

Non-Profit Organization Liability Insurance Policy

IMPORTANT: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OFFERED UNDER THIS INSURANCE POLICY APPLIES ONLY TO CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD.

Please read this Form carefully to determine rights, duties, coverage and limitations.

Words and phrases in bold or in quotation marks have special meaning as defined in Section 8 – Definitions.

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 (hereinafter called the “Insurer”) including the statements made in the application and its attachments and subject to all the terms, conditions and limitations of this policy, the Insurer agrees as follows:

SECTION 1 - INSURING AGREEMENTS

A. Insured's Liability Coverage

The Insurer agrees to pay on behalf of the **Insured** all **loss** for which the **Insured** shall become legally obligated to pay on account of any **claim** first made against them during the **policy period**, because of a **wrongful act** committed before or during the **policy period**, within the **coverage territory**.

B. Non-Profit Outside Directorship Liability Coverage

1. The Insurer agrees to pay on behalf of:

1.1 an **Insured Person** all **loss** for which the **Insured Persons** are not indemnified by the **Organization** or the **outside organization** (even by reason of the **Organization's** or **outside organization's insolvency**);

1.2 the **Organization** all **loss** for which the **Organization** shall be required by law, its articles of incorporation or its by-laws to indemnify an **Insured Person**;

for which an **Insured Person** while serving in an **outside directorship** shall become legally obligated to pay on account of any **claim** first made against them, during the **policy period**, because of a **wrongful act** committed before or during the **policy period**, within the **coverage territory**.

2. Such coverage as granted to **Insured Persons** shall:

2.1 apply in the absence of any valid or collectible insurance available to the **Insured Persons** through the **outside organization**;
or

2.2 be specifically excess of any insurance available to the **Insured Persons** from the **outside organization** or any other source other than the **Organization**.

C. Employment Practices Liability Coverage

The Insurer agrees to pay on behalf of the **Insured** all **loss** for which the **Insured**, shall become legally obligated to pay on account of any **claim** first made against them by an **employee** or applicant, during the **policy period**, because of a **wrongful act** related to **employment practices** committed before or during the **policy period**, within the **coverage territory**.

Spousal Extension Coverage

Coverage is extended to the lawful or common law spouse or the domestic partner of an **Insured Person**, but only to the extent that such person is named as a co-defendant in a **claim** against an **Insured Person** solely in his or her capacity as the lawful or common law spouse or domestic partner of an **Insured Person**, including such **claims** that seek damages recoverable from property jointly held by the **Insured Person** and their lawful or common law spouse or domestic partner, or property transferred from the **Insured Person** to their lawful or common law spouse or domestic partner, provided, however, that this extension does not provide coverage for any **claim** for any actual or alleged **wrongful act** of the lawful or common law spouse or domestic partner of the **Insured Person**.

Estate Extension Coverage

Coverage is extended to the estates, heirs, legal representatives or assignees of any **Insured Person** who is deceased or the legal representatives or assignees of any **Insured Person** who is incompetent, insolvent or bankrupt.

SECTION 2 – EXTENDED REPORTING PERIOD

In the event of:

1. cancellation or refusal to renew this policy by the Organization named in the Declarations Page, if premiums due are paid; or
2. refusal to renew this policy by the Insurer;

the **Insured** shall have the right to an extension of the coverage granted by this policy with respect to any **claim** first made against them during the Extended Reporting Period(s) after the effective date of such cancellation or non-renewal, **BUT ONLY WITH RESPECT TO ANY WRONGFUL ACT COMMITTED PRIOR TO THE EFFECTIVE DATE OF CANCELLATION OR NON-RENEWAL** of this policy.

Subject to the above:

A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the **policy period** and lasts for 60 days.

The Basic Extended Reporting Period does not apply to **claims** that are covered under any subsequent insurance purchased by the **Insured**, or that would be covered but for exhaustion of the Limit of Liability applicable to such **claims**.

Once in effect, the Basic Extended Reporting Period may not be cancelled.

A Supplemental 12-month Extended Reporting Period is available, by an endorsement attached to this policy and for an additional premium charge.

This supplemental period starts when the Basic Extended Reporting Period ends.

The additional premium for the Supplemental 12-month Extended Reporting Period shall be calculated at a percentage of the last annual premium, as follows:

- 75% if the policy has been in force with the Insurer for one year;
- 65% if the policy has been in force with the Insurer for two consecutive years;
- 55% if the policy has been in force with the Insurer for three consecutive years;
- 45% if the policy has been in force with the Insurer for four consecutive years or more.

The right to purchase the Supplemental 12-month Extended Reporting Period shall lapse unless written notice together with payment of the additional premium (including any applicable taxes) is given by the **Insured** to the Insurer within 60 days after the effective date of cancellation or non-renewal of this policy.

Notwithstanding paragraphs 1. and 2. above, the Basic Extended Reporting Period and Supplemental 12-month Extended Reporting Period are automatically granted without additional charge to a **Director** who was on the Board of Directors of the **Organization** or an **Officer** who was employed by the **Organization** on the effective date of the policy if it is the initial policy issued by the Insurer (or of the initial policy issued by the Insurer if the policy forms part of a continuous series of renewals) and who had retired before the effective date of cancellation or non-renewal of the policy, but only with respect to any **wrongful acts** committed prior to the effective date of cancellation or non-renewal of the policy and only if no other policy was issued to replace it within this 12-month period.

SECTION 3 - EXCLUSIONS

This policy does not apply to:

1. **claims** or 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 (or of the initial policy issued by the Insurer if this policy forms part of a continuous series of renewals);
2. **claims** based upon, arising out of, directly or indirectly resulting from or in consequence of any circumstance if written notice has been given under any policy of which this policy is a renewal or replacement and if such prior policy affords coverage (or would afford such coverage except for the exhaustion of its Limits of Liability) for such **loss**, in whole or in part, as a result of such notice;
3. **claims** based upon, arising out of, directly or indirectly resulting from any demand, suit or proceeding pending, or order, decree, judgment or settlement pending on or prior to the effective date of this policy (or of the initial policy issued by the Insurer if this policy forms part of a continuous series of renewals), or derived from, arising out of or resulting from or alleging the same or essentially the same facts as those alleged in such pending or prior litigation;
4. **claims**:
 - 4.1. which are based upon or arise out of, directly or indirectly, or any consequence related to the dishonesty or bad faith of any **Insured**;
 - 4.2. attributable to any **Insured Person** gaining in fact any personal profit or advantage to which such **Insured Person** was not legally entitled;
 - 4.3. for the return of any remuneration paid to any **Insured Person** by the **Organization**, if such remuneration was illegally paid; when a final judgment or other final adjudication (including any appeal therefrom), establishes that such conduct as enumerated in either one or all of paragraphs 4.1., 4.2. and 4.3. above were material to the cause of action so adjudicated. In such a case, the Insurer shall be entitled to recover its **defence costs** from the **Insured**. The words "final judgment or other final adjudication (including any appeal therefrom)" as used in this paragraph will include a decision rendered in a dispute between the **Insured** and the Insurer on the applicability of this insurance;
5. **claims** against any **Insured** made directly or indirectly by or on behalf of the **Organization**.

However, this exclusion does not apply to a **claim** against any **Insured Person**:

 - 5.1. that is a derivative action brought without the solicitation, assistance or active participation of any **Insured**;
 - 5.2. brought or maintained by a trustee in bankruptcy, liquidator, receiver or receiver-manager as defined in the *Bankruptcy and Insolvency Act*, R.S. (1985), c. B-3, in the *United States Bankruptcy Code* or in any similar federal, provincial, state, territorial or local legislation or any similar legislation of another country who has been appointed in relation to the financial affairs of the **Organization**;
 - 5.3. who was not serving the **Organization** in such duties on the date a **claim** is first made and where such **claim** is brought without the solicitation, assistance or active participation of an **Insured Person**;

6. with respect to Insuring Agreement A – Insured’s Liability Coverage and Insuring Agreement B – Non-Profit Outside Directorship Liability Coverage, **claims** based upon, arising out of or resulting from an actual or alleged violation of the responsibilities, obligations or duties imposed by the *Canada Pensions Benefits Standards Act, 1985*, R.S. (1985), c.32 (2nd Supp.) or the *Employee Retirement Income Security Act of 1974* of the United States, as amended, or similar provisions of any federal, provincial, territorial, local, state, Canadian or foreign law or regulation or the common law upon fiduciaries of any pension, profit sharing, health and welfare or other **employee benefit plan** established for the purpose of providing benefits to the **Insureds**;
7. **claims** for bodily injury, emotional distress, mental anguish, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof.
However, this exclusion does not apply to **claims** for emotional distress or mental anguish resulting from **wrongful acts** related to **employment practices**;
8. **claims** based upon, arising out of, or directly or indirectly resulting from, the provision of or failure to provide any type of professional service, including opinions and the giving of advice, rendered to others by the **Insured**, either gratuitously or for a fee;
9. **claims** against any **Insureds** based upon, arising out of, or directly or indirectly resulting from an **Insured Person** serving in any capacity on behalf of any entity other than the **Organization**, even if directed or requested to serve in such capacity by the **Organization**. However, this exclusion does not apply to **claims** covered under Insuring Agreement B – Non-Profit Outside Directorship Liability Coverage;
10. with respect to Insuring Agreement B – Non-Profit Outside Directorship Liability Coverage, **claims** based upon, arising out of, or directly or indirectly resulting from any fact or circumstance that may reasonably give rise to a **claim**, whether disclosed in the application or not, in any way known to the **Insured Person** elected or appointed to an **outside directorship** prior to the effective date of this policy (or of the initial policy issued by the Insurer if this policy forms part of a continuous series of renewals) or prior to the date the **Insured Person** was elected or appointed to the **outside directorship**;
11. with respect to Insuring Agreement B – Non-Profit Outside Directorship Liability Coverage, **claims** made by or on behalf of any **outside organization** or any entity linked to the **outside organization** or by any director, officer, trustee, observer or equivalent executive position or any employee of the **outside organization**;
12. **claims** based upon, arising out of, or directly or indirectly resulting from, the management, application or breach of a collective bargaining agreement;
13. with respect to Insuring Agreement A – Insured’s Liability Coverage and Insuring Agreement B – Non-Profit Outside Directorship Liability Coverage, **claims** based upon, arising out of, or directly or indirectly resulting from, any contract or agreement, either oral or written. However, this exclusion does not apply to the extent that the **Insured** would have been liable in the absence of such contract or agreement;
14. **claims** based upon, arising out of, or directly or indirectly resulting from the liability of others assumed by the **Insured** under any contract or agreement, either oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement;
15. **losses**, other than **defence costs**, which constitute:
 - 15.1. **benefits** due, or to become due, or the equivalent value of such **benefits**;
 - 15.2. salary, wages, **benefits** or any other cost or expense the **Insured** shall incur or be required to pay as economic relief if the Organization named in the Declarations Page is ordered, pursuant to a judgment or final adjudication, but fails to reinstate the claimant as an **employee**;
 - 15.3. the costs of compliance with or the satisfaction or remedy of an undertaking, a direction, an order, a violation, a determination or a certificate negotiated, issued, made or committed under the *Employment Equity Act* of Canada, or any costs associated with any accommodation or affirmative action programme required by, pursuant to or ordered under the *Canadian Human Rights Act*, rules, orders, orders in council or regulations promulgated under and amendments to these laws, or similar provisions of any constitutional, federal, provincial, territorial or local statutory, common or civil law; or
 - 15.4. the costs of compliance with any order for or grant of or agreement to provide injunctive or non-pecuniary relief;
 - 15.5. with respect to Insuring Agreement C – Employment Practices Liability Coverage, a **claim** which is based upon, arising from, or in consequence of, any dispute with respect to the valuation of a written employment contract or agreement;
16. with respect to Insuring Agreement C – Employment Practices Liability Coverage, **claims** based upon, arising out of, or directly or indirectly resulting from any lock-out, strike, picket line, replacement workers, actual or alleged unfair practices or other similar actions resulting from labour disputes or labour negotiations or any protections contained within the *Canada Labour Code* (Part I), and amendments thereto, or similar provisions of any constitutional, federal, provincial, territorial or local statutory law or common law or civil law, or based upon, arising from or in consequence of any differences between the parties to a collective agreement arising from the interpretation, application, administration or alleged violation of a collective agreement;
17. with respect to Insuring Agreement C – Employment Practices Liability Coverage, **claims** based upon, arising out of, or directly or indirectly, resulting from the **insolvency** of the **Insured** or the partial or complete closing by the **Insured** of one or more places of business;
18. with respect to Insuring Agreement C – Employment Practices Liability Coverage, **claims** based upon, arising out of, or directly or indirectly, resulting from any actual or alleged violation of an obligation imposed by any act, or regulation related to pay equity, workers' compensation, industrial accidents and occupational disease, occupational health and safety, employment insurance, welfare and social welfare, social security or old age security, retirement benefits or pension plan benefits, disability benefits, or by any similar act or regulation, including the *Canada Labour Code* and in particular its Parts II, III [Division XIII.1], the *Employment Insurance Act*, the *Old Age Security Act*, the *Pension Benefit Standards Act, 1985*, the *Canada Pension Act*, the *Canadian Human Rights Act*, and in particular its Section 11, as amended, or similar provisions of any constitutional, federal, provincial, territorial, or local statutory law or the common law upon fiduciaries of any pension, profit sharing, health and welfare or other **employee benefit plan** established for the purpose of providing benefits to the **Insured** or **employees**.

However, this exclusion shall not apply to any **claim** 1) for actual or alleged discrimination or employment-related harassment under Division XV.1 of Part III of the *Canada Labour Code* or under the *Canadian Human Rights Act*, rules or regulations promulgated thereunder and amendments thereto or similar provisions of any constitutional, federal, provincial, territorial or local statutory or, common law or civil law, or 2) based upon, arising from, or in consequence of any actual or alleged retaliatory treatment against the claimant by the **Insured** on account of the claimant's exercise of rights pursuant to any such law;

19. with respect to Insuring Agreement C – Employment Practices Liability Coverage, **loss** and other amounts actually or allegedly due on account of any **claim** for a **wrongful act** made against any **Insured** for an actual or alleged violation of the responsibilities, obligations or duties imposed in Canada by the Canada Labour Code, Part III, rules, orders, orders in council or regulations promulgated thereunder and any amendments thereto, or similar provisions of any constitutional, federal, provincial, territorial or local statutory law of Canada, or under the provisions of any written, oral, express or implied employment contract or agreement, but this exclusion shall not apply to **defence costs**.

Furthermore, this exclusion shall not apply to any **claim** for any retaliatory treatment of any claimant by any **Insured** based upon such claimant's exercise of rights pursuant to any such law, any **equal pay claim**, or any unjust dismissal or dismissal without good and sufficient cause brought in direct reliance upon Sections 240 to 246 inclusive of the Canada Labour Code, Part III, Section 124 of the Quebec Act Respecting Labour Standards or Section 71 of the Nova Scotia Labour Standards Code. Any amount actually or allegedly due under the provisions of any written, oral, express or implied employment contract or agreement remain excluded;

20. **claims** based upon, arising out of, or directly or indirectly resulting from the actual, alleged, potential or threatened spill, discharge, emission, seepage, leakage, migration, release, escape or disposal of **pollutants** or **claims** directly or indirectly related to the implementation of **antipollution measures**.

However, this exclusion shall not apply to any **claim** for **wrongful acts** related to **employment practices** for any retaliatory treatment of any claimant's actual or alleged: (1) refusal to violate any federal, provincial, territorial or local statutory law or common law or civil law regarding pollution, or (2) disclosure regarding any actual or alleged pollution by the **Organization**;

*NOTE: With respect to the above exclusions, no fact pertaining to or knowledge possessed by any **Insured** will be imputed to any other **Insured** to determine if coverage is applicable. Only facts pertaining to and knowledge possessed by any past, present or future Chief Financial Officer, President or Chairman, of the **Organization** named in the Declarations Page will be imputed to the **Organization** named in the Declarations Page to determine if coverage is available.*

*The following exclusions apply regardless of the cause of the **loss** or damage, other causes of the injury, damage, expense or costs or whether other causes acted concurrently or in any sequence to produce the injury, damage, expenses or costs.*

21. liability imposed by or arising under any nuclear liability act;
22. damages:
- 22.1. with respect to which an **Insured** under this policy is also insured under a contract of nuclear energy liability insurance (whether the **Insured** is unnamed in such contract and whether or not it is legally enforceable by the **Insured**) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for termination upon exhaustion of its Limit of Liability;
- 22.2. resulting directly or indirectly from the **nuclear energy hazard** arising from:
- 22.2.1. the ownership, maintenance, operation or use of **nuclear facility** by or on behalf of an **Insured**;
- 22.2.2. the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**;
- 22.2.3. the possession, consumption, use, handling, disposal or transportation of **fissionable substances**, or of other **radioactive material** (except radioactive isotopes, away from a **nuclear facility**, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an **Insured**;
23. 23.1. **claims** based upon, arising out of, or directly or indirectly resulting from the actual or alleged inhalation of, contact with, exposure to, use of, existence of, presence of, asbestos or any material containing asbestos in whatever form or quantity, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, clean up, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of asbestos or any material containing asbestos;
- 23.2. **claims** made by or on behalf of a governmental authority or arising out of any order or demand under any legislation or regulation that the **Insured** or others perform or assume liability for the following:
- 23.2.1. operations to evaluate or assess the presence or absence of asbestos, its effects or quantity;
- 23.2.2. operations to test for, monitor, contain, treat, detoxify, neutralize, identify, clean up, sample, remove, abate, mitigate, or dispose of asbestos;
- 23.2.3. any other actions to respond to situations involving asbestos;
- 23.3. any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with paragraphs 23.1. or 23.2. above;
- 23.4. any obligation to pay damages, share damages with or repay someone else who must pay damages because of such injury or damage referred to in the paragraphs 23.1, 23.2 and 23.3 above;
24. **claims** based upon, arising out of, or directly or indirectly resulting from the 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 any public authority.

SECTION 4 – LIMITS OF LIABILITY AND DEDUCTIBLES

1. Limits of Liability

1.1. The Limits stated in the Declarations Page and the rules below fix the most the Insurer will pay regardless of the number of:

1.1.1. **Insureds**;

1.1.2. **claims** made; or

1.1.3. persons or organizations making **claims**.

1.2. The Limits stated in the Declarations Page are Aggregate Limits of Liability for each coverage. Each Limit is the most the Insurer will pay separately for all **claims**, per coverage, made during the **policy period**. Each Limit shall apply in excess of the deductible amount stated in the Declarations Page. The Aggregate Limits under this policy shall be part of and not in addition to the Total Aggregate Limit of Liability per Policy Period stated in paragraph 1.3 below.

1.3. Subject to 1.2. above, the Total Aggregate Limit of Liability per Policy Period is the most the Insurer will pay for all **claims** made during the **policy period** under all Coverages.

2. Applicability of The Limits of Liability

The Limits of Liability shall apply separately to each **policy period**. If the **policy period** is extended for an additional period of less than 12 months, the additional period shall be deemed part of the last preceding period for purposes of determining the Limits of Liability. In addition, the Basic Extended Reporting Period, and the Supplemental 12-month Extended Reporting Period if exercised under SECTION 2, shall be part of, and not in addition to, the immediate preceding **policy period**, for the purposes of determining Limits of Liability.

3. Serial Loss

Claims arising out of interrelated circumstances shall be considered a single **loss**. One deductible amount shall apply to each and every **loss**.

4. Deductibles

4.1. The obligation of the Insurer to pay on behalf of the **Insured** applies only to the amount of **loss** in excess of any deductible amount stated in the Declarations Page as applicable to such coverages.

4.2. The deductible amounts stated in the Declarations Page for Insuring Agreement A – Insured’s Liability Coverage and Insuring Agreement B – Non-Profit Outside Directorship Liability Coverage applies only to the **Organization**.

4.3. The deductible amount stated in the Declarations Page for Insuring Agreement C – Employment Practices Liability Coverage applies only to the **Organization** and only when the **Organization** is responsible for the payment arising from a **loss** subject to this Insuring Agreement as required by law, its articles of incorporation, its by-law or by any other contract.

4.4. The deductible amounts stated in the Declarations Page as applicable to the **Organization** with respect to Insuring Agreement A – Insured’s Liability Coverage and Insuring Agreement B – Non-Profit Outside Directorship Liability Coverage shall also apply to **losses** for which the **Organization** fails or refuses to indemnify the **Insured Person**, if the indemnification is required or permitted by law, the **Organization**’s articles of incorporation or its by-laws, unless and to the extent that the **Organization** is unable to make such indemnification by reason of its **insolvency**.

4.5. In the event that a single **loss** is covered in part under several Insuring Agreements, the deductible amounts stated in the Declarations Page shall be applied separately to that part of the **loss** covered by each Insuring Agreement. However, the total deductible amount shall in no event exceed the highest deductible amount applicable to each **loss**.

5. Defence Costs

Except where this policy is governed by the insurance laws of the Province of Quebec, **defence costs** shall reduce and may exhaust the Limits of Liability stated in the Declarations Page and the deductible amounts stated in the Declarations Page apply to **defence costs**.

6. Increase of The Limits of Liability

If the Insurer has agreed to increase the Limits of Liability under this policy issued by the Insurer or any prior policy issued by the Insurer (if this policy forms part of a continuous series of renewals), such increase shall not apply to:

6.1. **claims** first made against the **Insured** before the effective date of the increase;

6.2. any fact or circumstance known to the **Insured** on the effective date of the increase and likely to give rise to a **claim**.

7. Reduction of The Limits of Liability

If the Limit of Liability has been reduced, the reduced Limit shall apply to all **claims** first made against the **Insured** after the effective date of the reduction, whether or not the **Insured** had prior knowledge of the **claim** or of any fact or circumstance likely to give rise to a **claim**.

SECTION 5 – DEFENCE AND SETTLEMENT

1. Right and Duty to Defend

The Insurer shall have the right and duty to defend any **claim** covered under this policy. However, if such **claim** is made outside Canada, the Insurer may instruct the **Insured** to conduct its own defence. In such a case, the Insurer shall have the right and be given the opportunity to be associated in the investigation, defence and settlement of any such **claim** which may reasonably appear to be covered, in whole or in part, under the terms of this policy.

2. Insurer’s Consent

The **Insured** shall not, except at their own cost, admit any liability, settle or attempt to settle any **claim**, incur any **defence costs**, or assume any contractual obligation without the Insurer’s consent, and such consent may not be unreasonably withheld.

3. 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 **Insured**. If, however, the **Insured** shall refuse to provide consent, the Insurer's liability for the **claim** shall be limited to:

- 3.1. the amount for which the Insurer could have settled such **claim** plus **defence costs** incurred as of the date such settlement was proposed in writing by the Insurer herein referred to as "Settlement Opportunity Amount"; and
- 3.2. 80% of the covered **loss** in excess of such Settlement Opportunity Amount, it being a condition of this insurance that the remaining 20% of such **loss** in excess of the Settlement Opportunity Amount shall be carried by the **Insured** at their own risk and be uninsured. However, this paragraph shall apply only if the Settlement Opportunity Amount exceeds the deductible amounts stated in the Declarations Page.

4. Termination of The Right and Duty to Defend

Subject to clause 5 – Defence Costs of SECTION 4 – LIMITS OF LIABILITY AND DEDUCTIBLES, the Insurer's right and duty to defend shall end when the applicable Limit of Liability is exhausted by the settlement or defence of **claims**.

5. Allocation

If **Insureds** in a **claim** incur both **loss** which is covered by this policy and also **loss** which is not covered by this policy either because such **claim** includes both covered and uncovered matters, or because such **claim** is made against both covered and uncovered parties, then coverage shall apply as follows:

- 5.1. all **defence costs** shall be deemed a covered **loss** and paid by the Insurer;
- 5.2. with respect to indemnities and other costs:
 - 5.2.1. the Insurer and the **Insured** shall use their best efforts to agree upon a fair and proper allocation of such amount between matters covered by this policy and matters not covered by this policy; and
 - 5.2.2. if the Insurer and the **Insured** cannot agree on any allocation, no presumption as to allocation shall exist in any arbitration, suit or other proceeding. The Insurer, if requested by the **Insured**, shall submit the allocation dispute to binding arbitration in accordance with the principles set forth under clause 16. – Arbitration Clause of SECTION 7 – GENERAL CONDITIONS of the policy.

6. Priority of Payments

In the event of a **loss** arising from a **claim** whose settlement exceeds the available Limits of Liability, the Insurer agrees, up to the Total Aggregate Limit of the Policy for each **policy period**:

- 6.1. to commence by settling the **losses** presented against **Directors** and **Officers** regardless of the coverage claimed;
- 6.2. to settle, up to any applicable balance, all other **claims** for the benefit of other **Insured Persons** not covered by 6.1.;
- 6.3. to settle, up to any applicable balance, all other **claims**.

In determination of the amounts allocated to the Insuring Agreements in the event of a shared judgment or settlement, the Aggregate Limits of Liability will be allocated in priority to the settlement of such **claims** in the order provided for in paragraphs 6.1., 6.2. and 6.3. above, unless a judge has instructed otherwise.

This clause applies even if the Insurer receives a formal notice of the **Organization's** insolvency.

The **Insureds** designated in 6.1., like those designated in 6.2. and 6.3. and within their respective orders of priority, each have the same rights.

SECTION 6 – NOTICE OF CLAIMS

Written notice of **claim** will be given to the Insurer as soon as practicable. Any interested person may give such notice. Failure to give notice of claim as soon as practicable will not affect the right of any of the **Insureds** who did not have knowledge of the claim.

Notwithstanding the above, the failure to notify the Insurer in writing as soon as practicable entails forfeiture of the **Insured's** right to indemnity and defence if such failure causes prejudice to the Insurer.

In the event of **claim**, the **Insured** must:

1. immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with the **claim**;
2. authorize the Insurer to obtain records and other information;
3. cooperate with the Insurer in the investigation, settlement or defence of the **claim**; and
4. upon the Insurer's request, assist the Insurer in the enforcement of any right against any person or organization which may be liable to the **Insured**.

If, during the **policy period**, or the Extended Reporting Period(s), if exercised under SECTION 2, the **Insured** becomes aware of a **wrongful act** which may reasonably be expected to give rise to a **claim** and if the **Insured** gives written notice to the Insurer before the expiration date of the **policy period**, or of the Extended Reporting Period(s) if applicable, then any **claim** which may subsequently arise out of such **wrongful act** will be considered to have been made during the **policy period** in which the **wrongful act** was first reported to the Insurer. The **Insured** will provide the Insurer with information as it may require regarding such **wrongful act**.

In order not to cause prejudice to any **Insured** if, this policy is cancelled or not renewed by the **Insured**, the Organization named in the Declarations Page or the Insurer, the Insurer agrees to grant the **Insured** an additional period of 15 days following the expiration date of the **policy period** or of the Extended Reporting Period(s) if applicable, for giving the Insurer written notice of any **wrongful act** which may reasonably give rise to a **claim** which an **Insured** became aware of during the **policy period** or Extended Reporting Period(s) if applicable.

All **claims** arising out of the same facts or circumstances shall be deemed to have been reported at the time the first of those **claims** is reported to the Insurer.

Any wilfully false statement shall entail forfeiture, for the person making it, of the right to indemnity with respect to the risk to which the statement relates.

SECTION 7 – GENERAL CONDITIONS

1. Policy Changes

This policy contains all the agreements between the **Insured** or the Organization named in the Declarations Page and the Insurer concerning the insurance afforded. The terms of this policy shall not be waived or changed, except by endorsement issued by the Insurer and made a part of this policy.

2. Declarations

By acceptance of this policy, the person who signed the application agrees that:

- 2.1. the statements in the application and the Declarations Page are accurate and complete and are based upon representations he made to the Insurer;
- 2.2. this policy has been issued in reliance upon such representations.

Any misrepresentation or concealment by the person who signed the application of any facts known to him which are likely to materially influence a reasonable insurer in the setting of the premium, the appraisal of the risk or the decision to accept it will void the policy at the instance of the Insurer, even in respect of **losses** not connected with the risk so misrepresented or concealed.

Unless the bad faith of the person who signed the application is established or unless it is established that the Insurer would not have accepted the risk if it had known the true facts, the Insurer will remain liable towards the **Insured** for such proportion of the indemnity as the premium it collected bears to the premium it should have collected.

To determine if the coverage provided by this policy applies, no statements or declarations made or information obtained by an **Insured** will be imputed to another **Insured** who had no knowledge of such misrepresentation or concealment, only facts pertaining to and knowledge possessed by any past, present or future Chief Financial Officer, President or Chairman of the Organization named in the Declarations Page will be imputed to the **Organization** to determine if coverage is available.

In case of any misrepresentation or concealment, this policy shall not be rescinded except with respect to:

- 2.3. any **Insured Person** who had knowledge of such misrepresentation or concealment;
- 2.4. the **Organization** who has indemnified an **Insured Person** who had knowledge of such misrepresentation or concealment;
- 2.5. the **Organization** if any past, present or future Chief Financial Officer, President or Chairman of the Organization named in the Declarations Page had knowledge of such misrepresentation or concealment.

3. Notice

Notices by the **Insured** to the Insurer will be mailed to the address shown in the Declarations Page.

Notices by the Insurer to an **Insured Person** or the **Organization** will be mailed to the Organization named in the Declarations Page at the address shown therein or any other address notified in writing to the Insurer.

Notice by the Organization named in the Declarations Page as provided hereunder shall constitute notice by the **Insured**. The **Insureds** agree that the Organization named in the Declarations Page will act on their behalf with respect to any action required or permitted, the giving and receiving of notice of **claim** or cancellation, the payment of premiums and the receiving of any return premiums that may be due under this policy or the acceptance of endorsements. Proof of receipt of the notices is the responsibility of the sender.

4. Separation of Insureds

Except with respect to the Limits of Liability and any rights or duties specifically assigned to the **Insureds**, this insurance shall apply in the same manner and to the same extent as if a separate policy had been issued to each **Insured**.

5. Assignment

Assignment of interest under this policy shall not bind the Insurer unless its consent thereto is given in writing.

6. Change of Control

In the event the Organization named in the Declarations Page merges into or consolidates with another organization, or if another organization or person or group of organizations or persons acquires more than 50% of the voting rights or management control of the Organization named in the Declarations Page, then coverage under this policy will continue until its expiry, but only with respect to **claims** for **wrongful acts** committed prior to such merger, consolidation or acquisition. The Organization named in the Declarations Page will give written notice of the merger, consolidation or acquisition to the Insurer as soon as practicable together with such information as the Insurer may request.

7. Cancellation

- 7.1. The Organization named in the Declarations Page may cancel this policy by mailing or delivering to the Insurer written notice stating when thereafter the cancellation will be effective. If no date is specified, cancellation is effective upon receipt of the notice.
- 7.2. The Insurer may only cancel this policy because of non-payment of premium by giving the Organization named in the Declarations Page, at the last mailing address known to it, written notice of cancellation by registered mail or personally delivered at least 15 days before the effective date of such cancellation.

Except in Québec, if notice is mailed, cancellation takes effect 15 days after receipt of the letter by the post office to which it is addressed. Proof of mailing will be sufficient proof of notice. In Québec, cancellation takes effect 15 days after receipt of the notice at the last known address of the Organization named in the Declarations Page.

If this policy is cancelled by the Organization named in the Declarations Page, the Insurer will send the Organization named in the Declarations Page any premium refund due. If the Insurer cancels, the refund will be pro rata. If the Organization named in the Declarations Page cancels, the refund will be computed in accordance with the Insurer's short rate table. The cancellation is effective even if the Insurer has not made or offered a refund.

8. **Payment of Premium**

The Organization named in the Declarations Page is responsible for the payment of all premiums and will be the payee for any return premiums payable by the Insurer.

9. **Computation of Premium**

The Insurer will compute all premiums for this policy in accordance with its rules and rates. The Organization named in the Declarations Page must keep records of the information needed by the Insurer for premium computation and will send copies to the Insurer at such times as it may request.

10. **Other Insurance**

10.1. If the **Insured** has other valid and collectible insurance against damages or **defence costs** covered by this policy, except an insurance policy issued by a subsidiary of the parent company of the Insurer, then this policy will be excess over such other insurance, unless such other insurance is written only as specific excess insurance, in which case this policy shall be primary.

10.2. If the **Insured** has other valid and collectible insurance against damages or **defence costs** covered by this policy, under a policy issued by a subsidiary of the parent company of the Insurer, the policy that applies most specifically to the **claim** will be primary and the other insurance will be excess. The Insurer's liability for any one **loss**, however, will in no event exceed the highest Limit of Liability applicable to the **loss** under all policies.

11. **Subrogation**

In the event of any payment under this policy, the Insurer will be subrogated to the extent of such payment to all the **Insured's** rights of recovery against any person or organization. The Insurer may be fully or partly released from its obligation towards the **Insured** where, owing to any act of the **Insured**, it cannot be so subrogated.

12. **Currency**

All Limits of Liability, premiums, deductibles and other amounts as expressed in this policy are in Canadian currency.

If judgment is rendered or if a settlement is denominated in a currency other than Canadian dollars, payment under this policy will be made in Canadian dollars.

With respect to the payment of the premium or of any judgment or settlement, the rate of exchange will be the rate in force on the date of billing, the date the final judgment is rendered or the date the amount of the settlement is agreed upon, respectively.

13. **Bankruptcy and Insolvency**

Bankruptcy or **insolvency** of the **Organization** shall not relieve the Insurer of its obligations under this policy.

14. **Action Against The Insurer**

No action shall lie against the Insurer unless as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy.

15. **Statutory Conformity**

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

16. **Arbitration Clause**

Any dispute between any **Insured** and the Insurer based upon, arising from or in connection with any actual or alleged coverage under this policy shall be submitted to binding arbitration.

Except with respect to the selection of the arbitration panel, an arbitration shall be governed by the law of the province or territory of the address of the **Organization** shown on the Declarations Page relating to arbitration, including rules, orders, orders in council or regulation promulgated under such law and amendments thereto or, upon the agreement of both the Insurer and the **Insured**, unless the **Organization** and the Insurer expressly agree otherwise in writing. The arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators. The decisions of the panel are final and will not be contested.

SECTION 8 - DEFINITIONS

1. **Antipollution measures** mean the testing for, remediation, monitoring, removal, containment, treatment, detoxification, decontamination, stabilization or neutralization of **pollutants**, corrective measures, decontamination or clean up operations.
2. **Bankruptcy** means the state of the **Organization** which occurs at the time or date of the granting of a receiving order against the **Organization**, the filing of an assignment of property by or in respect of the **Organization** or the event that causes an assignment by the **Organization** to be deemed. **Bankruptcy** shall also include any similar position of the **Organization** under similar legislation of any other country.
3. **Benefits** means perquisites, fringe benefits, payments in connection with an **employee benefit plan** and any other payment, other than salary or wages, to or for the benefit of an **employee** arising out of the employment relationship.
4. **Claim**, either in the singular or the plural, means:
 - 4.1. any written demand or written allegation seeking non-monetary relief or damages;
 - 4.2. a civil proceeding commenced by the filing or service, whichever is earlier, of a complaint or similar pleading;
 - 4.3. a criminal proceeding against an **Insured Person** commenced by laying of information, the return of an indictment or similar document;
 - 4.4. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or

4.5. an arbitration proceeding;

against an **Insured** for a **wrongful act**, including any appeal therefrom.

5. **Coverage territory** means any part of the world except with respect to Insuring Agreement C – Employment Practices Liability Coverage, for which this policy shall only apply to **claims** made in Canada in respect of **wrongful acts** committed in Canada and based on Canadian law.
6. **Defence costs** mean that part of **loss** consisting of reasonable costs, charges, fees (including but not limited to lawyers', accountants' and experts' fees) and expenses (other than salaries, overhead and benefit expenses of any **Insured**) incurred in defending or investigating **claims**.
- The term "**defence costs**" shall also include:
- 6.1. all premiums on bonds to release attachments for an amount not in excess of the Limit of Liability, but without any obligation to apply for or furnish such bonds;
- 6.2. all reasonable expenses (other than loss of earnings) incurred by the **Insured** at the Insurer's request in assisting the Insurer in the investigation or defence of any **claim** or suit;
- 6.3. all costs taxed against the **Insured** in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the applicable Limit of Liability and before the Insurer has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Liability;
7. **Director** means any person who was, or now is, a member, a governor or a trustee of the Board of Directors of the **Organization** or who will be duly elected or appointed member, governor or trustee of the Board, after the effective date of this policy and any equivalent executive position of the **Organization** in foreign jurisdictions or any person who acts "de facto" as director of the **Organization**, before or after the effective date of the policy.
8. **Employee** means an individual who was, now is, or will be employed by the **Organization**, while acting within the scope of his duties.
9. **Employee Benefit Plan** means any retirement, pension, supplemental pension, savings, retirement saving, profit sharing, deferred compensation, change of control, insurance, medical, hospital, dental, vision care, drug, sick leave, short term or long term disability, salary continuation, vacation pay or other employee benefit, plan, program, arrangement, policy or practice whether written or oral, formal or informal, funded or unfunded, registered or unregistered that is maintained or otherwise contributed to, or required to be contributed to for the benefit of an **employee**.
10. **Employment practices** means:
- 10.1. wrongful dismissal, discharge or termination of employment, whether actual or constructive;
- 10.2. breach of any oral or written employment contract;
- 10.3. violation of any law concerning discrimination in employment;
- 10.4. employment-related harassment, including sexual harassment or other harassment in the workplace;
- 10.5. wrongful deprivation of employment or promotion;
- 10.6. wrongful discipline;
- 10.7. failure to grant tenure;
- 10.8. negligent evaluation;
- 10.9. employment-related invasion of privacy;
- 10.10. employment-related defamation;
- 10.11. employment-related wrongful infliction of emotional distress;
- 10.12. employment-related misrepresentation.
11. **Equal pay claim** means a **claim** for an actual or alleged differential of pay for the same work or substantially similar work, but does not include a **claim** for pay equity.
12. **Fissionable substance** means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
13. **Insolvency** means:
- 13.1. the financial position of the **Organization** or **outside organization** as a debtor as that term is defined and used in Canada within the provisions of the *Bankruptcy and Insolvency Act*, R.S. (1985), c. B-3 and, without limiting the generality of the foregoing, shall occur when any receiver, conservator, liquidator, trustee, sequestrator, court or similar provincial or federal official or a creditor takes control of, supervises, manages or liquidates the **Organization** or **outside organization**;
- 13.2. a reorganization proceeding of the **Organization** or **outside organization** under the *Companies' Creditors Arrangement Act*, R.S. (1985), c. C-36 in Canada;
- 13.3. the **Organization** or **outside organization** becoming a debtor in possession under Chapter 11 of the United States Code, Bankruptcy;
- 13.4. any similar position of the **Organization** or **outside organization** under similar legislation of any other country.
14. **Insured**, either in the singular or the plural, means the **Organization** and **Insured Persons**.
15. **Insured Person**, either in the singular or the plural, means:
- 15.1. **Director, Officer, employee** or volunteer worker of the **Organization**;
- 15.2. All natural persons who were, now are, or will be, observers to the Board of Directors or members of any commission, assembly, or committee of the Board of Directors of the **Organization** or of a board created by the Organization named in the Declarations Page;
- 15.3. under Insuring Agreement B – Non-Profit Outside Directorship Liability Coverage, any natural person serving in an **outside directorship**.

16. **Loss**, either in the singular or the plural, means:
- 16.1. compensatory damages, including any interest accruing before entry of judgment (or, in those jurisdictions where statute prescribes interest from some other date, from such prescribed date) upon that part of the judgment which is within the limits of the Insurer's liability and;
 - 16.2. **defence costs**;
- which an **Insured** becomes legally obligated to pay on account of any **claim** or **claims** made against them for a **wrongful act**.
- Loss**, other than **defence costs**, shall not include:
- 16.3. fines, penalties, punitive or exemplary damages;
 - 16.4. any taxes the **Organization** or **outside organization** owe, or have failed to pay, other than those taxes for which an **Insured Person**, (including an **outside directorship**), becomes personally liable under statutory law;
 - 16.5. the salary or **benefits** of a claimant;
 - 16.5.1. who has been or shall be hired, promoted or reinstated to employment;
 - 16.5.2. whose employment has been or shall be continued;
 - 16.5.3. whose salary or **benefits** have been increased pursuant to a settlement, order or other resolution;
 - 16.6. with respect to a **claim** for **Employment Practices**, salaries, wages or commissions payable to a claimant for services performed for any **Organization** while employed with any **Organization**;
 - 16.7. matters uninsurable by law under which this policy is construed.
17. **Nuclear energy hazard** means the radioactive, toxic, explosive, or other hazardous properties of **radioactive material**.
18. **Nuclear facility** means:
- 18.1. any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
 - 18.2. any equipment or device designed or used for (1) separating the isotopes of plutonium, thorium and uranium or any one or more of them; (2) processing or utilizing spent fuel; or (3) handling, processing or packaging **waste**;
 - 18.3. any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the **Insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - 18.4. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste radioactive material**; and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
19. **Officer** means any person who was, now is, or will be duly elected or appointed officer of the **Organization** and any equivalent executive position of the **Organization** in foreign jurisdictions or any person who acts "de facto" as officer of the **Organization**, before or after the effective date of the policy.
20. **Organization** means:
- 20.1. the Organization named in the Declarations Page;
 - 20.2. any **subsidiary** of the **Organization** which existed on or before the effective date of this policy. Coverage will apply only to **wrongful acts** committed after the entity became a **subsidiary**;
 - 20.3. any new **subsidiary** of the **Organization** which is acquired or created during the **policy period** and whose revenues represent 35% or more of the total annual revenues of the Organization named in the Declarations Page at the time of the acquisition or creation, as shown in the most recent annual financial statements (or interim financial statements, if applicable), provided written notice is given to the Insurer within 90 days of the acquisition or creation together with such information as the Insurer may require and any additional premium required by the Insurer is paid. Coverage will apply only to **wrongful acts** committed after such acquisition or creation;
 - 20.4. any new **subsidiary** of the **Organization** which is acquired or created during the **policy period** and whose revenues represent less than 35% of the total annual revenues of the Organization named in the Declarations Page at the time of the acquisition or creation, as shown in the most recent annual financial statements (or interim financial statements, if applicable). Coverage will apply only to **wrongful acts** committed after such acquisition or creation. The **Organization** will provide all particulars of the new **subsidiary** to the Insurer at the next renewal of this policy;
 - 20.5. any former **subsidiary** of the **Organization**, but only with respect to **losses** arising out of **wrongful acts** actually or allegedly committed while it was a **subsidiary**.
21. **Outside directorship** means the position of director, officer, trustee, governor, observer or equivalent executive position held by an **Insured Person** in an **outside organization**, provided that service in such position was at the request of the **Organization**.
22. **Outside organization** means any non-profit organization, having no share capital and shall not include the **Organization**.
23. **Policy period** means the period from the effective date of this policy to the policy expiration date as set forth in the Declarations Page, or its earlier cancellation in accordance with clause 7 – Cancellation in SECTION 7 – GENERAL CONDITIONS.
24. **Pollutants** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and **waste**.
25. **Radioactive material** means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.
26. **Subsidiary** means any non-profit association or organization in which more than 50% of the voting rights is owned by the Organization named in the Declarations Page or by one or more of its **subsidiaries**.

27. Wrongful act means:

27.1. Applicable to **Insuring Agreement A – Insured’s Liability Coverage** any negligent act, error, omission, negligence, breach of duty, misleading statement or any other act actually or allegedly committed by:

27.1.1. an **Insured Person** in the discharge of his duties, or any other matter claimed against an **Insured Person** solely by reason of his being an **Insured Person**;

27.1.2. the **Organization**;

and not excluded by the terms and conditions of the policy.

27.2. Applicable to **Insuring Agreement B – Non-Profit Outside Directorship Liability Coverage** any negligent act, error, omission, negligence, breach of duty, misleading statement or any other act actually or allegedly committed by an **Insured Person** in the discharge of his duties, or any other matter claimed against an **Insured Person** solely by reason of his being an **Insured Person** and not excluded by the terms and conditions of the policy;

27.3. Applicable to **Insuring Agreement C – Employment Practices Liability Coverage** any negligent act, error, omission, negligence, breach of duty or misleading statement related to **employment practices** actually or allegedly committed or commenced by the **Insured** and not excluded by the terms and conditions of the policy.

28. Waste includes materials to be recycled, reconditioned or reclaimed.