

PROFESSIONAL LIABILITY COVERAGE SECTION

THIS COVERAGE SECTION 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 payment of the premium, and in reliance upon all statements made and information furnished to the Insurer including the **Application**, and subject to the Declarations Page, the General Terms and Conditions and the terms, conditions and limitations of this Coverage Section, the Insurer and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) Professional Liability Coverage

The Insurer will pay, on behalf of an **Insured**, **Loss** from any **Claim** first made against an **Insured** during the **Policy Period** or applicable **Extended Reporting Period** for a **Wrongful Act** committed or allegedly committed on or after the **Retroactive Date** by an **Insured**.

(B) Vicarious Liability Coverage

The Insurer will pay, on behalf of an **Insured**, **Loss** from any **Claim** first made against an **Insured** during the **Policy Period** or applicable **Extended Reporting Period** for a **Wrongful Act** committed or allegedly committed on or after the **Retroactive Date** by any entity or natural person, other than an **Insured**, for whose **Wrongful Acts** an **Insured** is legally liable.

(C) Personal Injury Coverage

The Insurer will pay, on behalf of an **Insured**, **Loss** from any **Claim** first made against an **Insured** during the **Policy Period** or applicable **Extended Reporting Period** for a **Personal Injury Wrongful Act** committed or allegedly committed on or after the **Retroactive Date** by an **Insured**.

(D) Disciplinary Proceedings Expenses Coverage

The Insurer will pay, on behalf of an **Insured**, **Disciplinary Proceeding Expenses** incurred by such **Insured** in connection with any **Disciplinary Proceeding** first commenced against such **Insured** during the **Policy Period** or applicable **Extended Reporting Period**.

(E) Crisis Management Expenses Coverage

The Insurer will pay, on behalf of a **Named Insured**, **Crisis Management Expenses** incurred by such **Named Insured** in connection with any **Crisis Management Event** that first occurs during the **Policy Period**.

(F) Pre-Claim Expenses Coverage

In addition to the applicable Limits of Liability, at the sole discretion of the Insurer, the Insurer will pay reasonable costs, charges, fees and expenses incurred by the Insurer to monitor or investigate any **Circumstance** reported to the Insurer in accordance with Section VI. **CLAIM DEFENCE, REPORTING AND SETTLEMENT** of the General Terms and Conditions. If a **Circumstance** becomes a covered **Claim**, any costs, charges, fees or expenses incurred thereafter, whether by the Insurer or by an **Insured**, will be subject to the Deductible and will reduce, and may exhaust, the applicable Limits of Liability.

II. DEFINITIONS

(A) "**Application**" shall have the meaning set forth in the General Terms and Conditions.

(B) "**Based Upon**" shall have the meaning set forth in the General Terms and Conditions.

(C) "**Circumstance**" shall have the meaning set forth in the General Terms and Conditions.

(D) "**Claim**" means:

- (1) a written demand for monetary, non-monetary or injunctive relief, commenced by an **Insured's** receipt of such demand;
- (2) a civil proceeding, other than an investigation or an administrative or regulatory proceeding, commenced by the service of a complaint, notice of action or similar pleading;
- (3) an administrative or regulatory proceeding, other than a **Disciplinary Proceeding** or investigation, commenced by an **Insured's** receipt of a notice of filed charges or formal investigative order or service of a complaint or similar document; or
- (4) an arbitration or mediation proceeding commenced by an **Insured's** receipt of a demand for arbitration, demand for mediation or similar document; against an **Insured** for a **Wrongful Act** or **Personal Injury Wrongful Act**, including any appeal therefrom;
- (5) an official request for **Extradition** for a **Wrongful Act** or **Personal Injury Wrongful Act**, commenced by an **Insured Person's** receipt of such request;
- (6) a written request received by an **Insured** to toll or waive a limitation period, relating to any matter outlined in paragraphs (1) through (5) above; or
- (7) for the purposes of Insuring Agreement (D) **Disciplinary Proceedings Expenses Coverage** of this Coverage Section, a **Disciplinary Proceeding** against an **Insured**, commenced by such **Insured's** receipt of notification of such proceeding.

(E) "**Crisis Management Event**" means any actual or threatened publication of information in connection with a **Claim** that did, or would reasonably be expected to, cause material public harm to a **Named Insured**.

(F) "**Crisis Management Expenses**" means reasonable costs, charges, fees and expenses incurred by a **Named Insured**, with prior written consent given by the Insurer, for services performed by any public relations, crisis management or law firm retained by such **Named Insured** to minimize potential public harm to such **Named Insured** resulting from a **Crisis Management Event**. **Crisis Management Expenses** do not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.

(G) "**Defence Expenses**" shall have the meaning set forth in the General Terms and Conditions.

(H) "**Disciplinary Proceeding**" means any proceeding by a regulatory or disciplinary official, board, agency or committee to investigate a **Wrongful Act** committed or allegedly committed by an **Insured** on or after the **Retroactive Date**.

(I) "**Disciplinary Proceeding Expenses**" means reasonable costs, charges, fees (including, but not limited to lawyers' and experts' fees) and expenses incurred to investigate, defend or appeal a **Disciplinary Proceeding**; provided, that **Disciplinary Proceeding Expenses** does not include any:

- (1) fines, penalties or sanctions assessed against any **Insured**; or

- (2) remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (J) **"Employee"** means any natural person whose labour or service was, is or becomes both engaged and directed by a **Named Insured**, including any part-time, seasonal and temporary employee. **Employee** also includes:
- (1) any volunteer or intern performing **Professional Services** on behalf of a **Named Insured**; or
 - (2) any individual who is leased to, and performing **Professional Services** on behalf of, a **Named Insured**, but only if such **Named Insured** provides indemnification to such leased individual in the same manner as is provided to such **Named Insured's** employees.
- Employee** does not include any **Independent Contractor**.
- (K) **"Executive"** means any natural person who was, is or becomes a duly elected or appointed director, officer, partner, member of the Board of Directors, member of the Board of Managers, duly constituted committee member, member of an Advisory Board, in-house general counsel or in-house risk manager, or an equivalent position thereof, of a **Named Insured** entity.
- (L) **"Extended Reporting Period"** shall have the meaning set forth in the General Terms and Conditions.
- (M) **"Extradition"** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or to answer to a criminal accusation, or the execution of a warrant for the arrest of an **Insured Person** where the execution of such warrant is an element of the formal process of extradition.
- (N) **"First Inception Date"** means the inception date of the first professional liability policy or coverage section issued by the Insurer to the **First Named Insured** and continuously renewed by the Insurer until the inception date of this Policy stated in the Declarations Page.
- (O) **"First Named Insured"** shall have the meaning set forth in the General Terms and Conditions.
- (P) **"Independent Contractor"** means any natural person who is not an **Employee** and who is performing **Professional Services** under contract or agreement with, at the direction of, and on behalf of, a **Named Insured**.
- (Q) **"Insured"** means any **Named Insured** and any **Insured Person**.
- (R) **"Insured Person"** means:
- (1) an **Employee** or **Executive** while acting in their capacity as such; or
 - (2) an **Independent Contractor** while acting in their capacity as such, but only if a **Named Insured** provides indemnification to such **Independent Contractor**.
- (S) **"Liquidated Damages"** means a sum of money stipulated by the parties to a contract as the amount of damages to be recovered for a breach of such contract.
- (T) **"Loss"** means any monetary amount which an **Insured** is legally obligated to pay as a result of a covered **Claim**, including:
- (1) compensatory damages, judgments (including pre-judgment and post-judgment interest) and settlements;
 - (2) punitive, exemplary, or multiplied damages, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, this Policy or to the **Claim** giving rise to such damages and which is most favourable to the insurability of such damages;
 - (3) **Defence Expenses**; and
 - (4) for the purposes of Insuring Agreement (D) **Disciplinary Proceedings Expenses Coverage** of this Coverage Section, **Disciplinary Proceeding Expenses**.
- Loss** does not include:
- (a) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided in paragraph (2) above;
 - (b) taxes, fines or penalties, except as provided in paragraph (2) above with respect to punitive, exemplary or multiplied damages;
 - (c) any costs incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
 - (d) **Liquidated Damages**;
 - (e) the return of fees, commissions, expenses or other compensation paid to an **Insured**; or
 - (f) the cost of correcting, re-performing or completing any **Professional Services**.
- (U) **"Mould"** means any mould, yeast, mushroom, mildew, spore, mycotoxin or fungi, or any pathogen or micro-organism produced by, emitted from or arising out of any of the foregoing.
- (V) **"Named Insured"** shall have the meaning set forth in the General Terms and Conditions.
- (W) **"Personal Injury Wrongful Act"** means any actual or alleged:
- (1) libel, slander, product disparagement, trade libel or other form of defamation;
 - (2) invasion or infringement of the right of privacy or publicity, including false light, public disclosure of private facts, intrusion and commercial appropriation of name, persona or likeness;
 - (3) false arrest, detention or imprisonment; or
 - (4) wrongful entry or eviction, or other invasion of the right of private occupancy;
- by an **Insured** while performing **Professional Services**.
- (X) **"Policy Period"** shall have the meaning set forth in the General Terms and Conditions.
- (Y) **"Pollutant"** means:
- (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by Environment and Climate Change Canada or any federal, provincial, territorial, state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials including materials to be recycled, reconditioned or reclaimed, or
 - (2) any other air emission, odor, waste water, oil or oil product, infectious or medical waste, asbestos or asbestos product or any noise.
- (Z) **"Professional Services"** means only those services stated in the Declarations Page which are performed for others for a fee, including any such services that are performed via telephone or electronically utilizing the Internet or a network of two or more computers.
- (AA) **"Retroactive Date"** means the applicable Retroactive Date stated in the Declarations Page.
- (BB) **"Similar Legislation"** shall have the meaning set forth in the General Terms and Conditions.
- (CC) **"Wrongful Act"** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed or allegedly committed in the performance of, or failure to perform, **Professional Services**:
- (1) by an **Insured**; or
 - (2) by any entity or natural person, other than an **Insured**, for whose acts an **Insured** is legally liable.
- Wrongful Act** does not include any **Personal Injury Wrongful Act**.

III. EXCLUSIONS

This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss** from any **Claim**:

(A) PRIOR NOTICE

Based Upon any fact, circumstance, situation, transaction, event, **Wrongful Act** or **Personal Injury Wrongful Act** that, before the inception date of this Policy stated in the Declarations Page, was the subject of any notice given and accepted under any policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;

(B) PRIOR AND PENDING LITIGATION

Based Upon any prior and/or pending litigation or administrative, regulatory, arbitration, mediation or disciplinary proceeding against any **Insured** as of the **First Inception Date**, or the same or substantially the same fact, circumstance, situation, transaction, event, **Wrongful Act** or **Personal Injury Wrongful Act** underlying or alleged therein;

(C) PRIOR KNOWLEDGE

Based Upon any **Wrongful Act** or **Personal Injury Wrongful Act** if, on or before the **First Inception Date**, any **Insured** knew or could have reasonably foreseen that such **Wrongful Act** or **Personal Injury Wrongful Act** did or could result in a **Claim** against any **Insured**;

(D) BODILY INJURY AND PROPERTY DAMAGE

for any actual or alleged bodily injury, mental anguish, humiliation, emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed, provided, that this EXCLUSION (D) shall not apply to mental anguish, humiliation or emotional distress resulting from a **Personal Injury Wrongful Act**;

(E) PERSONAL CONDUCT

Based Upon:

- (1) any **Insured** gaining any personal profit, remuneration or financial advantage to which such **Insured** is not legally entitled; or
 - (2) the committing of any deliberately fraudulent, dishonest or criminal act or omission, or any willful violation of any statute, rule or law, by any **Insured**;
- provided, that:
- (a) this EXCLUSION (E) shall not apply to **Defence Expenses** incurred by an **Insured** in defending any such **Claim** until any of the foregoing conduct has been established by a final and non-appealable adjudication in any judicial or administrative proceeding other than an action or proceeding commenced by the Insurer to determine coverage under this Policy;
 - (b) no conduct pertaining to any **Insured Person** shall be imputed to any other **Insured Person**; and
 - (c) any conduct pertaining to any **Executive** of a **Named Insured** entity shall be imputed to such **Named Insured** entity and its **Subsidiaries**;

(F) LIABILITY ASSUMED UNDER CONTRACT OR AGREEMENT

Based Upon any actual or alleged liability assumed by any **Insured** under any express contract or agreement; provided, that this EXCLUSION (F) shall not apply to liability which would have attached in the absence of such express contract or agreement;

(G) INTELLECTUAL PROPERTY

Based Upon any actual or alleged infringement of patent, copyright or trademark or misappropriation of intellectual property, ideas or trade secrets;

(H) KNOWINGLY FALSE PUBLICATION

Based Upon any oral or written publication of material by or at the direction of any **Insured** with knowledge of its falsity;

(I) INSURED VS. INSURED

brought or maintained by or on behalf of any **Insured**; provided, that this EXCLUSION (I) shall not apply to any **Claim** brought or maintained by or on behalf of an **Employee** in connection with **Professional Services** provided by an **Insured** to such **Employee** in a professional/client relationship where a fee for a service has been paid;

(J) AFFILIATED PARTIES

brought or maintained by or on behalf of any entity:

- (1) that was or is owned, operated or controlled by any **Insured**;
- (2) that did or does own, operate or control any **Insured**; or
- (3) of which any **Insured** was or is a member of the Board of Directors, officer, member of the Board of Managers, partner or principal stockholder;

(K) ANTITRUST, COMPETITION ACT AND UNFAIR TRADE PRACTICES

Based Upon any actual or alleged price fixing (including horizontal or other price fixing of wages, hours, salaries, compensation, benefits or any other terms and conditions of employment), restraint of trade, monopolization, or violation of:

- (1) the *Competition Act*, R.S.C. 1985, c. C-34, in Canada;
- (2) the *Interstate Commerce Act of 1887*, the *Sherman Antitrust Act of 1890*, the *Clayton Act of 1914*, the *Robinson-Patman Act of 1936*, the *Cellar-Kefauver Act of 1950*, or the *Federal Trade Commission Act of 1914* in the United States of America; or
- (3) any **Similar Legislation** involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities;

(L) BENEFIT LAW

for any actual or alleged violation of the responsibilities, duties or obligations imposed by:

- (1) the *Pension Benefit Standards Act, 1985*, R.S.C. 1985, c. 32 (2nd Supp.), the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), including any rules, regulations or amendments thereunder and any of the same or similar provisions of any province or territory;
- (2) the *Employee Retirement Income Security Act of 1974*, including any rules, regulations or amendments thereunder (including amendments relating to the *Consolidated Omnibus Budget Reconciliation Act of 1985* and the *Health Insurance Portability and Accountability Act of 1996*); or
- (3) any **Similar Legislation** related to employee benefits;

(M) POLLUTION

- (1) **Based Upon** any actual, alleged, or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of any **Pollutant**;
- (2) **Based Upon** any request, demand, direction, order, or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, any **Pollutant**; or
- (3) brought by or on behalf of any governmental authority because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to, or assessing the effects of, any **Pollutant**;

(N) MOULD

- (1) **Based Upon** any actual, alleged, or threatened exposure to, or manifestation, dispersal, seepage, leakage, migration, release, appearance, presence, reproduction or growth of, **Mould**;
- (2) **Based Upon** any request, demand, direction, order, or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **Mould**; or

- (3) brought by or on behalf of any governmental authority because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to, or assessing the effects of, **Mould**;

(O) **NUCLEAR**

Based Upon any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance, or the hazardous properties of nuclear or radioactive material;

(P) **SOCIAL ENGINEERING FRAUD**

Based upon the intentional misleading of any **Insured** through misrepresentation of a material fact which is relied upon by any **Insured** as genuine and results in the voluntary transfer, payment or delivery of money, securities or other property;

(Q) **GUARANTEES AND WARRANTIES**

Based Upon any express or implied warranty, guarantee, penalty clause or cost estimate;

(R) **ESTIMATE OF PROFITS AND COMMINGLING**

Based Upon any actual or alleged:

- (1) estimates of profits, return on capital, economic return or other estimates giving rise to forecasts of economic return; or
- (2) improper use or commingling of any funds or monies; or

(S) **WAR**

Based Upon any actual or alleged civil or foreign war, invasion, hostilities (whether war be declared or not), act of foreign enemy, rebellion, insurrection, revolution, military or usurped power, martial law or confiscation by order of any government or public authority.

IV. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY

The Limit of Liability stated in the Declarations Page for Insuring Agreement (E) **Crisis Management Expenses Coverage** of this Coverage Section is the maximum limit of the Insurer's liability for all **Crisis Management Expenses** resulting from all **Crisis Management Events**, which amount shall be in addition to, and not part of, the Policy Aggregate Limit of Liability and the Coverage Section Aggregate Limit of Liability applicable to this Coverage Section.

V. COVERAGE SECTION SPECIFIC DEDUCTIBLE

The following provision shall apply in addition to the provisions of Section **IV. DEDUCTIBLES** of the General Terms and Conditions:

The obligation of the Insurer to pay on behalf of a **Named Insured** under Insuring Agreement (E) **Crisis Management Expenses Coverage** of this Coverage Section applies only to the amount of **Crisis Management Expenses** in excess of the applicable Deductible amount stated in the Declarations Page.

VI. RETIRED PROFESSIONALS

The Insurer agrees that, in the event an **Employee** or **Executive** retires from professional practice during the **Policy Period**, the coverage provided by this Coverage Section shall be automatically extended for a maximum period of six (6) years from such **Employee's** or **Executive's** official retirement date, but only with respect to any **Claim** made against such **Employee** or **Executive Based Upon Wrongful Acts** committed or allegedly committed by such **Employee** or **Executive** prior to such official retirement date.

However, this automatic extension shall not apply if:

- (A) either a replacement policy or **Extended Reporting Period** is obtained by the **First Named Insured** and in force during the six (6) year period from such official retirement date;
- (B) such retirement is due to or occurs during an event described in paragraph (B) **Acquisition by Another Organization** or (C) **Cessation of a Subsidiary** of Section **XI. CHANGES IN EXPOSURE** of the General Terms and Conditions; or
- (C) such **Employee** or **Executive** continues to provide **Professional Services** in any capacity for or on behalf a **Named Insured**.

In no event shall the coverage provided under this Section **VI.** extend to any **Insured** other than such retired **Employee** or **Executive**.