

# INTACT PROFESSIONAL LIABILITY POLICY

## GENERAL TERMS AND CONDITIONS

THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST AN INSURED DURING THE POLICY PERIOD OR APPLICABLE EXTENDED REPORTING PERIOD, WITH DEFENCE EXPENSES INCLUDED IN THE LIMITS OF LIABILITY (EXCEPT TO THE EXTENT THE INSURANCE LAWS OF THE PROVINCE OF QUEBEC APPLY). PLEASE READ THE ENTIRE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance upon all statements made and information furnished to the Insurer shown in the Declarations Page including the **Application**, and subject to the Declarations Page and the terms, conditions and limitations of this Policy, the Insurer and the **Insureds** agree as follows:

### I. TERMS AND CONDITIONS

If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms, conditions or limitations of the Professional Liability Coverage Section, such Coverage Section's terms, conditions and limitations shall control for purposes of such Coverage Section. Any defined term referenced in these General Terms and Conditions but defined in the Professional Liability Coverage Section shall, for purposes of coverage under such Coverage Section, have the meaning set forth in such Coverage Section.

### II. DEFINITIONS

- (A) **"Application"** means:
- (1) the application(s) attached to and forming part of this Policy, including any materials submitted in connection to the underwriting of this Policy; and
  - (2) all warranties provided to the Insurer in connection to the underwriting of this Policy or any coverage section or policy of which this Policy is a renewal or replacement; all of which are on file with the Insurer and are a part of and incorporated into this Policy. If any **Application** uses any terms or phrases that differ from terms defined in this Policy, no inconsistency between any term or phrase used in the **Application** and any term defined in this Policy will waive or change any of the terms and conditions of this Policy.
- (B) **"Based Upon"** means based upon, arising out of, in relation to, or directly or indirectly resulting from.
- (C) **"Circumstance"** means any fact, circumstance, **Wrongful Act** or **Personal Injury Wrongful Act** that may subsequently give rise to a **Claim**.
- (D) **"Claim"** shall have the meaning set forth in the Professional Liability Coverage Section.
- (E) **"Defence Expenses"** means reasonable costs, charges, fees (including, but not limited to lawyers', accountants' and experts' fees) and expenses incurred in defending or investigating any **Claim**. **Defence Expenses** does not include:
- (1) any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**; or
  - (2) **Disciplinary Proceeding Expenses**.
- (F) **"Disciplinary Proceeding Expenses"** shall have the meaning set forth in the Professional Liability Coverage Section.
- (G) **"Domestic Partner"** means any common law partner or any natural person qualifying as a domestic partner under the provisions of any applicable federal, provincial, territorial, state or local law or under the provisions of any formal program established by a **Named Insured**.
- (H) **"Executive"** shall have the meaning set forth in the Professional Liability Coverage Section.
- (I) **"Extended Reporting Period"** shall have the meaning set forth in Section **X. EXTENDED REPORTING PERIOD** of these General Terms and Conditions.
- (J) **"First Named Insured"** means the natural person or entity stated in the Declarations Page.
- (K) **"Insured"** shall have the meaning set forth in the Professional Liability Coverage Section.
- (L) **"Insured Person"** shall have the meaning set forth in the Professional Liability Coverage Section.
- (M) **"Loss"** shall have the meaning set forth in the Professional Liability Coverage Section.
- (N) **"Named Insured"** means the **First Named Insured** and:
- (1) if the **First Named Insured** is a natural person, a corporation owned solely by such **First Named Insured** and/or their lawful spouse or **Domestic Partner** and incorporated for the purpose of limiting personal liability, including tax liability; provided, that such corporation has no other employees; or
  - (2) if the **First Named Insured** is an entity, any **Subsidiary**, subject to the provisions of Section **XI. CHANGES IN EXPOSURE** of these General Terms and Conditions.
- (O) **"Personal Injury Wrongful Act"** shall have the meaning set forth in the Professional Liability Coverage Section.
- (P) **"Policy Period"** means the period from the inception date to the expiration date of this Policy stated in the Declarations Page or to any earlier cancellation of this Policy.
- (Q) **"Similar Legislation"** means any similar provision of any federal, provincial, territorial, state or local statutory, civil or common law anywhere in the world.
- (R) **"Subsidiary"** means, subject to the provisions of Section **XI. CHANGES IN EXPOSURE** of these General Terms and Conditions, any entity during any time which the **First Named Insured** has more than fifty percent (50%) ownership in such entity, either directly or through one or more **Subsidiaries**.
- (S) **"Wrongful Act"** shall have the meaning set forth in the Professional Liability Coverage Section.

### III. LIMITS OF LIABILITY

- (A) **Policy Aggregate Limit of Liability**
- The Policy Aggregate Limit of Liability stated in the Declarations Page is the maximum limit of the Insurer's liability for all **Loss** under this Policy resulting from all **Claims** for which this Policy provides coverage.
- (B) **Coverage Section Aggregate Limit of Liability**
- Subject to (A) above, the Coverage Section Aggregate Limit of Liability stated in the Declarations Page for the Professional Liability Coverage Section is the maximum limit of the Insurer's liability for all **Loss** resulting from all **Claims** for which such Coverage Section provides coverage.

(C) **Specific Insuring Agreement Limits of Liability**

Subject to (A) and (B) above:

- (1) the Each Claim Limit of Liability stated in the Declarations Page for any Insuring Agreement under the Professional Liability Coverage Section shall be the maximum limit of the Insurer's liability for all **Loss** under such Insuring Agreement resulting from each **Claim** for which such Insuring Agreement provides coverage; and
- (2) the Aggregate Limit of Liability stated in the Declarations Page for any Insuring Agreement under the Professional Liability Coverage Section shall be the maximum limit of the Insurer's liability for all **Loss** under such Insuring Agreement resulting from all **Claims** for which such Insuring Agreement provides coverage.

If no such amounts are stated, then no coverage shall be available under such Insuring Agreement.

(D) **Defence Expenses**

**Defence Expenses** are part of and not in addition to the applicable Limits of Liability stated in the Declarations Page, and payment of **Defence Expenses** by the Insurer will reduce, and may exhaust, such applicable Limits of Liability, unless Section XXVII. **QUEBEC LAW CONFORMITY** of these General Terms and Conditions applies.

(E) **Related Claims**

All **Claims** for **Wrongful Acts** or **Personal Injury Wrongful Acts Based Upon** the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally or in any other way, shall be deemed a single **Claim**. Such **Claim** shall be deemed to have been first made when the earliest of such **Claims** was first made against any **Insured**.

(F) **Applicability of the Limits of Liability**

- (1) If this **Policy Period** is extended for an additional period of less than twelve (12) months, the additional period shall be deemed part of the **Policy Period** for purposes of determining the Limits of Liability.
- (2) No **Extended Reporting Period** shall in any way increase the Insurer's Limits of Liability stated in the Declarations Page and the Insurer's Limits of Liability for **Claims** made during any **Extended Reporting Period** shall be part of, and not in addition to, the applicable Limits of Liability stated in the Declarations Page.

**IV. DEDUCTIBLES**

- (A) The obligation of the Insurer to pay on behalf of or to reimburse an **Insured** applies only to the amount of **Loss** in excess of any applicable Deductible amount stated in the Declarations Page.
- (B) In the event that different Deductibles apply to a **Claim**, it is understood and agreed that only the highest applicable Deductible shall apply to such **Claim**.

**V. SPOUSES, ESTATES AND LEGAL REPRESENTATIVES**

- (A) Subject to all limitations, conditions, provisions and other terms of these General Terms and Conditions and of the Professional Liability Coverage Section, coverage shall extend to **Claims** for the **Wrongful Acts** or **Personal Injury Wrongful Acts** of an **Insured Person** made against:
  - (1) the estate, heirs, legal representatives or assigns of such **Insured Person** if such **Insured Person** is deceased, or the legal representatives or assigns of such **Insured Person** if such **Insured Person** is legally incompetent, insolvent or bankrupt; or
  - (2) the lawful spouse or **Domestic Partner** of such **Insured Person** solely by reason of such spouse's or **Domestic Partner's** status as a spouse or **Domestic Partner**, or such spouse's or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for a **Wrongful Act** or **Personal Injury Wrongful Act** committed or allegedly committed by such **Insured Person**.
- (B) All provisions of these General Terms and Conditions and of the Professional Liability Coverage Section, including, without limitation, the Deductible, that are applicable to **Loss** incurred by the **Insured Person** shall also apply to **Loss** incurred by the estate, heirs, legal representatives, assigns, spouse and/or **Domestic Partner** of such **Insured Person**. The coverage extended pursuant to this Section V. shall not apply with respect to any **Loss** resulting from an actual or alleged act, error or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

**VI. CLAIM DEFENCE, REPORTING AND SETTLEMENT**

(A) **Duty to Defend**

The Insurer will have the right and duty to defend any **Claim** covered under the Professional Liability Coverage Section through counsel of its choice, even if the allegations of such **Claim** are groundless, false, or fraudulent; provided, that the Insurer's obligation to defend any **Claim** covered under such Coverage Section is subject to the Insurer's applicable Limits of Liability stated in the Declarations Page. In the event the Insurer's applicable Limits of Liability have been exhausted by the payment of **Loss**, the Insurer will have no obligation to defend or continue to defend any **Claim**.

(B) **Notice of Claims**

If, during the **Policy Period** or any applicable **Extended Reporting Period**, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under the Professional Liability Coverage Section, give the Insurer written notice of such **Claim**:

- (1) if the **First Named Insured** is a natural person, as soon as practicable after the **First Named Insured** first becomes aware of such **Claim**; or
- (2) if the **First Named Insured** is an entity, as soon as practicable after any **Executive** first becomes aware of such **Claim**,

but in no event later than:

- (a) sixty (60) days after expiry or termination of this Policy with respect to any **Claim** first made during the **Policy Period**; or
- (b) sixty (60) days after the end of the **Extended Reporting Period** with respect to any **Claim** first made during any applicable **Extended Reporting Period**.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including, but not limited to:

- (i) a description of the **Claim** and **Wrongful Act** or **Personal Injury Wrongful Act**;
- (ii) the identities of all potential claimants and any **Insureds** involved;
- (iii) a description of the injury or damages that resulted from such **Wrongful Act** or **Personal Injury Wrongful Act**;
- (iv) information on the time, place and nature of the **Wrongful Act** or **Personal Injury Wrongful Act**; and
- (v) the manner in which the **Insureds** first became aware of such **Wrongful Act** or **Personal Injury Wrongful Act**.

(C) **Notice of Circumstances**

If, during the **Policy Period**, an **Insured** first becomes aware of a **Circumstance** and:

- (1) gives the Insurer written notice of such **Circumstance** with full particulars as soon as practicable thereafter but in any event before the end of the **Policy Period**; and
- (2) requests coverage under the Professional Liability Coverage Section for any **Claim** subsequently arising from such **Circumstance**;

then any **Claim** subsequently made against an **Insured** arising out of such **Circumstance** shall, subject to paragraph (E) **Related Claims** of Section III. **LIMITS OF LIABILITY** of these General Terms and Conditions, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under paragraph (1) above must include, without limitation:

- (a) a description of such **Circumstance**;
- (b) the identities of all potential claimants and any **Insureds** involved;
- (c) a description of the injury or damages that have resulted and/or may result from such **Circumstance**;
- (d) information on the time, place and nature of such **Circumstance**;
- (e) the manner in which the **Insureds** first became aware of such **Circumstance**; and
- (f) the reasons why the **Insureds** believe such **Circumstance** is likely to result in a **Claim** being made.

(D) **Insurer's Consent**

The **Insured** shall not admit any liability, settle or attempt to settle a **Claim**, pay any **Loss**, incur any **Defence Expenses** or **Disciplinary Proceeding Expenses** or assume any contractual obligation without the Insurer's prior written consent.

(E) **First Named Insured's Consent to Settlements**

The Insurer shall have the right to investigate any **Claim** and negotiate the settlement thereof, as it deems expedient, but the Insurer shall not make any settlement without the consent of the **First Named Insured**. If the **First Named Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the Insurer's recommendation, then, subject to the applicable Limits of Liability stated in the Declarations Page, the Insurer's liability for such **Claim** will not exceed:

- (1) the amount for which the **Claim** could have been settled plus **Defence Expenses** incurred up to the date the **First Named Insured** refused to settle such **Claim** (the "Settlement Amount"); plus
- (2) fifty percent (50%) of any **Loss** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining fifty percent (50%) of **Loss** in excess of the Settlement Amount will be carried by the **Insureds** at their own risk and will be uninsured.

## VII. ALLOCATION

If there is a **Claim** under the Professional Liability Coverage Section in which both **Loss** covered by such Coverage Section and loss not covered by such Coverage Section are incurred, either because such **Claim** made against an **Insured** includes both covered and uncovered matters, or because such **Claim** is made against both **Insureds** and others not included within the definition of "**Insured**", then such covered **Loss** and uncovered loss shall be allocated as follows: all loss incurred by the **Insureds** in connection with such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of, and relative benefits obtained in connection with the defence and/or settlement of the **Claim** by, the **Insured Persons**, the **Named Insured** and others. The **Insureds** and the Insurer agree to use their best efforts to determine a fair and proper allocation. In the event that the Insurer and the **Insureds** do not reach an agreement with respect to an allocation, then the Insurer shall be obligated to make an interim payment of the amount of **Loss** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of Section XXV. **ALTERNATIVE DISPUTE RESOLUTION** of these General Terms and Conditions.

## VIII. NOTICE

- (A) Any notice to the Insurer of any **Claim**, **Circumstance** or request for coverage under an expense Insuring Agreement shall be deemed notice under this Policy in its entirety.
- (B) Notice to the Insurer of any **Claim** or **Circumstance** shall be sent to the address designated in the Declarations Page or specialtyclaims@intact.net.
- (C) All other notices to the Insurer shall be sent to the address designated in the Declarations Page.
- (D) Notice to the **Insured** shall be sent to the **First Named Insured** at the address designated in the Declarations Page.
- (E) Proof of receipt of the notices is the responsibility of the sender.

## IX. TERRITORY

This Policy applies to **Wrongful Acts** or **Personal Injury Wrongful Acts** committed or allegedly committed anywhere in the world; provided, that **Claims** must be made in Canada or the United States of America, including its territories or possessions.

## X. EXTENDED REPORTING PERIOD

If the Professional Liability Coverage Section is:

- (A) terminated for any reason, other than non-payment of premium; or
- (B) not renewed for any reason;

by the Insurer or the **First Named Insured**, then solely with respect to such Coverage Section, an additional period of time during which **Claims** may be reported under this Policy (an "**Extended Reporting Period**") shall be made available as described in this Section X., but any such **Extended Reporting Period** shall apply only to **Claims** for **Wrongful Acts** or **Personal Injury Wrongful Acts** committed or allegedly committed before:

- (1) the effective date of such termination or non-renewal ("Termination Date"); or
  - (2) the effective date of any event described in paragraph (B) **Acquisition by Another Organization** or (C) **Cessation of Subsidiary** of Section XI. **CHANGES IN EXPOSURE** of these General Terms and Conditions,
- whichever is earlier.

No **Extended Reporting Period** shall in any way increase the Insurer's Limits of Liability stated in the Declarations Page, and the Insurer's Limits of Liability for **Claims** made during any **Extended Reporting Period** shall be part of, and not in addition to, the applicable Limits of Liability stated in the Declarations Page. The offer of renewal terms, conditions, limits of liability, deductibles or premium different from those in effect prior to renewal shall not constitute cancellation or refusal to renew for purposes of this Section X.

The **First Named Insured** may purchase an **Extended Reporting Period** for the period of time stated below by notifying the Insurer in writing of their intention to do so no later than sixty (60) days after the Termination Date. The additional premium for an **Extended Reporting Period** shall equal the percentage, as stated below, of the full annual premium (including any premium adjustments made during the **Policy Period**) for the Professional Liability Coverage Section, and must be paid no later than sixty (60) days after the Termination Date. The entire additional premium shall be deemed fully earned upon inception of such **Extended Reporting Period**.

**Extended Reporting Period Option:**

100% for an **Extended Reporting Period** of one (1) year

If no election to purchase an **Extended Reporting Period** is made as described above, or if the additional premium for any such **Extended Reporting Period** is not paid within sixty (60) days after the Termination Date, there will be no right to purchase any **Extended Reporting Period** at any later time.

## XI. CHANGES IN EXPOSURE

### (A) Acquisition/Creation of Another Organization

If, before or during the **Policy Period**, any **Named Insured** entity acquires:

- (1) more than fifty percent (50%) ownership in another organization or creates another organization which, as a result of such acquisition or creation, becomes a **Subsidiary**; or
- (2) another organization by merger into or consolidation with the **Named Insured** entity such that the **Named Insured** entity is the surviving entity;

then coverage under the Professional Liability Coverage Section shall be provided for such other organization and its **Insureds** solely for **Wrongful Acts** or **Personal Injury Wrongful Acts** committed or allegedly committed after the effective date of such acquisition or creation, unless the Insurer agrees, after presentation of a complete **Application** and all other appropriate information, to provide coverage by written endorsement for **Wrongful Acts** or **Personal Injury Wrongful Acts** committed or allegedly committed by such **Insureds** before such acquisition or creation.

### (B) Acquisition by Another Organization

If the **First Named Insured** is an entity and:

- (1) the **First Named Insured** merges into or consolidates with another organization where the **First Named Insured** is not the surviving entity; or
- (2) another organization or person or group of organizations and/or persons acting in concert acquires more than fifty percent (50%) ownership in the **First Named Insured**;

then coverage under the Professional Liability Coverage Section shall continue until termination of such Coverage Section, but only with respect to **Claims** for **Wrongful Acts** or **Personal Injury Wrongful Acts** committed or allegedly committed by the **Insureds** before the effective date of such merger, consolidation or acquisition.

Upon the occurrence of any event described in paragraph (B)(1) or (B)(2) above, the entire premium for this Policy shall be deemed fully earned. The **First Named Insured** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable, but in no event later than ninety (90) days after the date of such merger, consolidation or acquisition, together with such other information as the Insurer may require. Upon receipt of such notice and information and at the request of the **First Named Insured**, the Insurer shall provide to the **First Named Insured** a quotation for an extension of coverage (for such period as may be negotiated between the Insurer and the **First Named Insured**) with respect to **Claims** for **Wrongful Acts** or **Personal Injury Wrongful Acts** committed or allegedly committed by the **Insureds** before such merger, consolidation or acquisition. Any coverage extension pursuant to such quotation shall be subject to such additional or different terms, conditions and limitations of coverage and payment of such additional premium as the Insurer, in its sole discretion, may require.

### (C) Cessation of Subsidiary

In the event a **Named Insured** entity ceases to be a **Subsidiary** before or during the **Policy Period**, then coverage under the Professional Liability Coverage Section with respect to such former **Subsidiary** and its **Insureds** shall continue until termination of such Coverage Section, but only with respect to **Claims** for **Wrongful Acts** or **Personal Injury Wrongful Acts** committed or allegedly committed while such **Named Insured** entity was a **Subsidiary**.

## XII. VALUATION AND FOREIGN CURRENCY

All premiums, limits, deductibles, loss and other amounts under this Policy are expressed and payable in Canadian currency. Except as otherwise provided in the Professional Liability Coverage Section, if a judgment is rendered, a settlement is denominated or any element of loss under this Policy is stated in a currency other than Canadian dollars, 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 judgment becomes final, the amount of the settlement is agreed upon or any element of loss is due, respectively.

## XIII. ASSISTANCE AND COOPERATION

In the event of a **Claim**, the **Insureds** shall, as a condition precedent to any right to coverage under the Professional Liability Coverage Section, provide the Insurer with all information, assistance and cooperation that the Insurer reasonably requests. At the Insurer's request, the **Insureds** shall assist in:

- (A) investigating, defending and settling **Claims**;
- (B) enforcing any right of contribution or indemnity against another who may be liable to any **Insured**;
- (C) the conduct of actions, suits, appeals or other proceedings, including, but not limited to; attending trials, hearings and depositions;
- (D) securing and giving evidence; and
- (E) obtaining the attendance of witnesses.

## XIV. SUBROGATION

Except as otherwise provided in the Professional Liability Coverage Section, in the event of any payment hereunder, the Insurer shall be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Insurer effectively to bring suit in its name. The **Insureds** shall do nothing that may prejudice the Insurer's position or potential or actual rights of recovery. The obligations of the **Insureds** under this Section **XIV**, shall survive the expiration or termination of this Policy.

(A) In no event, however, shall the Insurer seek subrogation against any **Insured** under this Policy unless:

- (1) such **Insured** has been convicted of a criminal act in the underlying **Claim**;
- (2) it has been determined by a final and non-appealable adjudication in the underlying **Claim**, that such **Insured** committed a deliberately fraudulent or dishonest act or omission, or willfully violated any statute, rule or law; or
- (3) it has been determined by a final and non-appealable adjudication in the underlying **Claim**, that such **Insured** gained any profit, remuneration or advantage to which such **Insured** was not legally entitled.

(B) In the event the Insurer recovers any amounts paid under this Policy, the Insurer will reinstate the applicable Coverage Section Aggregate Limit of Liability, net of the costs and expenses incurred to recover such amounts. The Insurer assumes no duty to seek a recovery of any amounts paid under this Policy and shall, in its sole discretion, determine the amounts to be credited towards the reinstatement of the Coverage Section Aggregate Limit of Liability.

## XV. NO ACTION AGAINST INSURER

Except as otherwise provided in the Professional Liability Coverage Section or Section **XXV. ALTERNATIVE DISPUTE RESOLUTION** of these General Terms and Conditions:

- (A) No action shall be taken against the Insurer by any **Insured** unless, as conditions precedent thereto, the **Insureds** have fully complied with all of the terms of this Policy and the amount of such **Insured's** obligation to pay has been finally determined either by judgment against such **Insured** after adjudicatory proceedings, or by written agreement of such **Insured**, the claimant and the Insurer.
- (B) No individual or entity shall have any right under this Policy to join the Insurer as a party to any **Claim** to determine the liability of any **Insured**; nor shall the Insurer be impleaded by any **Insured** or their legal representative in any such **Claim**.

## XVI. FIRST NAMED INSURED RIGHTS AND OBLIGATIONS

The **First Named Insured** will act on behalf of all **Insureds** with respect to:

- (A) the giving or receiving of any notices under this Policy;
- (B) the payment of premiums to and receiving of return premiums from the Insurer;
- (C) the receiving and acceptance of any endorsements issued to form a part of this Policy; and
- (D) the exercising or declining to exercise any **Extended Reporting Period**.

## XVII. CHANGES

Notice to or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not constitute a waiver or change in any part of this Policy or prevent or estop the Insurer from asserting any right(s) under this Policy. This Policy can only be altered, waived or changed by written endorsement issued to form a part of this Policy.

## XVIII. ASSIGNMENT

No assignment of interest under this Policy shall bind the Insurer without its written consent issued as a written endorsement to form a part of this Policy.

## XIX. CANCELLATION/NONRENEWAL

- (A) The Insurer may only cancel this Policy because of non-payment of premium by giving the **First Named Insured** at the last mailing address known to it, written notice of cancellation by registered mail or personally delivered at least fifteen (15) days before the effective date of such cancellation. If notice is mailed, the cancellation notice begins at the receipt of the letter by the post office to which it is addressed and proof of mailing will be sufficient proof of notice, except in Quebec where the cancellation notice begins after receipt of the notice at the last known address of the **First Named Insured**.
- (B) This Policy may be cancelled by the **First Named Insured** at any time by mailing written notice to the Insurer stating when thereafter such cancellation will be effective. In such event, the earned premium will be computed *pro rata*. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (C) The Insurer will not be required to renew this Policy upon its expiration. The Insurer will provide the **First Named Insured** with sixty (60) days' notice of any non-renewal. Renewal terms which differ in any manner from the terms, conditions and premium of the expiring Policy shall not constitute a refusal to renew.

## XX. INSOLVENCY OF INSURED

The Insurer will not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any **Insured** or their estate.

## XXI. ENTIRE AGREEMENT

The **Insureds** agree that this Policy, including the **Application**, Declarations Page and any endorsements, constitutes the entire agreement between them and the Insurer or any of its agents relating to this insurance.

## XXII. HEADINGS

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

## XXIII. OTHER INSURANCE

- (A) If the **Insured** has other valid and collectible insurance against **Loss** covered by this Policy, other than another insurance policy issued by the Insurer, then this Policy will be excess over such other insurance and will not contribute, unless such other insurance is written only as specific excess insurance, in which case this Policy shall be primary.
- (B) If the **Insured** has other valid and collectible insurance against **Loss** covered by this Policy, under another policy issued by the Insurer, the policy that applies most specifically to the **Claim** will be primary and the other insurance will be excess. The Insurer's limit of liability for any one **Claim**, however, will in no event exceed the highest Limit of Liability applicable to such **Claim** under all such policies.

## XXIV. REPRESENTATIONS AND SEVERABILITY - INCORPORATION OF APPLICATION

- (A) The Policy is issued and continued in force by the Insurer in reliance upon the statements and representations contained in the **Application** as being true, accurate and complete. Such statements and representations are incorporated in and form part of this Policy.
- (B) With respect to the statements and representations contained in the **Application**:
  - (1) subject to (2) below, no knowledge possessed by any **Insured Person** will be imputed to any other **Insured Person** to determine if coverage is available for such **Insured Person**;
  - (2) if the **First Named Insured** is a natural person, the knowledge of the **First Named Insured** shall be imputed to all **Insureds** to determine if coverage is available; and
  - (3) if the **First Named Insured** is an entity, the knowledge of any **Executive** of a **Named Insured** entity shall be imputed to such **Named Insured** entity and its **Subsidiaries** to determine if coverage is available.

## XXV. ALTERNATIVE DISPUTE RESOLUTION

Subject to Section **VII. ALLOCATION** of these General Terms and Conditions or as provided in Section **XV. NO ACTION AGAINST INSURER** of these General Terms and Conditions:

- (A) Any dispute between the **Insured** and the Insurer (hereinafter referred to as the parties) based upon or in connection with any actual or alleged coverage under this Policy shall be submitted to an alternative dispute resolution process. The process is initiated by sending a written notice to the other party selecting either non-binding mediation or binding arbitration to resolve the dispute. In case of disagreement in the means to resolve the dispute between the parties, the **Insured's** preference will have precedence. In the event non-binding mediation is selected, the **Insured** and the Insurer shall agree on a single mediator. Each party shall retain the right to begin judicial proceedings but shall put a hold on commencing such proceedings until the mediation terminates without successful resolution.
- (B) In the event binding arbitration is selected, the **Insured** and the Insurer shall agree on an odd number of arbitrators that will constitute the arbitration panel. If the Insurer and the **Insured** do not agree on the choice of arbitrators, each shall select one arbitrator and the two arbitrators shall select a third arbitrator. The majority ruling of the arbitration panel shall be final and binding upon the **Insured** and the Insurer on the matters disputed. The arbitration award shall not include legal expenses or other fees related to the arbitration process.

- (C) The arbitrators and mediators must be disinterested and have sufficient experience in mediating or arbitrating legal, corporate management or insurance issues similar to the matters in dispute. Each party shall share equally the expenses of the process elected.

The terms of this Section **XXV.** shall be interpreted in conformity with the alternative dispute resolution legislation or act applicable at the domicile of the **First Named Insured.**

#### **XXVI. STATUTORY CONFORMITY**

The terms of this insurance that are in conflict with the terms of any applicable laws construing this insurance are amended to conform to such laws.

#### **XXVII. QUEBEC LAW CONFORMITY**

Only to the extent required under the insurance laws of the province of Quebec:

- (A) **Defence Expenses** and **Disciplinary Proceeding Expenses** shall be in addition to the applicable Limits of Liability stated in the Declarations Page;
- (B) no Deductible shall apply to **Defence Expenses** or **Disciplinary Proceeding Expenses**;
- (C) the portion of **Loss** that represents interest accruing on a judgment or settlement that is within the applicable Limits of Liability stated in the Declarations Page shall be in addition to such Limits of Liability.