **Extended Reporting Period** shall be dependent upon:
- a) written notice requesting the **Extended Reporting Period** being received by the **Insurer** within sixty (60) days following the date of termination of the **Policy** or the expiry date of the **Policy Period**, or in the case of a **Change in Control** within sixty(60) days of the **Change in Control**; and
  - b) the applicable additional premium being received by the **Insurer** no more than fifteen (15) days after the date of receipt of such request.
- 3.3 Purchase of the **Extended Reporting Period** shall not in any way increase the **Policy Aggregate Limit** or any **Shared Limit of Liability** or **Separate Limit of Liability**.
- 3.4 The **Extended Reporting Period**, once purchased, is not cancellable and the additional premium charged is fully earned at inception. The **Insurer** has no obligation under this **Policy** to offer any additional or sequential **Extended Reporting Period** after the **Extended Reporting Period** set out in section 3.1 of the **General Terms and Conditions**.

#### SECTION 4. LIMIT OF LIABILITY AND PRIORITY OF PAYMENTS

- 4.1 The maximum limit of liability of the **Insurer** under the **Policy**, for all **Loss** under all **Coverage Sections**, shall be the total **Policy Aggregate Limit** stated in Item 5 of the **Declarations**. Once the **Policy Aggregate Limit** is fully exhausted, the **Insurer** shall have no obligation to pay any further **Loss** under any **Coverage Sections** of this **Policy**.
- 4.2 If any **Shared Limits of Liability** are shown in Item 3 of the **Declarations**, then each such **Shared Limit of Liability** shall be the maximum limit of the **Insurer's** aggregate liability for all **Loss** with respect to all **Coverage Sections** combined for which such **Shared Limit of Liability** is applicable as indicated in Item 3 of the **Declarations**, regardless of the number of **Claims, Investigations, Derivative Demands** or **Inquiries**. Each **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit** under this **Policy** and shall in no way serve to increase the **Policy Aggregate Limit**. Once a **Shared Limit of Liability** is fully exhausted, the **Insurer** shall have no obligation to pay any further **Loss** under the **Coverage Sections** which are subject to such **Shared Limit of Liability**.
- 4.3 If **Separate Limits of Liability** are stated in Item 3 of the **Declarations** for any **Coverage Section**, then each such **Separate Limit of Liability** shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss** under such **Coverage Section**, regardless of the number of **Claims, Investigations, Derivative Demands** or **Inquiries**. Each **Separate Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit** under this **Policy** and shall in no way serve to increase the **Policy Aggregate Limit**. Once a **Separate Limit of Liability** is fully exhausted, the **Insurer** shall have no obligation to pay any further **Loss** under the **Coverage Section** which is subject to such **Separate Limit of Liability**.
- 4.4 The **Policy Aggregate Limit**, and all **Shared Limits of Liability** or **Separate Limits of Liability** applicable to any **Extended Reporting Period**, if purchased, shall be part of, and not in addition to, such limits of liability for the **Policy Period**.

#### SECTION 5. RETENTION

- 5.1 The **Insurer** will only be liable for the amount of **Loss** arising from a **Claim** that is in excess of the applicable **Retention** amount stated in Item 3 of the **Declarations**.
- 5.2 No **Retention** will apply to a **Claim, Investigation, Derivative Demand** or **Inquiry**:
- a) in the event the **Insured Organization** fails to indemnify the **Insured Persons** due to the **Financial Insolvency** of the **Insured Organization** during the **Policy Period**, or during any applicable **Extended Reporting Period**;
  - b) where a final judgment of no liability is obtained prior to trial in favour of all **Insureds**, by reason of a motion to dismiss or a motion for summary judgment, after the exhaustion of all appeals; or
  - c) where a final judgment of no liability is obtained after trial in favour of all **Insureds**, after

exhaustion of all appeals and no **Loss** other than in respect of **Defence Costs** has been incurred.

The **Insurer** agrees in the case of b) or c) above to reimburse all reasonably incurred **Defence Costs** paid by an **Insured** subject to the applicable **Policy Aggregate Limit** and any applicable **Shared Limit of Liability** or **Separate Limit of Liability**. In the event of such determination or dismissal, reimbursement shall occur within sixty (60) days thereafter.

- 5.3 If, for any reason, an **Insured Organization** fails or refuses to advance, pay or indemnify covered **Loss** of an **Insured Person** within the applicable retention, if any, then the **Insurer** shall advance such amounts within 60 days after sufficiently detailed invoices for those fees, costs, expenses and other related charges are received by the **Insurer**. In such case the **Insurer** shall continue to advance such amounts on behalf of the **Insured Person** until either (i) the retention has been satisfied; or (ii) the **Insured Organization** has agreed to make such payments. Such advancement by the **Insurer** shall in no way relieve any **Insured Organization** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**.
- 5.4 All **Claims** or **Investigations** against the **Insured** that arise out of or are attributable to the same **Wrongful Acts, Employment Practices Wrongful Acts, Third Party Wrongful Acts, Fiduciary Wrongful Acts, or Interrelated Wrongful Acts**, shall constitute, respectively, a single **Claim** or **Investigation**, for the purposes of this **Policy**.
- 5.5 Where a **Claim** is covered under two or more **Coverage Sections** of this **Policy**, the **Retention** shall apply as follows:
- a) If two or more **Coverage Sections** applicable to the **Claim** share a **Shared Limit of Liability**, only one **Retention** amount shall apply in respect of the **Coverage Sections** which are subject to the **Shared Limit of Liability**, and such amount shall be the greater of the **Retentions** applicable under such applicable **Coverage Sections**; and
  - b) A separate **Retention** shall apply for each applicable **Coverage Section** that has a **Separate Limit of Liability**.

## SECTION 6. REPORTING – CONDITION PRECEDENT

- 6.1 The **Insureds** shall, as a condition precedent to the **Insurer's** liability under this **Policy**, provide written notification of any **Claim, Inquiry** or **Investigation** first made against any **Insured** during the **Policy Period** as soon as reasonably practicable after the **Named Organization's** General Counsel or Chief Financial Officer first becomes aware of such **Claim, Inquiry** or **Investigation**. However,
- a) if this **Policy** expires and a replacement policy has been issued by the **Insurer**, written notice may be given within 180 days of this **Policy** expiration provided the **Insured** satisfies the **Insurer** that sooner notice was not reasonably possible;
  - b) if this **Policy** expires (or is otherwise terminated) and a replacement policy is not issued by the **Insurer** and the **Extended Reporting Period** has not been exercised, notice may be given within 90 days after the **Policy** expiration date;
  - c) if the **Extended Reporting Period** has been exercised, written notice must be given before the expiration date of the **Extended Reporting Period**;
  - d) if this **Policy** has been cancelled for non-payment of premium, notice must be given prior to the effective date of this **Policy** termination; and
  - e) in the event of an **Early Settlement Opportunity**, notice of a **Claim** must comply with Section 2.8 a).
- 6.2 The **Insureds** may also provide notice in writing to the **Insurer** during the **Policy Period**, or during the **Extended Reporting Period** if applicable, of any fact or circumstance which could reasonably be expected to give rise to a **Claim** or **Investigation**, including a request to toll, waive or extend a limitation period, being made against an **Insured** for a **Wrongful Act, Employment Practices Wrongful Act, Third Party Wrongful Act, or Fiduciary Wrongful Act**.
- 6.3 Notification in accordance with Section 6.1 and notice in writing in accordance with Section 6.2 shall be forwarded to the **Insurer** at the address, or facsimile or electronic mail contact details, stated in Item 8 of the **Declarations**, and must include full particulars as to dates, events, persons and entities involved and the manner in which the **Insureds** became aware of the **Claim, Inquiry, Investigation**, fact or circumstance. Any **Claim** or **Investigation** subsequently made and arising out of a fact or circumstance reported pursuant to Section 6.2 of the **General Terms and Conditions** shall be deemed to have been first made at the time such notice in writing was provided to the **Insurer**.

- 6.4 Failure to give any notice required or permitted to be given by this **Policy** within the prescribed time shall not invalidate any **Claim, Investigation or Inquiry** under this **Policy**:
- a) if the **Insured**, acting reasonably, considers that it is unable to notify a **Claim, Investigation or Inquiry** in order to comply with the requirements of an **Official Body**, or pursuant to any statute or other legal obligation; or
  - b) in the event of a situation not within subparagraph (a) above, unless the **Insurer** can demonstrate its interests have been materially prejudiced by reason of such late notice.

## SECTION 7. DEFENCE, INVESTIGATION AND SETTLEMENT

- 7.1 It shall be the duty of the **Insured** to defend **Claims, Inquiries, Investigations, and Derivative Demands** covered under this **Policy**.
- 7.2 In respect of any **Claim, Investigation, Inquiry or Derivative Demand** covered under this **Policy** the **Insurer** will pay, respectively, **Defence Costs, Investigative Costs or Inquiry Defence Costs** on behalf of the **Insured** on an as incurred basis, but no later than 60 days after receipt of the invoice, subject to reasonableness. If at any time a **Claim, Investigation, Inquiry or Derivative Demand** is determined not to be covered under this **Policy**, then all such **Defence Costs, Investigative Costs, and Inquiry Defence Costs** must be repaid to the **Insurer** on demand, by the **Insureds**, severally and according to their respective interests.
- 7.3 However, the **Insured** shall have the right to tender the defence of a **Claim, Investigation, Inquiry or Derivative Demand** to the **Insurer**, which right shall be exercised in writing by the **Named Organization** on behalf of all **Insured(s)** to the **Insurer** in accordance with SECTION 6, REPORTING – CONDITION PRECEDENT of the **General Terms and Conditions** and within 30 days of the date the **Claim, Investigation, Inquiry or Derivative Demand** is first made against an **Insured**.
- Provided that the **Insured** has complied with SECTION 6. REPORTING – CONDITION PRECEDENT and provided that the **Insured** shall have taken no action whatsoever in the administration or defence of the **Claim, Investigation, Inquiry or Derivative Demand** that prejudices the right of the **Insured** or the **Insurer** with respect to such **Claim, Investigation, Inquiry or Derivative Demand** the **Insurer** shall be obligated to assume the defence of the **Claim, Investigation, Inquiry or Derivative Demand** even if such **Claim, Investigation, Inquiry or Derivative Demand** is groundless, false or without merit. The assumption of the defence of the **Claim, Investigation, Inquiry or Derivative Demand** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Named Organization**.
- The right to tender shall terminate within 30 days of the date the **Claim, Investigation, Inquiry or Derivative Demand** was first made against an **Insured**, however, the **Insurer** may at its sole discretion elect to assume the defence of the **Claim, Investigation, Inquiry or Derivative Demand** should the **Insured** seek to tender the defence more than 30 days after the date the **Claim, Investigation, Inquiry or Derivative Demand** was first made against an **Insured**.
- 7.4 The **Insured** shall obtain the **Insurer's** written consent to retain any lawyers or other advisors from whom advice in respect of the defence of the **Claim, Investigation, Inquiry or Derivative Demand** is being sought, prior to their appointment. Such consent shall not be unreasonably withheld. The **Insurer** shall accept as reasonable and necessary the retention of separate legal representation to the extent required by any actual or potential conflict of interest between any **Insureds**.
- 7.5 The **Insured** shall not admit liability for, plead guilty to, or settle, any **Claim, Investigation, Derivative Demand or Inquiry** without the written consent of the **Insurer**, such consent not to be unreasonably withheld. Furthermore, the **Insurer** shall not settle or compromise any **Claim, Investigation, Derivative Demand or Inquiry** without the written consent of the **Insured**.
- 7.6 The **Insured** shall assert all appropriate defences and cross claims for contribution, indemnity or damages and shall co-operate fully with the **Insurer** and/or its legal representative in the conduct of the defence.
- 7.7 The **Insured** shall at its own cost and in a timely fashion provide all information and assistance reasonably required to allow any **Claim, Investigation, Inquiry or Derivative Demand** to be effectively investigated, defended and/or resolved, and to allow the **Insurer** to investigate and determine coverage under the **Policy**.

- 7.8 The failure of any **Insured Person** to give the **Insurer** cooperation and information as required by Sections 7.6 and 7.7 of this **Coverage Section** shall not impair the rights of any other **Insured Person** under this **Policy**.
- 7.9 If the **Insurer** recommends an **Early Settlement Opportunity** to the **Insureds**, and:
- a) the **Insureds** consent to such **Early Settlement Opportunity** within thirty (30) days of the **Insurer's** recommendation thereof; and
  - b) the **Claim** settles as a result of such **Early Settlement Opportunity**;
- the **Retention** applicable to such **Claim** shall be waived, and any amounts paid by the **Insureds** towards the **Retention** shall be reimbursed by the **Insurer**.

## SECTION 8. GENERAL CONDITIONS

### 8.1 SUBSIDIARY CREATION AND CESSATION

In the event the **Insured Organization** creates or acquires a **Subsidiary**, coverage under this **Policy** shall extend to such **Subsidiary** and its **Insured Persons**, but only with respect to **Wrongful Acts**, **Employment Practices Wrongful Acts**, **Third Party Wrongful Acts** and **Fiduciary Wrongful Acts** committed or alleged to have been committed, or to **Inquiries** commenced, after the said date of acquisition or creation.

If any entity ceases to be a **Subsidiary** after the inception date of the **Policy** or any policy of which the **Policy** is a renewal or replacement, the **Policy** shall continue to apply to any of the **Insured Persons** and **Subsidiaries** who were covered under the **Policy** because of their service with such **Subsidiary**, but only with respect to any **Wrongful Acts**, **Employment Practices Wrongful Acts**, **Third Party Wrongful Acts** and **Fiduciary Wrongful Acts** committed, or to **Inquiries** commenced, prior to the time such entity ceased to be a **Subsidiary**.

### 8.2 ALLOCATION

In the event that a **Claim** involves both **Loss** that is partly covered by this **Policy** and loss that is not covered, either because a **Claim** against an **Insured** includes both covered and uncovered matters or because a **Claim** is made against covered and uncovered parties, the **Insurer** and the **Insured** shall use their best efforts to determine a fair and proper allocation of covered **Loss** and uncovered loss, taking into account the relative legal exposures of the covered and uncovered matters and parties under this **Policy**.

If the amount of covered **Loss** cannot be agreed, the **Insurer** shall pay that portion of **Loss** (pursuant to this Subsection) which the **Insured** and the **Insurer** agree is not in dispute until a final amount is agreed upon or determined pursuant to Section 8.16 of the **General Terms and Conditions**.

### 8.3 MATERIAL CHANGES IN CONDITIONS

Change in Control

In the event of a **Change in Control**, this **Policy** shall only apply to **Wrongful Acts**, **Employment Practices Wrongful Acts**, **Third Party Wrongful Acts** and **Fiduciary Wrongful Acts** committed, or **Inquiries** commenced, prior to the effective date of such **Change in Control**. The full annual premium for the **Policy Period** shall be deemed fully earned immediately upon the occurrence of such **Change in Control** and this **Policy** may not be cancelled thereafter but shall continue until the expiration date shown in Item 2 of the **Declarations**.

In the event of a **Change in Control**, the **Parent Organization** will have the option to purchase an **Extended Reporting Period** as set out in section 3 of the **General Terms and Conditions**.

### 8.4 CANCELLATION / TERMINATION

- a) The **Named Organization** may cancel this **Policy** by giving notice in writing to the **Insurer** at any time.

- b) The **Insurer** may cancel this **Policy** by giving thirty (30) days written notice to the **Named Organization** due to non-payment of premium.
- c) This **Policy** may be cancelled in writing by mutual agreement of the **Named Organization** and the **Insurer**.
- d) This **Policy** shall terminate at the expiration of the **Policy Period** as stated in Item 2 of the **Declarations**.
- e) The **Insurer** shall give written notice to the **Named Organization** 90 days in advance of the **Policy Period** expiry date, in the event the **Insurer** intends to non-renew this **Policy**.

If the **Named Organization** cancels this **Policy**, the **Insurer** shall retain the proportion of the premium calculated on a pro-rata basis as at the date of cancellation.

#### 8.5 OTHER INSURANCE

This **Policy** shall apply only in excess of any other valid and collectible insurance, other than insurance written as specific excess insurance over the **Policy Aggregate Limit**, or over the **Shared Limit of Liability** or **Separate Limit of Liability** applicable to any **Coverage Section** of this **Policy**.

#### 8.6 PRIORITY OF PAYMENTS

The **Insurer** shall pay **Loss** in the order in which **Loss** is presented to the **Insurer** for payment. If **Loss**, which in the aggregate exceeds the applicable available or remaining available **Separate Limit of Liability** or applicable **Shared Limits of Liability**, is payable concurrently under Insuring Agreement A in the **D&O Coverage Section** and other Insuring Agreements in other **Coverage Sections** of this **Policy**, the **Insurer** will first pay **Loss** payable under Insuring Agreement A in the **D&O Coverage Section**. Notwithstanding the above, the **Insurer** shall upon written request by the Chief Executive Officer or equivalent position of the **Named Organization** withhold any payment which would otherwise be made under any Insuring Agreements other than Insuring Agreement A in the **D&O Coverage Section**. Any such withheld payment shall, upon further written request to the **Insurer** by the Chief Executive Officer or equivalent position of the **Named Organization**, be paid by the **Insurer** to either:

- a) the **Insured Organization**, if the written request for payment is made within 1 year of the date of final judgment or resolution of the **Claim, Investigation, or Inquiry** for which coverage is provided under any Insuring Agreements other than Insuring Agreement A in the **D&O Coverage Section**; or
- b) to, or for the benefit of an **Insured Person**, if such **Insured Person** has incurred **Loss** for which coverage is provided under Insuring Agreement A in the **D&O Coverage Section**.

The order of payment provided for herein shall apply irrespective of the **Financial Insolvency** of any **Insured Organization**, provided however that no payment will be compelled without compliance with all necessary judicial authorization, orders and laws.

#### 8.7 ACTION AGAINST THE INSURER

Except as provided in Section 8.16 – ALTERNATIVE DISPUTE RESOLUTION, no action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms and conditions of this **Policy**.

No suit or action by the **Insured**, or by any other person or entity claiming through the **Insured**, or on its behalf, shall lie against the **Insurer** unless such suit or action is brought in a Court of competent jurisdiction within Canada.

No person or entity shall have the right under this **Policy** to join the **Insurer** as a party to any action against the **Insured** to determine liability of the **Insured**, nor shall the **Insureds** or their legal representative implead the **Insurer**. **Financial Insolvency** of any **Insured**, or their estates, shall not relieve the **Insurer** of any of its obligations hereunder.

#### 8.8 ASSIGNMENT OF POLICY

This **Policy** and any rights hereunder cannot be assigned without the written consent of the **Insurer**.

#### 8.9 ACCEPTANCE AND SEVERABILITY OF APPLICATION

- a) The **Application** for this **Policy** shall be construed as a separate **Application** by each **Insured Person**. With respect to the declarations and statements contained in the **Application**, no

statement in the **Application** or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**. Only the knowledge of any past, present or future chief executive officer or chief financial officer of the **Insured Organization** shall be imputed to such **Insured Organization** for the purposes of determining the validity of this **Policy** as to the coverage provided to such **Insured Organization**. To each **Insureds'** best respective knowledge, the particulars and statements contained in the **Application** are true in all material respects and this **Policy** is issued in reliance upon the truth of such representations.

- b) Notwithstanding the foregoing, this **Policy** and all **Coverage Sections** hereunder shall be non-rescindable by the **Insurer**.

#### 8.10 SUBROGATION AND ASSIGNMENT OF RIGHTS

In the event of payment under this **Policy**, the **Insurer** shall be subrogated to all of the **Insured's** rights of recovery in respect of such payment. In addition, the **Insured** shall execute all documentation that may be necessary to enable the **Insurer** to bring an action or suit in the name of the **Insured**. Any recovery received shall first be applied against any payment made by the **Insurer**, with any balance remaining thereafter being remitted to the **Insured**.

It is agreed that the **Insurer** may subrogate against the **Insured** only in the event of a deliberate criminal or deliberately fraudulent act by the **Insured** if established by a final, non-appealable adjudication in an underlying action adverse to the **Insured**.

In the event the **Insurer** recovers amounts it paid under this **Policy** or any **Coverage Section**, whether from the **Insured Organization**, underlying insurer or any third party, the **Insurer** will reinstate the **Policy Aggregate Limit** and any applicable **Shared Limit of Liability** or **Separate Limit of Liability** under this **Policy** to the extent of such recovery.

By paying **Loss** under this **Policy**, the **Insurer** does not waive, compromise or release its right to recover such **Loss** from the issuers of any other insurance under which coverage may be owed, or from the **Insured Organization**, or any other party from which the **Insured Person** is entitled to indemnification.

#### 8.11 AUTHORIZATION OF THE NAMED ORGANIZATION

The **Named Organization** shall act as agent on behalf of the **Insured** in respect of all matters of any nature relating to or affecting this **Policy**. The **Insurer** shall be entitled to treat the **Named Organization** as having such authority for all purposes connected with this **Policy**. However, if a **Claim** is made against an **Insured Person** by the **Insured Organization**, the **Insurer** shall have no duty or obligation to communicate with any other **Insured Person** or the **Insured Organization** in relation to that **Claim**.

#### 8.12 SINGULAR AND PLURAL / MASCULINE AND FEMININE

Any reference to the singular shall include the plural and vice versa. Any reference to the masculine shall include the feminine and vice versa.

#### 8.13 TERRITORY AND VALUATION

Coverage under this **Policy** shall extend anywhere in the world, unless specified otherwise.

All premiums, limits, **Retentions**, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of Canada, unless specified otherwise. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than Canadian, payment under this **Policy** shall be made in Canadian dollars at the rate of exchange published by the Bank of Canada on the date the final judgment is reached, or the amount of the settlement is agreed upon respectively.

#### 8.14 GOVERNING LAW

- a) This **Policy** shall be governed by the laws of, and, other than as set out in section 8.16 of the **General Terms and Conditions**, subject to the exclusive jurisdiction of the province or territory where the **Named Organization** has its principal address, as noted in Item 1 of the Declarations.

- b) In the event that there is an inconsistency between any applicable provincial or territorial legislation regarding insurance and any term or condition of this **Policy**, then it is understood and agreed that, where permitted by law, the **Insurer** shall apply those terms and conditions of either the provincial or territorial insurance legislation or the **Policy** which are more favorable to the **Insured**.
- c) Where this **Policy** is legally required to be interpreted in accordance with the laws of the Province of Quebec:
  - (i) Les parties ont expressément convenu que cette convention ainsi que tous documents y afférents soient rédigés en langue anglaise seulement. The parties have expressly agreed that this **Policy** and all related documents be drafted in the English language only; and
  - (ii) The **Policy** provisions shall be deemed to be amended to comply with the applicable mandatory provisions of the Quebec Civil Code, but only to the extent necessary to comply with such mandatory provisions of the Quebec Civil Code and only to the extent that such mandatory provisions are contrary to the existing terms of this **Policy**.

#### 8.15 WAIVER IN STAY IN BANKRUPTCY

It is understood and agreed that the coverage provided under the **Policy** is intended to protect and benefit the **Insured Persons**. In the event of **Financial Insolvency** of the **Insured Organization**, then, in regard to a covered **Claim, Investigation, or Inquiry** under the **Policy**, the **Insureds** hereby 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 the **Policy** as a result of the **Financial Insolvency**.

#### 8.16 ALTERNATIVE DISPUTE RESOLUTION

- a) All disputes or differences 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 an alternative dispute resolution (ADR) process as provided in this clause.
- b) Mediation. If any dispute arises between any **Insured** and the **Insurer** involving this **Policy** and/or a **Claim, Investigation, Derivative Demand or Inquiry** hereunder, it is hereby mutually agreed by the **Insured** and the **Insurer** that such dispute shall be referred to a qualified mediator in a good faith effort to negotiate a resolution of the dispute, prior to the initiation of any arbitration or other proceedings. The party electing to mediate shall provide written notice to the other party setting forth its request to mediate and a brief statement regarding the issue to be mediated. Notice of Mediation to the **Insurer** shall be forwarded to the address stated in Item 8 of the **Declarations**. The **Named Organization** is authorized and directed to accept the Notice of Mediation on behalf of any **Insured**.
- c) Arbitration. As a condition precedent to any right of action hereunder, in the event that a good faith effort to mediate pursuant to Section 8.16 a. above cannot resolve a dispute between any **Insured** and the **Insurer** involving this **Policy** or a **Claim, Investigation, Derivative Demand or Inquiry** hereunder, it is hereby mutually agreed that such dispute shall be determined by final and binding arbitration before a single arbitrator under the provisions of the provincial *Arbitration Act* currently in force in the jurisdiction of the **Named Organization's** principal address indicated in Item 1 of the **Declarations**. If the parties cannot mutually select the arbitrator, the parties will refer the selection of the arbitrator to the chapter of the ADR Institute of Canada Inc. operating in the jurisdiction of the applicable *Arbitration Act*.
- d) ADR Rules: In considering the construction or interpretation of the provisions of this **Policy**, the mediator or arbitrator(s) must give due consideration of the general principles of the law of the jurisdiction of the **Named Organization's** principal address. Each party shall share equally the expenses of the ADR. At the election of the **Named Organization**, the ADR process shall be commenced in Toronto, Ontario, or in the province or territory reflected in the address of the **Named Organization**, or in accordance with the applicable *Arbitration Act*. In all other respects, the **Insurer** and the **Named Organization** shall mutually agree to the procedural rules for the mediation or arbitration. In the absence of such an agreement, after reasonable diligence, the arbitrator(s) or mediator shall specify commercially reasonable rules.



## ENDORSEMENT

PLEASE READ THIS ENDORSEMENT CAREFULLY.

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Policy Number: MU401999  
Effective Date: April 1, 2021  
Endorsement Number: 1  
Brokerage: Arthur J. Gallagher Canada Limited  
Insured Organization: All Affiliated Clubs of Athletics Ontario

### CRISIS MANAGEMENT EXPENSE COVERAGE

**Attached to and forming part of the Modular Financial Lines Liability Insurance Policy.**

It is hereby agreed that the following amendments are made to the **D&O COVERAGE SECTION** of the **Policy**:

1. Section 2 COVERAGE EXTENSIONS is amended to add the following:

E. Crisis Management Expenses for Insured Organization

The **Insurer** shall pay the **Crisis Expenses** of an **Insured Organization** incurred in connection with a **Crisis** first commenced during the **Policy Period** or, if applicable, during the **Extended Reporting Period**.

2. The following are added to SECTION 3.DEFINITIONS:

**"Crisis"** shall mean one of the following events which results in the publication of unfavourable information regarding an **Insured Organization** and which could reasonably be considered to lessen public confidence in the competence of the **Insured Organization**:

- a) the public announcement of accusation that an individual under the management control of the **Insured Organization** has caused the bodily injury to, or death of, or sexually abused a member of the **Insured Organization**;
- b) the public announcement that an **Insured Organization** has defaulted or intends to default on its debt or intends to engage in debt restructuring;
- c) an unanticipated death, incapacity or criminal indictment of any **Director or Officer** of the **Insured Organization**;
- d) the public announcement of an **Insured Organization's** filing for bankruptcy, whether voluntary or involuntary, or a filing of a reorganization proceeding under the Companies' Creditors Arrangement Act; or



- e) the public announcement that the withdrawal or return by the **Insured Organization** of a non-government grant, contribution, or bequest in excess of 10% of the assets of the **Insured Organization** as at the policy effective date of the **Policy**.

For the purposes of this Endorsement, a **Crisis** shall be deemed first commenced when a **Director and Officer** of the **Insured Organization** first becomes aware of such **Crisis**. A **Crisis** shall conclude once the retained independent consultant advises an **Insured Organization** that such **Crisis** no longer exists or when the sublimit of liability for **Crisis Expenses** provided by this Endorsement has been exhausted.

“**Crisis Expenses**” shall mean the reasonable costs, charges, fees and expenses, incurred by the **Insured Organization** with the **Insurer’s** prior written consent, of an independent public relations consultant or crisis management consultant retained on behalf of the **Insured Organization** to:

- i) make a public communication; or
- ii) prevent or minimize business disruption and adverse publicity, with respect to a **Crisis**.

- 3. Coverage provided for **Crisis Expenses** pursuant to this Endorsement, shall be subject to a sub-limit of liability of \$250,000 each **Loss** and each **Policy Period**. Such sub-limit shall be part of and not in addition to **Policy Aggregate Limit** or any **Shared Limit of Liability** or **Separate Limit of Liability** applicable to this **Coverage Section**.



## ENDORSEMENT

PLEASE READ THIS ENDORSEMENT CAREFULLY.

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Policy Number: MU401999  
Effective Date: April 1, 2021  
Endorsement Number: 2  
Brokerage: Arthur J. Gallagher Canada Limited  
Insured Organization: All Affiliated Clubs of Athletics Ontario

### ABUSE EXCLUSION

**Attached to and forming part of the Modular Financial Lines Liability Insurance Policy.**

It is understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim**, except for **Claims for Employment Practices Wrongful Acts**, based upon, arising from, directly or indirectly resulting from, or in consequence of:

1. **Abuse** committed or alleged to have been committed by an **Insured**, including the transmission of disease arising out of any act of **Abuse**;
2. the **Insured's** practices of **Employee** hiring, acceptance of volunteer workers or supervision or retention of any person alleged to have committed **Abuse**; or
3. the actual or alleged knowledge or the failure to report by the **Insured** the alleged **Abuse** to the appropriate authorities.

For the purposes of this endorsement only, **Abuse** means any act or threat involving molestation, harassment, corporal punishment, assault or battery or any other form of physical, sexual, emotional, psychological, or mental abuse.



## ENDORSEMENT

PLEASE READ THIS ENDORSEMENT CAREFULLY.

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Policy Number: MU401999  
Effective Date: April 1, 2021  
Endorsement Number: 3  
Brokerage: Arthur J. Gallagher Canada Limited  
Insured Organization: All Affiliated Clubs of Athletics Ontario

### PRIOR CLAIMS EXCLUSION

**Attached to and forming part of the Modular Financial Lines Liability Insurance Policy.**

It is understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** based upon, arising from, directly or indirectly resulting from, or in consequence of any fact or circumstance that may reasonably give rise to a **Claim**, whether disclosed in the application or not, in any way known to any **Insured** prior to the effective date of this policy.



## ENDORSEMENT

PLEASE READ THIS ENDORSEMENT CAREFULLY.

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Policy Number: MU401999  
Effective Date: April 1, 2021  
Endorsement Number: 4  
Brokerage: Arthur J. Gallagher Canada Limited  
Insured Organization: All Affiliated Clubs of Athletics Ontario

### COMMUNICABLE DISEASE EXCLUSION

**Attached to and forming part of the Modular Financial Lines Liability Insurance Policy.**

It is understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim**, including but not limited to shareholders' derivative and/or representative class action suits, based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Communicable Disease**, including any coronavirus such as SARS-CoV-2 (COVID-19).

For the purposes of this endorsement, **Communicable Disease** means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- 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
- 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) the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.



## ENDORSEMENT

PLEASE READ THIS ENDORSEMENT CAREFULLY.

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Policy Number: MU401999  
Effective Date: April 1, 2021  
Endorsement Number: 5  
Brokerage: Arthur J. Gallagher Canada Limited  
Insured Organization: All Affiliated Clubs of Athletics Ontario

### PROFESSIONAL EXCLUSION

**Attached to and forming part of the Modular Financial Lines Liability Insurance Policy.**

It is understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** based upon, arising from, directly or indirectly resulting from, or in consequence of the provision of or failure to provide any opinion, advice or service directly relating to the actual physical performance of the sport of Athletics, rendered by any **Insured**, either gratuitously or for a fee, including but not limited to; coaching, judging, the management of any sporting team (except the National Team to participate at international competitions), or the actual activity of training of coaches, judges or athletes or any medical treatment, service, opinion, advice or support, including psychological, physiotherapy or therapeutic exercise or massages for athletes, coaches or judges or any other national person or entity related to the actual physical performance of the sport of Athletics.

However, this exclusion shall not apply to any other opinion, advice or service rendered by the **Insured** or an **Insured Person** for the sport of Athletics to: regulate, promote, oversee the structure of local clubs, regional, provincial, and territorial bodies, deliver training programs, including certification programs for coaches and judges, staging competitions, management of the National Team to participate in international competitions, or act as a Canadian representative for the sport of Athletics internationally.