



**NOT FOR PROFIT DIRECTORS' AND OFFICERS' LIABILITY
POLICY DECLARATIONS**

Policy Number: CP82582K

Replaces Number: RENEWAL

Process Date: March 31, 2020

The Subscribing Companies, hereinafter called the Insurer, agree to insure, subject to the statements contained in the Declarations, the Insured, in accordance with the Terms, Conditions, Forms and Endorsements of this Policy.

Named Insured(s)

COMMUNITY LIVING ONTARIO

Policy Mailing Address

1 VALLEYBROOK CRESCENT
NORTH YORK, ON M3B 2S7

Broker Name and Address

MCDUGALL INSURANCE BROKERS LIMITED
BELLEVILLE, ON

Policy Period:

From APRIL 01, 2020

To APRIL 01, 2021

at 12:01 a.m. Standard Time at the Named Insured's postal address shown on this Certificate

Insured's Operations

COMMUNITY LIVING

Schedule of Coverage

(Insurance is provided, subject to the Declarations, Terms, Conditions of the Policy and its Form(s), only for the coverage for which specific Form(s) are attached and for which a specific Limit or Amount of Insurance is shown hereunder.)

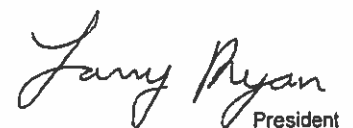
Refer to attached if applicable

Minimum retained premium for this policy is (\$)	279	Total (\$)	Premium	1,860
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The policy contains a clause that may limit the amount payable.

In witness whereof the Insurers have duly authorized the Frank Cowan Company Limited to execute and sign this policy on their behalf for the proportions of indemnity so stated.

Frank Cowan Company Limited
75 Main Street North
Princeton, ON N0J 1V0


President

Authorized Representative

Cancellation/Non-acceptance of this Policy

Named Insured(s)

COMMUNITY LIVING ONTARIO

Policy Mailing Address

1 VALLEYBROOK CRESCENT
NORTH YORK, ON M3B 2S7

Broker Name and Address

MCDUGALL INSURANCE BROKERS LIMITED
BELLEVILLE, ON

If you no longer require this Policy, please complete and return the portion below otherwise leave blank. We strongly recommend that you review this with your Broker to ensure that you fully understand the impact of this decision.

Cancellation Agreement

I/we agree as the undersigned Insured named in this policy CP82582K and renewal certificates (if any), hereby acknowledge the cancellation thereof _____ At 12:01 a.m. standard time and agree that all coverages and liability of

Day/Month/Year

Frank Cowan Company Limited and The Insurer(s) with respect to all accidents, losses or damage occurring on and after the date of cancellation is hereby terminated.

X

Signature (only required if cancelling the Policy)

Policy No. CP82582K
 Effective Date APRIL 01, 2020

SCHEDULE OF COVERAGE

Not For Profit Directors' and Officers' Liability

Form-Edition	Coverage Description	Deductible	(\$) Limit of Insurance	(\$) Premium
CWGX3399-0117	Not For Profit Entity Directors' and Officers' Liability	As Indicated Below	5,000,000 Aggregate	1,860
	Insuring Agreement A. Personal Insurance	\$ 2,500	Included	
	Insuring Agreement B. Entity Indemnification Insurance	\$ 2,500	Included	
	Insuring Agreement C. Entity Insurance	\$ 2,500	Included	
	Insuring Agreement D. Fiduciary Insurance	\$ 2,500	Included	
	Insuring Agreement E. Derivative Demand	\$ 2,500	Included	
	Additional Limit of Liability - Insuring Agreement A only	Included	1,000,000 Aggregate	
GNGX408-0120	Lloyd's Additional Conditions			
			Total	1,860

Subscription Form

In consideration of the Insured having paid or agreed to pay to each of the Insurers named in the List of Subscribing Companies forming part hereof, or to Insurers whose names are substituted thereof or added thereto by endorsement, the premium set against its name in the List of Subscribing Companies.

The Insurers severally and not jointly agree, each for the proportion set against its name in the List of Subscribing Companies, that if the insurance described in the Schedule of Coverage of this policy is provided by the terms of this policy and endorsements attached hereto, while the policy is in force, the Insurers will indemnify the Insured against the loss so insured, the liability of the Insurers individually being limited to that proportion set against the name of the individual, or such other proportion as may be substituted by endorsement.

Subscribing Companies

Insurers	Participation (%)	(\$) Premium
The Guarantee Company of North America	60.00	1,116
Temple Insurance Company	20.00	372
Underwriters at Lloyd's under Contract Number B1100049400120000	20.00	372
Total	100	1,860

NOT FOR PROFIT DIRECTORS' AND OFFICERS' LIABILITY

This Not For Profit Directors' and Officers' Liability policy provides claims made coverage. Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

The word "Insurer" refers to the Subscribing Companies that have agreed to insure this Not For Profit Directors' and Officers' Liability Policy and are shown on the "Declarations" for this Not For Profit Directors' and Officers' Liability Policy 'Subscribing Companies'.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section II - Definitions. These definitions apply to the singular and the plural of these terms as circumstances and context require.

SECTION I - INSURING AGREEMENTS

In consideration of the premium, in reliance on the statements in the "Application", and subject to the "Declarations" and all of the terms, exclusions, conditions and limitations of this Policy, the "Insurer" and the "Named Insured" agree as follows:

A. Personal Insurance

The "Insurer" agrees with the "Insured Persons" that if, during the "Policy Period", any "Claim" or "Claims" (including "Wrongful Employment or Membership Practices Claims") are made against them, or any of them, jointly or severally, and notice is given to the "Insurer" in accordance with SECTION VII of this Policy, the "Insurer" will pay in accordance with the terms of this Policy, on behalf of the "Insured Persons", or any of them, all "Loss" which the "Insured Persons", or any of them, shall become legally obligated to pay, except for "Loss" for which the "Entity" is required or permitted by law to indemnify the "Insured Persons" unless, and to the extent only that, the "Entity" is unable to make actual indemnification solely by reason of its "Insolvency".

The "Insurer" shall not be entitled under any circumstances to rescind the coverage provided by this Insuring Agreement A.

B. Entity Indemnification Insurance:

The "Insurer" agrees with the "Entity" that if, during the "Policy Period", any "Claim" or "Claims" are made against the "Insured Persons", or any of them, jointly or severally, and notice is given to the "Insurer" in accordance with SECTION VII of this Policy, the "Insurer" will pay in accordance with the terms of this Policy, on behalf of the "Entity", all "Loss" for which the "Entity" is required or permitted by law to indemnify the "Insured Persons";

C. Entity Insurance:

The "Insurer" agrees with the "Entity" that if, during the "Policy Period", any "Claim" or "Claims" are made against the "Entity", (including "Wrongful Employment or Membership Practices" "Claims") and notice is given to the "Insurer" in accordance with SECTION VII of this Policy, the "Insurer" will pay in accordance with the terms of this Policy, on behalf of the "Entity", all "Loss" which the "Entity" shall become legally obligated to pay;

D. Fiduciary Insurance:

The "Insurer" agrees with the "Insureds" and the "Benefit Program" that if, during the "Policy Period", any "Fiduciary Claim" or "Claims" are made against them, or any of them, jointly or severally, and notice is given to the "Insurer" in accordance with SECTION VII of this Policy, the "Insurer" will pay in accordance with the terms of this Policy:

1. on behalf of the "Insured Persons", or any of them, all "Loss" for which the "Insured Persons" or any of them shall become legally obligated to pay, except for "Loss" for which the "Benefit Program" or "Entity" is required or permitted by law to indemnify the "Insured Persons" unless and to the extent only that the "Benefit Program" or "Entity" is unable to make actual indemnification solely by reason of its "Insolvency";
2. on behalf of the "Entity" and the "Benefit Program", all "Loss" for which the "Entity" and the "Benefit Program" is required or permitted by law to indemnify the "Insured Persons";
3. on behalf of the "Entity" and the "Benefit Program", all "Loss" for which the "Entity" and the "Benefit Program" shall become legally obligated to pay.

E. Derivative Demand Insurance

The "Insurer" agrees with the "Insureds" that if, during the "Policy Period", a "Derivative Demand" is made upon the Board of Directors of the "Entity", and notice is given to the "Insurer" in accordance with SECTION VII of this Policy, the "Insurer" will pay in accordance with the terms of this Policy, on behalf of the "Insureds", all "Investigation Costs" which the "Entity" or the Board of Directors incur and which arise from the "Derivative Demand".

SECTION II - DEFINITIONS

When set out in quotation marks in this Policy or in the "Application", the following terms shall have the meanings set out hereunder. Otherwise, when not in quotation marks, the same terms shall have only the meaning given to them in normal usage.

1. **"Abuse"** means "Sexual Abuse", "Physical Abuse", psychological or emotional abuse, molestation or harassment including corporal punishment.
2. **"Administration"** means:
 - (a) giving advice, counsel or interpretation regarding a "Benefit Program" to "Employees", beneficiaries or participants;
 - (b) undertaking the enrolment, termination or cancellation of a "Benefit Program", or
 - (c) maintaining or administering records or data in any form for the purposes of a "Benefit Program".
3. **"Applicant"** means any natural person who is not an "Employee", "Member" or "Volunteer" but who has been acknowledged by the "Entity" as applying or as having applied, or is or was an acknowledged candidate, for:
 - (a) full time or part time employment by the "Entity", or
 - (b) membership in the "Entity", or
 - (c) full-time or part-time volunteer work for the "Entity".
4. **"Application"** means the most recent written "Application" form completed, signed and submitted to the "Insurer" on behalf of the "Proposed Insureds" in support of their request that this Policy be issued or renewed, as the case may be.
5. **"Application Information"** means all documents and all information, whether in paper or any other form, submitted to the "Insurer" with an "Application", or otherwise submitted or made available to the "Insurer" in support of a request that this Policy be issued or renewed, as the case may be.
6. **"Arbitration"** means any formal and binding "Arbitration" process pursuant to "Statute" or agreement, by which parties submit a dispute for final resolution by one or more arbitrators.
7. **"Based Upon"** means "based upon", resulting from, arising out of or in any way involving or alleging, directly or indirectly.
8. **"Begun"** when used with reference to a "Prosecution" or "Inquiry", means either the beginning of the "Prosecution" or "Inquiry" or the "Insured's" first notice thereof, whichever comes first.
9. **"Benefit Program"** means:
 - (a) any "Employee Benefit Plan"; or
 - (b) any "Government Sponsored Benefit Plan", but coverage under this Policy is only afforded to such plan for any actual or alleged negligent act, error or omission solely in the "Administration" of the "Government Sponsored Benefit Plan"; or
 - (c) any other plan, fund, program or government-mandated "Benefit Program" including all "Benefit Programs" sponsored by the "Entity" or for which the "Entity" provides "Administration".
10. **"Claim"**:
 - (a) means a written notice from any party:
 - i) that it is the intention of such party to hold any "Insured" civilly liable for "Damages" caused by a "Wrongful Act", or
 - ii) that it is the intention of such party to seek an "Oppression Remedy" against any "Insured" with respect to a "Wrongful Act", or
 - iii) that it is the intention of such party to seek an injunctive, administrative or any other non-monetary remedy or relief from any "Insured" with respect to a "Wrongful Act";
 - (b) means a civil suit against any "Insured":
 - i) claiming "Damages" caused by a "Wrongful Act", or
 - ii) seeking an "Oppression Remedy" with respect to a "Wrongful Act", or
 - iii) seeking an injunctive, administrative or any other non-monetary remedy or relief from any "Insured" with respect to a "Wrongful Act";
 - (c) means a "Prosecution" of any "Insured" for a "Wrongful Act";
 - (d) means an "Inquiry" "Based Upon" a "Wrongful Act" by any "Insured";
 - (e) means a demand or notice of an "Arbitration" claiming "Damages" against any "Insured" caused by a "Wrongful Act";
 - (f) means a "Regulatory or Administrative Proceeding" against any "Insured" alleging a "Wrongful Act";
 - (g) means an "Extradition Proceeding", including any appeals therefrom.

11. "Damages" means:

- (a) with respect to the "Insured Persons":
 - i) direct compensatory civil damages which the "Insured Persons" are legally liable to pay as a result of a judgment or settlement;
 - ii) civil fines or penalties and punitive or exemplary damages or the multiple portion of any multiplied damage award, awarded pursuant to a judgment or settlement, but only if not declared uninsurable under the law pursuant to which this Policy is construed;
 - iii) any costs or expenses incurred or to be incurred by the "Insured Persons" which are required by, pursuant to or in any way involve any order for, grant of or agreement to provide injunctive, administrative or any other non-monetary remedy or relief;
 - iv) an "Oppression Remedy", provided that the complainant seeking the "Oppression Remedy" is acting totally independently of, and totally without the solicitation of, or assistance of, or participation of, or intervention of, any "Insured" unless the "Insured" in question is an "Insured Person" engaged in "Whistleblower Activity";
 - v) pre-judgment and post-judgment interest and legal fees and expenses awarded pursuant to a judgment or settlement;
- (b) with respect to the "Entity" or the "Benefit Program" :
 - i) direct compensatory civil damages, which the "Entity" or the "Benefit Program" is legally liable to pay as a result of a judgment or settlement;
 - ii) punitive or exemplary damages or the multiple portion of any multiplied damage award awarded pursuant to a judgment or settlement, but only if not declared uninsurable under the law pursuant to which this Policy is construed;
 - iii) an "Oppression Remedy", provided that (i) the complainant seeking the "Oppression Remedy" is acting totally independently of, and totally without the solicitation of, or assistance of, or participation of, or intervention of, any "Insured" unless the "Insured" in question is an "Insured Person" engaged in "Whistleblower Activity" and (ii) the remedy is an award of direct compensatory civil damages;
 - iv) pre-judgment and post-judgment interest and legal fees and expenses awarded pursuant to a judgment or settlement.

However, "Damages" shall not include:

- i) civil or criminal fines or penalties imposed by law other than (i) "Statutory Liabilities" and (ii) civil fines or penalties imposed on "Insured Persons" but only if such civil fines or penalties are not declared uninsurable under the law pursuant to which this Policy is construed;
 - ii) any costs or expenses incurred or to be incurred by the "Entity" or the "Benefit Program" which are "Based Upon" any order for, grant of or agreement to provide injunctive, administrative or any other non-monetary remedy or relief;
 - iii) any costs or expenses incurred or to be incurred by the "Entity" or the "Benefit Program" which are "Based Upon" any order, grant, judgment or agreement under the *Canadian Human Rights Act*, the *Employment Equity Act*, the *Americans with Disabilities Act*, the *Civil Rights Act of 1964* or similar provisions of any other pertinent Statute;
 - iv) any amount that represents or is substantially equivalent to dividends or distributions of earnings;
 - v) "Damages" that are declared uninsurable under the law pursuant to which this Policy is construed.
12. "Data Breach" means the unauthorized taking, acquisition, obtaining, use or disclosure of information on a computer system, including but not limited to "personally identifiable information", charge, debit, and credit card information, banking, financial, and investment services account information, proprietary information, and personal, private and confidential information.
13. "Declarations" means the "Declarations" page, including any associated schedules of coverage, applicable to this Not For Profit Directors' and Officers' Liability Policy.
14. "Defence Costs" means the amounts incurred in accordance with SECTION VI of this Policy for the defence or legal representation of "Insureds" in respect of "Claims", such as legal, accounting, adjusting or investigating expenses, and the cost of any appeal bond, attachment bond, or similar bond. However, the term is exclusive of i) the regular or overtime salaries or wages, fees, benefit costs and travel or accommodation expenses of "Insured Persons" in connection with "Claims" and ii) "Investigation Costs".
15. "Derivative Demand" means any written notice, as described in Section 251(2)(a) of the *Canada Not-for-profit Corporations Act S.C. 2009, c. 23* to the directors of the "Entity" of the complainant's intention to apply to the Court under Section 251 for leave to bring an action in the name and on behalf of the "Entity", or intervene in an action to which the "Entity" is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the "Entity", or any similar provision of any provincial or foreign "Statute".

16. **"Employee"** means a natural person (except when acting in a non-employee capacity) who currently provides or previously provided services to the "Entity", whether part-time or full-time, in the ordinary course of the "Entity's" business and whom the "Entity" compensates or compensated by salary, wages or commissions and maintains or maintained the right to control and direct in the performance of such services. However, "Employee" does not mean any broker, factor, commission merchant, consignee, independent or dependent contractor, consultant, or other agent or representative of the same general character.
17. **"Employee Benefit Plan"** means:
- (a) any plan so defined by the *Pension Benefits Standard Act, 1985, R.S. 1985, c.32 (2nd Supp)*, the *Ontario Pension Benefits Act, R.S.O 1990, c P-8*, or similar provincial "Statute", which is operated for the benefit of the "Employees" of the "Entity";
 - (b) any medical or welfare benefit plan or disability benefit plan as defined by the *Canada Health Act, R.S.C. 1985, c. C-6*, the *Ontario Health Insurance Act, R.S.O. 1990, c. H.6*, or, any other similar provincial "Statute";
 - (c) any plans as defined in the *Ontario Insurance Act, R.S.O. 1990, c. 1.8*, or, similar provincial "Statute";
 - (d) any retirement compensation agreement, flexible employee benefit plan or registered supplementary unemployment benefit or stock ownership plan not subject to Canadian "Statute" if sponsored by the "Entity" for the benefit of the "Insured Persons" of the "Entity";
 - (e) in the United States of America, any plan, including a welfare benefit plan, as defined in "ERISA", provided, however, "Employee Benefit Plan" shall not include any multi-employer plan as defined in the *Pension Benefits Standards Act, R.S. 1985, c.32 (2nd Supp.)*, the *Ontario Pension Benefits Act, R.S.O 1990, c. P.8* or "ERISA" or by the common, civil or statutory law of Canada, the United States of America or any province, territory, state or other jurisdiction anywhere in the world.
18. **"Entity"** means:
- (a) any non-profit corporation, organization or association shown as the "Named Insured" on the "Declarations"; and
 - (b) any "Subsidiary" at the effective date of this Policy, any "Subsidiary" created by the "Entity", directly or indirectly, after the effective date of this Policy or any former "Subsidiary", but coverage with respect to such former "Subsidiary" is only afforded with respect to "Loss" arising from "Wrongful Acts" committed or allegedly committed while it was a "Subsidiary"; and
 - (c) any "Subsidiary" acquired by the "Entity", directly or indirectly, after the effective date of this Policy, but coverage with respect to such acquired "Subsidiary" is only afforded with respect to "Loss" arising from "Wrongful Acts" committed or allegedly committed after it became a "Subsidiary"; and
 - (d) any other entity which during the "Policy Period" is or was formally constituted and recognized by the "Entity" as part of or a member of the "Entity", but coverage is only afforded with respect to "Loss" arising from "Wrongful Acts" committed or allegedly committed while the other entity was so formally constituted and recognized; and
 - (e) in the event of "Insolvency", any receiver, conservator, liquidator, trustee, sequestrator or similar official, including foreign equivalents, which has been appointed by a provincial, state or federal court, agency, official or foreign equivalents or by a creditor to take control of, supervise, manage or liquidate the "Entity";
- However, "Entity" shall not include any "Benefit Program(s)".
19. **"ERISA"** means the *Employee Retirement Income Security Act of 1974* of the United States of America, as amended.
20. **"Extradition Proceeding"** means a formal proceeding, including the execution of a warrant for the arrest or detention of any "Insured Persons", to extradite any "Insured Person" from the country in which he or she is presently residing to another country which is a sovereign state, for the purposes of either "Prosecution" by that state or imposing a sentence on any "Insured Person" by that state in respect of a criminal or penal offence actually or allegedly committed or attempted by such "Insured Person" even if that offence would not have constituted a criminal or penal offence if it had been committed or attempted in Canada.
21. **"Fiduciary Claim"** means a "Claim" "Based Upon" a "Fiduciary Wrongful Act".
22. **"Fiduciary Wrongful Act"** means:
- (a) any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty (including fiduciary duty) by the "Insureds", individually or collectively, in the discharge of their legal obligations, including without limitation any violation of the responsibilities, obligations or duties imposed by the *Pension Benefit Standards Act of Canada R.S. 1985 c.32(2nd Supp.)*, by the *Employee Retirement Income Security Act of 1974*, as amended, of the United States of America, or by similar provisions of any other "Statute", solely in their capacity as fiduciaries of a "Benefit Program";
 - (b) any actual or alleged negligent act, error or omission solely in the "Administration" of a "Benefit Program"; and
 - (c) any other matter claimed against the "Insureds" solely because of their service as a fiduciary of a "Benefit Program".

23. **"Fungi"** includes, but is not limited to any form or type of mould, yeast, mushroom or mildew whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any "Fungi" or "Spores" or resultant mycotoxins, allergens, or pathogens.
24. **"Government Sponsored Benefit Plan"** means any benefit or compensation plan created by any "Statute" of which the funds and contingent liabilities are held or managed by a government or governmental body and which provides for workers' compensation benefits, employment (or unemployment) insurance, unemployment compensation, retirement benefits, social or old age security, Canada Pension Plan or Quebec Pension Plan benefits, health insurance or disability benefits, or automobile insurance or accident benefits.
25. **"Inquiry"** and **"Inquiries"** mean any inquiry, investigation or commission "Begun" pursuant to "Statute" during the "Policy Period" which an "Insured Person" reasonably believes may lead to disclosures or findings of fact or of law which are relevant to the civil, penal or criminal liability of an "Insured Person" or of the "Entity" or "Benefit Program".
26. **"Insolvency"** means the financial position of the "Entity" or a "Benefit Program" as a debtor as that term is defined and used in Canada within the provisions of the *Bankruptcy and Insolvency Act, R.S.C. c. B-3*, or similar provisions of any other provincial or foreign "Statute". Without limiting the generality of the foregoing, "Insolvency" shall occur when (i) any receiver, conservator, liquidator, trustee, sequestrator or similar official has been appointed by a provincial, state or federal court, agency or official or by a creditor to take control of, supervise, manage or liquidate the "Entity" or the "Benefit Program", (ii) a reorganization proceeding relating to the "Entity" or the "Benefit Program" has been brought in Canada under the *Companies' Creditors Arrangement Act, R.S.C. c. C-36*, (iii) the "Entity" becomes a debtor in possession under Chapter 11 of the *United States Bankruptcy Code*, or (iv) a reorganization proceeding relating to the "Entity" or the "Benefit Program" has been brought in any foreign jurisdiction under similar provisions of any pertinent "Statute".
27. **"Insured"** and **"Insureds"** may be used interchangeably and shall mean any one or more of "Entity", a "Benefit Program" and the "Insured Persons", whether jointly or severally.
28. **"Insured Person"** and **"Insured Persons"** may be used interchangeably and shall mean, but solely when acting in the described capacity:
- any person or persons, individually or collectively, who were, now are, or will be duly elected, appointed or de facto chairpersons, directors, officers, trustees, executive directors, executive officers, treasurers, secretaries or managers of the "Entity", or any equivalent executive position under applicable law in any country other than Canada or the United States of America;
 - a chairperson or member of a duly constituted committee of the "Entity" or its board;
 - an "Employee";
 - a "Volunteer";
 - any person contemplated by (a) to (d) above who, at the written request of the "Entity" or with the written consent of the "Entity", served or serves as a director or officer of any other non-profit entity, but solely in their capacity as a director of such other non-profit entity;
 - any person contemplated by (a) to (d) above who, at the written request of the "Entity", was, now is or shall be a trustee, director, (de facto or otherwise), officer, "employee", administrator or committee member while acting in their capacity as a fiduciary of or performing "Administration" for any "Benefit Program";
 - the estates, heirs, legal representatives or assigns of any of the natural persons contemplated in (a) to (f) above, in the event of their death, incapacity, bankruptcy or "Insolvency";
 - the "Spouse" of any person contemplated in (a) to (f) above, if such "Spouse" is named as a co-defendant in a "Claim" against any such person as a result of an alleged "Wrongful Act" solely by reason of (i) such "Spouse's" status as a "Spouse", or (ii) such "Spouse's" ownership interest in property which the claimant seeks as recovery.
- However, "Insured Person" shall not include any trustee, director, officer or "Employee" of a "Government Sponsored Benefit Plan".
29. **"Interrelated Wrongful Acts"** means any and all "Wrongful Acts" that have as a common nexus any fact, circumstance, situation, event, transaction, cause or individual, or series of causally or logically connected facts, circumstances, situations, events, transactions, causes or individuals.
30. **"Investigation Costs"** means reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred by the "Entity", its Board of Directors or any committee of its Board of Directors in connection with the investigation or evaluation of any "Derivative Demand". However, the term is exclusive of (i) the regular or overtime salaries or wages, fees, benefit costs and travel or accommodation expenses of "Insured Persons" in connection with the investigation or evaluation of any "Derivative Demand", and (ii) "Defence Costs".
31. **"Loss"** means: (i) "Damages", and (ii) "Defence Costs".
32. **"Member"** means any natural person who is or has been formally admitted to and recognized by the "Entity" as a member.

33. "**Oppression Remedy**" means an order or other remedy sought under Section 253 of the *Canada Not-for-Profit Corporations Act* S.C. 2009, c. 23, or similar provisions of any provincial or foreign "Statute".
34. "**Pay Differential**" means any actual or alleged differential in pay or salary between "Employee(s)" who perform the same work or substantially the same work.
35. "**Personally Identifiable Information**" means:
- (i) personal information as defined in the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) as amended, and in equivalent provincial and territorial legislation, concerning the individual;
 - (ii) personal health information as defined in PIPEDA, the *Personal Health Information Protection Act, 2004* (Ontario) and equivalent legislation in other provinces and territories, concerning the individual;
 - (iii) the individual's social insurance number, driver's license, identification number, credit, debit, or other financial account numbers and associated security codes, access codes, passwords or personal identification numbers;
 - (iv) (PINs) that allows access to the individual's financial account information; or
 - (v) other personal information about the individual that is protected under any local, provincial, territorial, state, federal or foreign "Statute" or regulation.
- Provided, however, "personally identifiable information" shall not include information that is lawfully available to the public, including information from any local, provincial, territorial, state, federal or foreign governmental entity or body.
36. "**Pay Equity**" means any actual or alleged differential in pay or salary between "Employee(s)" who perform different work of equal or comparable value.
37. "**Physical Abuse**" means wilful and deliberate misconduct:
- (a) causing or permitting another person to suffer unjustifiable pain or suffering; or
 - (b) causing or permitting another person to be placed in a situation in which his or her life or limb likely would be endangered or his or her health likely would be impaired.
38. "**Policy Period**" means the period of time from the effective date shown on the "Declarations" to the earlier of the expiry date shown on the "Declarations" or the effective date of cancellation of this Policy. If the **DISCOVERY CLAUSE** option is engaged in accordance with **SECTION III**, then such period (herein the Discovery Period) shall be part of and not in addition to the "Policy Period" of the "Entity".
39. "**Pollutants**" means any solid, liquid or gaseous substance, emanation, irritant, radiation, or contaminant in any form (including but not limited to noise, smoke, vapours, fumes, odours, electromagnetic radiation, thermal contamination, greenhouse gas emissions, soot, oil or oil products, asbestos or asbestos products, silica, mould, acids, alkalis, chemicals, medical waste or any other waste materials) which constitutes a nuisance, hazard or pollutant of any kind.
40. "**Proposed Insureds**" means all persons who would be insured in any capacity under the insurance Policy being applied for.
41. "**Prosecution**" means any "Prosecution", charge, information, indictment or other proceeding "Begun" against an "Insured" during the "Policy Period" by the Crown or by any other government or governmental body or regulatory authority seeking penal or criminal sanctions anywhere in the world, including, without limitation, a criminal prosecution.
42. "**Regulatory or Administrative Proceeding**" means any formal proceeding pursuant to a "Statute" before a board, tribunal, commissioner, adjudicator or other judicial or quasi-judicial officer which may lead to a ruling or decision binding on an "Insured", including without limitation a proceeding before a labour standards commission, labour relations board or other similar body.
43. "**Sexual Abuse**" means any conduct constituting a sexual offence under the Criminal Code of Canada including sexual assault offences resulting from physical contact.
44. "**Spores**" includes, but is not limited to, one or more reproductive particles or microscopic fragments produced by, emitted from or arising out of any "Fungi".
45. "**Spouse**" means a "Spouse" or domestic partner recognized as such by "Statute" or in the written provisions of any "Benefits Program" established by the "Entity".
46. "**Statute**" shall include all applicable federal, state, provincial, territorial or local "Statutes" or by-laws or common or civil law in force and any amendments thereto and all applicable regulations or statutory instruments promulgated thereunder, anywhere in the world. Any reference to a "Statute" by name shall include all amendments, all regulations or all other statutory instruments promulgated thereunder and any new "Statute" which replaces or is substituted for the named "Statute" in whole or in part.
47. "**Statutory Liabilities**" means unpaid liabilities of the "Entity" or any "Benefit Program", including unpaid tax liabilities and unpaid wages and deductions at source, for which any "Insured Person" becomes personally liable in their capacity as such under any applicable "Statute" if the "Entity" or the "Benefit Program" is in "Insolvency".
48. "**Subsidiary**" means:
- (a) any non-profit corporation, organization or association in which the "Entity", named on the "Declarations", owns, directly or through one or more "Subsidiaries", more than fifty percent (50%) of the outstanding securities or voting rights representing the right to vote for the election of, or to appoint, such entity's board of directors, board of trustees or a functional equivalent thereof, or in cases where no such securities have been issued, the ability to control or direct such entity's managerial decisions; or

- (b) any for-profit entity added specifically by endorsement as a "Subsidiary" to this Policy.
49. **"Terrorism"** means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.
50. **"Third Party"** means any natural person who is a customer, vendor, service provider, client or other business invitee of the "Entity".
51. **"Volunteer"** means a natural person (except when acting in a non-volunteer capacity) who currently provides or previously provided services to the "Entity", or to any "Third Party" under the auspices and with the knowledge and authorization of the "Entity", without monetary compensation.
52. **"Whistleblower Activity"** means an activity whereby an "Insured Person":
- reports or submits complaints regarding financial statement disclosure issues, accounting, internal accounting controls, auditing matters or violations of the "Entity's" or "Benefit Program's" code of business conduct and/or ethics; or
 - provides information, causes information to be provided or otherwise assists in a "Prosecution", "Inquiry", "Regulatory or Administrative Proceeding" or official investigation of any kind regarding any conduct which he or she reasonably believes to be a violation of employment or labour "Statutes" or any other "Statutes" regarding fraud or the commission or possible commission of a criminal or penal offence.
53. **"Wrongful Act"** means:
- with respect to "Insured Persons", any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty (including fiduciary duty) by the "Insured Persons", individually or collectively, in the discharge of their legal obligations solely in their capacity as "Insured Persons", including without limitation "Wrongful Employment or Membership Practices" and "Whistleblower Activity", or any other matters, including "Statutory Liabilities", claimed against them solely by reason of their being "Insured Persons";
 - with respect to the "Entity", any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty by the "Entity", including without limitation "Wrongful Employment or Membership Practices";
 - with respect to the "Insureds", a "Fiduciary Wrongful Act".
54. **"Wrongful Employment or Membership Practice(s)"** means, with respect to an "Employee", "Applicant", "Third Party", "Member" or "Volunteer" only, any actual or alleged:
- wrongful denial of admission or status to a "Member" or "Volunteer";
 - wrongful termination, dismissal, or discharge (either actual or constructive) of an "Employee";
 - wrongful termination of status or expulsion of a "Member" or "Volunteer";
 - breach of any oral or written employment contract or agreement, or quasi employment contract or agreement, or any contract or agreement relating to status as a "Member" or "Volunteer";
 - misrepresentation relating to employment or to status as a "Member" or "Volunteer";
 - discrimination relating to employment or to status as a "Member" or "Volunteer";
 - wrongful failure to employ or promote, or wrongful discipline, demotion, deprivation of a career opportunity, or failure to grant tenure, or negligent "Employee", "Member" or "Volunteer" evaluation;
 - libel or slander relating to employment or relating to an individual in their capacity as a "Member" or "Volunteer";
 - workplace harassment (including sexual harassment), or retaliation, or invasion of privacy, or employment-related defamation, or employment-related wrongful infliction of emotional distress, or other unwelcome verbal, visual or physical conduct of a provocative nature that creates an intimidating, hostile or offensive working environment;
 - retaliatory treatment of an "Employee", "Member" or "Volunteer" as a result of such "Employee's", "Member's" or "Volunteer's" exercise of their rights pursuant to any "Statute", or arising from such "Employee's", "Member's" or "Volunteer's" "Whistleblower Activity" or arising from such "Employee's", "Member's" or "Volunteer's" involvement with or report to a regulatory or government agency with respect to the "Entity's" activities or operations.
55. **"Wrongful Employment or Membership Practices Claim"** means a "Claim" "Based Upon" "Wrongful Employment or Membership Practices".

SECTION III - DISCOVERY CLAUSE

- If the "Insurer" cancels or refuses to renew this Policy or the "Entity" cancels or elects to not renew this Policy, the "Insureds" may, upon payment of an Additional Premium, extend the period for discovery of a "Loss" for an Additional Period from the date this Policy terminates to dates as agreed to by the "Insurer" and specifically endorsed on the Policy (herein the Discovery Period). The extension of this Policy's coverage is for any "Claim" first made or "Begun" during the Discovery Period, of which notice is given to the "Insurer" in accordance with SECTION VII of this Policy during the

Discovery Period, but only if the "Claim" is "Based Upon" "Wrongful Acts" committed before the date of such cancellation or non-renewal, whichever is applicable.

2. The right of the "Insureds" to engage the **DISCOVERY CLAUSE** is conditional upon the following:
 - (a) the **DISCOVERY CLAUSE** must be engaged by the Insureds by written notice to the "Insurer" no later than thirty (30) days prior to cancellation or non-renewal and payment of the Additional Premium to be received by the "Insurer" no later than thirty (30) days after the date of cancellation or non-renewal;
 - (b) there is no right to engage the **DISCOVERY CLAUSE** in the event of cancellation of the Policy resulting from non-payment of premium or if the "Insured Persons" are otherwise not in compliance with the terms and conditions of this Policy;
 - (c) the "Insurer's" offer of any renewal terms, conditions, limits of liability or premiums different from those of the expiring policy shall not constitute a cancellation or refusal to renew;
 - (d) the **DISCOVERY CLAUSE** shall not be cancelled or rescinded once engaged and the Additional Premium due for the period shall be fully earned at inception of the Discovery Period;
 - (e) the engagement of the **DISCOVERY CLAUSE** shall not increase the **LIMITS OF LIABILITY** otherwise available to pay "Loss";
 - (f) "Claims" made and "Prosecutions" or "Inquiries" "Begun" during the Discovery Period shall be subject to the same **LIMITS OF LIABILITY** applicable to "Claims", "Prosecutions" or "Inquiries", as the case may be, made or "Begun" during the "Policy Period".

SECTION IV - EXCLUSIONS

A. GENERAL EXCLUSIONS APPLICABLE TO INSURING AGREEMENTS A, B, C, D and E.

Under **Insuring Agreements A, B, C, D and E** the "Insurer" shall have no obligation to defend any "Insured" or to make any payment for "Loss" or "Investigation Costs" in connection with any "Claim" or "Derivative Demand":

1. Which is insured by another valid and collectible policy or policies, including without limitation any policy of general liability insurance, professional liability insurance or any insurance policy for pollution liability or environmental liability, except with respect to any excess "Loss", or "Investigation Costs" beyond the amount or amounts of coverage under such other policy or policies, and then only when the limits of coverage under such policy or policies have been exhausted by payment by the other "Insurer(s)". The "Insurer" shall have no obligation to defend or to make any contribution to the cost of defending or to pay "Investigation Costs" in respect of any "Claim" or "Derivative Demand" insured by another policy or policies unless and until the limits of coverage under the other policy or policies have been exhausted by payment by the other "Insurer(s)";
2. For bodily injury, sickness, disease, handicap, impairment or death of any person.
However, this exclusion shall not apply:
 - (a) to "Defence Costs" in connection with a "Prosecution" against the "Insured Persons" by the Crown in Canada pursuant to Section 217.1 of the *Criminal Code of Canada* (as amended by Bill C-45) or similar provisions of any provincial or foreign "Statute" including, without limitation, the *Corporate Manslaughter and Corporate Homicide Act 2007* of the United Kingdom; or
 - (b) to any "Claim" that specifically alleges that "Wrongful Employment or Membership Practices" have been committed; or
 - (c) to any "Claim" against the "Insured Persons" for retaliatory treatment of any claimant as a result of such claimant's exercise of collective bargaining rights or rights under any collective agreement;
3. For damage to or destruction of any tangible or intangible property, including loss of use thereof;
4. For (a) false arrest, detention or imprisonment; or (b) malicious prosecution; or (c) libel, slander or defamation of character; or (d) humiliation; or (e) discrimination; or (f) wrongful entry or eviction or invasion of any right of privacy.
However, this exclusion shall not apply to any "Claim" that specifically alleges that "Wrongful Employment or Membership Practices" have been committed or to any "Claim" against the "Insured Persons" for retaliatory treatment of any claimant as a result of such claimant's exercise of collective bargaining rights or rights under any collective agreement;
5. "Based Upon":
 - (a) any demand, suit or other proceeding pending, or order, decree or judgment entered against any "Insured" on or prior to the effective date of this Policy, or, if this Policy is part of a series of consecutive renewals issued by the Insurer, the effective date of the original Policy, or "Based Upon" the same or substantially the same underlying or alleged facts; or
 - (b) any "Claim" or "Derivative Demand" already made, commenced or "Begun" against any "Insured", or which arises from any fact, circumstance or situation indicating the possibility of a "Claim" or "Derivative Demand" and already known to any "Insured", upon the effective date of this Policy, or, if this Policy is part of a series of consecutive renewals issued by the "Insurer", the effective date of the original Policy;

6. By or on behalf of the "Entity", or any "Subsidiary" of the "Entity", whether directly or derivatively, except:
 - (a) where such "Subsidiary" bringing the "Claim" is acting totally independently of, and totally without the solicitation of, or assistance of, or participation of, or intervention of, any of the "Insureds" other than when the solicitation, assistance, participation or intervention of any of the "Insureds" arises from the "Insureds" engaging in "Whistleblower Activity"; or
 - (b) where the "Claim" is brought in the name of the "Entity" by way of derivative action, and totally without the solicitation of, or assistance of, or participation of, or intervention of, the governing board or body of the "Entity" other than when the solicitation, assistance, participation or intervention of the governing board or body of the "Entity" arises from the governing board or body engaging in "Whistleblower Activity"; or
 - (c) in the event of an "Insolvency" any "Claim" brought by the examiner, trustee, receiver, receiver manager, liquidator or rehabilitator (or any assignee thereof), if any, of the "Entity"; or
 - (d) where the "Claim" is made against an "Insured Person" engaging in "Whistleblower Activity".
7. If the "Claim" was first made, or the "Claim" is "Based Upon" a "Wrongful Act" which was committed, before the "Entity" became a "Subsidiary", or before the "Benefit Program" was added to this Policy by endorsement, as the case may be;
8. "Based Upon":
 - (a) the actual or threatened presence, discharge, dispersal, release, escape or disposal of "Pollutants" in or on real or personal property (immoveable or moveable), water or the atmosphere, whether such presence, discharge, dispersal, release, escape or disposal is intentional or accidental; or
 - (b) any direction or request that the "Entity" or the "Benefit Program" test for, monitor, reduce, clean up, remove, contain, treat, detoxify or neutralize "Pollutants" or any voluntary decision to do so.

However this exclusion shall not apply:

 - (i) to any "Fiduciary Claim" or "Derivative Demand"; or
 - (ii) to "Loss" resulting from a "Claim" for "Wrongful Employment or Membership Practice(s)"; or
 - (iii) with respect to coverage provided under **Insuring Agreement A** of this Policy, to "Defence Costs" incurred defending the "Insured Persons" in respect of a "Claim" "Based Upon" the matters described in 8 (a) and 8 (b) above but only if such "Claim" is first brought, commenced and conducted in a jurisdiction within the territorial limits of Canada: or
 - (iv) to "Defence Costs" incurred in respect of a "Claim" "Based Upon" the matters described in 8 (a) and 8 (b) above, brought by any Member of the "Entity" in his capacity as such, whether in his own right or on behalf of the "Entity" by way of derivative action, provided that such "Claim" is brought and maintained totally without the solicitation of, assistance of, participation of or intervention of the governing board or body of the "Entity"; or
 - (v) to "Defence Costs" incurred in respect of a "Claim" "Based Upon" the matters described in 8 (a) and 8 (b) above, which alleges a violation of the *Canadian Environmental Protection Act*, S.C. 1999, c. 33, or the *Ontario Environmental Protection Act*, R.S.O. 1990, c. E-19, or similar provisions of any Canadian provincial, territorial or local environmental protection law;
9. "Based Upon" their service as directors of any for-profit entity, even if directed or requested by the "Entity" to serve as directors of such for-profit entity.

However, this exclusion shall not apply to any "Claim" "Based Upon" their services as directors of any other non-profit entity where there is prior written consent of the "Entity";
10. "Based Upon" any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty (including fiduciary duty) by the "Insured Persons", individually or collectively, in the discharge of their legal obligations, including without limitation any violation of the responsibilities, obligations or duties imposed by the *Pension Benefit Standards Act of Canada* R.S. 1985 c.32 (2nd Supp.), by the *Employee Retirement Income Security Act of 1974* of the United States of America, or by similar provisions of any other "Statute", solely in their capacity as fiduciaries, trustees, administrators or members of the pension committee of any pension, profit sharing, health and welfare or other employee or member benefit plan or trust which is **not** named in the "Declarations", or added to this Policy by endorsement during the "Policy Period";
11. "Based Upon" any violation of the responsibilities, obligations or duties imposed by or pursuant to any "Statute" governing or in any way relating to a "Government Sponsored Benefit Plan".

However, this exclusion shall not apply to any "Claim" (i) for retaliatory treatment of any claimant as a result of such claimant's exercise of rights pursuant to such "Government Sponsored Benefit Plan", or (ii) "Based Upon" any actual or alleged negligent act, error or omission solely in the "Administration" of the "Government Sponsored Benefits Plan", or (iii) for "Statutory Liabilities";
12. "Based Upon":
 - (a) any breach of any contract or agreement, whether verbal or written, by the "Entity", including without limitation any commercial contractual liability of the "Entity" to an existing or potential customer, client, consumer, distributor, supplier, franchisee, franchisor, vendor, agent or representative, or any other "Third Party"; or

(b) any liability of others assumed by the "Entity" under any contract or agreement, whether verbal or written.

However, this exclusion shall not apply (i) to the "Insured Persons", or (ii) to "Defence Costs" incurred by the "Entity" in connection with "Wrongful Employment or Membership Practices" "Claims", or (iii) to the extent the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which a "Benefit Program" was established, or (iv) to the extent the "Insured" would have been liable in the absence of such contract or agreement;

13. "Based Upon":

(a) any violation of or failure to meet the responsibilities, obligations or duties imposed by the *Canada Labour Code* or similar provisions of any other "Statute";

(b) any employer vs "Employee" conflict or dispute of any kind relating to a collective bargaining agreement.

However, this exclusion shall not apply (i) to any "Derivative Demand" or (ii) to any "Wrongful Employment or Membership Practices" "Claim" against the "Insured Persons" or the "Entity" for retaliatory treatment of any claimant as a result of such claimant's exercise of rights pursuant to the *Canada Labour Code* (R.S.C., 1985, c. L-2) or similar provisions of any other "Statute", or (iii) to any "Claim" against the "Insured Persons" or the "Entity" for retaliatory treatment of any claimant as a result of such claimant's exercise of collective bargaining rights or rights under any collective agreement, or (iv) to any "Fiduciary Claim" made against the "Insureds" or the "Benefit Program" if the "Benefit Program" is named in the "Declarations" or added to this Policy by endorsement during the "Policy Period";

14. For taxes, duties, levies, fees, charges or any other amount due by the "Entity" to any level of government or governmental agency.

However, this exclusion shall not apply to the "Insured Persons";

15. "Based Upon" "Pay Equity", including any violation of the responsibilities, obligations or duties imposed under Section 11 of the *Canadian Human Rights Act*, the *Employment Equity Act* or similar provisions of any other "Statute".

However, this exclusion shall not apply to any "Claim" for retaliatory treatment of any claimant as a result of such claimant's exercise of rights pursuant to such "Statute";

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

17. "Based Upon":

(a) the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any "Fungi" or "Spores" however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of "Fungi" or "Spores";

(b) any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with (a) above; or

(c) 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 (a) or (b) above.

This exclusion applies regardless of any other cause that contributes concurrently or in any sequence to the "Loss", damage, cost or expense.

However, this exclusion shall not apply to any "Claim" that specifically alleges that "Wrongful Employment or Membership Practices" have been committed or to any "Claim" against the "Insured Persons" for retaliatory treatment of any claimant as a result of such claimant's exercise of collective bargaining rights or rights under any collective agreement;

18. "Based Upon" in whole or in part, war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power. This exclusion applies regardless of any other cause that contributes concurrently or in any sequence to the loss, damage, cost or expense;

19. "Based Upon" in whole or in part, "Terrorism" or any activity or decision of a government agency or other entity to prevent, respond to or terminate "Terrorism". This exclusion applies regardless of any other cause that contributes concurrently or in any sequence to the loss, damage, cost or expense;

20. "Based Upon" the rendering or failure to render any kind of professional service for others, either gratuitously or for a fee;

21. "Based Upon" "Abuse".

However, this exclusion shall not apply to any "Claim" that specifically alleges that "Wrongful Employment or Membership Practices" have been committed or to any "Claim" against the "Insured Persons" for retaliatory treatment of any claimant as a result of such claimant's exercise of collective bargaining rights or rights under any collective agreement;

22. "Based Upon" any "Data Breach".

B. BENEFIT OF DOUBT EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

1. If a "Claim" is made against an "Insured Person" alleging that the "Insured Person" committed a criminal or other intentionally dishonest act, the "Insurer" will defend and indemnify the "Insured Person", subject to the terms and conditions of this Policy, until such time as the "Insured Person" shall be held to have committed a criminal or other intentionally dishonest act by final, unappealable judgment. Once such final, unappealable judgment has occurred, however, the "Insurer" shall then have no further obligations to the "Insured Person" in question in relation to the "Claim" under this Policy, whether for defence or the payment of "Loss" or otherwise.
2. If a "Claim" is made against an "Insured Person" (i) for the return of any remuneration paid to the "Insured Person" without the prior lawful approval of the board of directors or any governing body or person whose approval is required by the by-laws or other formal procedures of the "Entity" or the "Benefit Program", or (ii) alleging that the "Insured Person" gained any other profit or advantage to which such person was not legally entitled, the "Insurer" will defend and indemnify the "Insured Person", subject to the terms and conditions of this Policy, until such time as such remuneration, profit or advantage shall be held to have been unlawful by final, unappealable judgment. Once such final, unappealable judgment has occurred, however, the "Insurer" shall then have no further obligations to the "Insured Person" in question in relation to the "Claim" under this Policy, whether for defence or the payment of "Loss" or otherwise.

C. COVERAGE FOR DEFENCE ONLY

1. The "Insurer" shall have no obligation under **Insuring Agreements C and D** to indemnify the "Entity" or the "Benefit Program" or to pay any "Damages" on its behalf with respect to "Claims":
 - (a) for salary, wages, pay in lieu of notice, termination or severance pay (including an enhancement to amounts paid as termination or severance pay or pay in lieu of notice on account of bad faith or inducement), 'back pay', bonuses, benefits, expenses (including mitigation expenses), or any other type of employment related compensation or benefit; or
 - (b) for 'front pay', future "Damages" or other future economic relief for failure to reinstate or rehire; or
 - (c) "Based Upon" "Pay Differential".

However, subject to the other terms and conditions of this Policy, the "Insurer" shall have the right and duty to defend the "Insureds" against such "Claims" and to pay the "Defence Costs" associated therewith.

2. The "Insurer" shall have no obligation under **Insuring Agreement D** to indemnify the "Insureds" or to pay "Damages" on their behalf in connection with any "Claim" for the actual or alleged benefits which are due or to become due under a "Benefit Program", or benefits which would be due under a "Benefit Program" if its terms complied with all applicable "Statutes".

However,

- (a) this exclusion shall not apply to an "Insured Person" if (i) the benefits are payable by such "Insured Person" as a personal obligation and (ii) recovery of the benefits is "Based Upon" a covered "Fiduciary Wrongful Act"; and
 - (b) subject to the other terms and conditions of this Policy, the "Insurer" shall have the right and duty to defend the "Insureds" against such "Claims" and to pay the "Defence Costs" associated therewith.
3. The "Insurer" shall have no obligation under **Insuring Agreement D** to indemnify the "Insureds" or to pay "Damages" on their behalf in connection with any "Claim":
 - (a) for failure to collect contributions owed to the "Benefit Program(s)";
 - (b) for failure to fund the "Benefit Program(s)"; or
 - (c) for the return or reversion to anyone of any contributions or assets of any "Benefit Program(s)".

However, subject to the other terms and conditions of this Policy, the "Insurer" shall have the right and duty to defend the "Insureds" against such "Claims" and to pay the "Defence Costs" associated therewith.

SECTION V - LIMITS OF LIABILITY

1. The "Insurer" shall be liable to pay all "Damages" in excess of the **Deductible** set forth on the "Declarations" up to the **LIMITS OF LIABILITY** stated in **SECTION V 2** below. One **Deductible** shall apply (i) to each and every "Loss", but only with respect to "Damages", and (ii) to each and every "Derivative Demand".
2. The **LIMITS OF LIABILITY** shall be the amounts set forth on the "Declarations", and the amount shown on the "Declarations" shall be the maximum aggregate liability of the "Insurer" with respect to all "Damages" and "Investigation Costs" arising from all "Claims" and "Derivative Demands" made or "Begun" during the "Policy Period", regardless of the number of "Insureds" involved, subject however to subsection 3 of **SECTION V** below. "Defence Costs" incurred by the "Insurer", or by the "Insureds" with the written consent of the "Insurer", are in addition to the **LIMITS OF LIABILITY**. Payment by the Insurer of "Defence Costs" shall not reduce the **LIMITS OF LIABILITY**.
3. In the event that:
 - (a) the **LIMIT OF LIABILITY** stated the "Declarations" is exhausted by the payment of "Damages" and/or "Investigation Costs"; and

- (b) a "Claim" made or "Begun" against the "Insured Persons" during the "Policy Period" which is covered under **Insuring Agreement A** of **SECTION I** remains outstanding (the Outstanding "Claim"); and
- (c) the "Insured Persons" are not covered for "Loss" arising from the Outstanding "Claim" under any other insurance policy, whether primary or excess, or are covered but the limits under the policy in question have been exhausted by the payment of "Damages" and/or "Investigation Costs",

The **ADDITIONAL LIMIT OF LIABILITY** stated on the "Declarations" shall apply, but only to "Damages" arising from the Outstanding "Claim". The Insurer's maximum aggregate liability for "Damages" arising from all "Claims" made or "Begun" during the "Policy Period" shall then be the sum of the **LIMIT OF LIABILITY** stated on the "Declarations" and the **ADDITIONAL LIMIT OF LIABILITY** stated on the "Declarations". However, the **ADDITIONAL LIMIT OF LIABILITY** stated on the "Declarations" shall not apply to "Damages" arising from "Claims" which are covered under **Insuring Agreements B, C, D or E**.

In the event that more than one of the "Insured Persons" is included in the same Outstanding "Claim" and the **ADDITIONAL LIMIT OF LIABILITY** is insufficient to pay all "Damages" arising from the "Claim", the **ADDITIONAL LIMIT OF LIABILITY** shall be prorated among the "Insured Persons" in proportion to their respective legal liability for the awards of "Damages" (i) unless otherwise mutually agreed upon by such "Insured Persons" and the "Insurer", or (ii) unless a court of competent jurisdiction shall decide otherwise.

- 4. "Claims" "Based Upon" the same "Wrongful Act(s)", or "Interrelated Wrongful Acts", committed by one or more "Insureds", shall be considered a single "Loss" and the "Insurer's" liability for "Damages" arising from such single "Loss" shall be limited to the **LIMITS OF LIABILITY** stated in **SECTION V 2** above.

"Derivative Demands" "Based Upon" the same "Wrongful Act(s)", or "Interrelated Wrongful Acts", committed by one or more "Insureds", shall be considered a single "Derivative Demand" and the "Insurer's" liability for "Investigative Costs" arising from such single "Derivative Demand" shall be limited to the **LIMITS OF LIABILITY** stated in **SECTION V 2** above.

- 5. Where "Loss" covered under this Policy is due and payable in accordance with the terms of this Policy, it shall be paid in the following order, unless a court of competent jurisdiction shall decide otherwise:

- (a) firstly, and to the extent that the **LIMITS OF LIABILITY** permit, to the "Insured Persons" where such "Loss", or portion thereof, is payable under **SECTION I, INSURING AGREEMENTS A or D 1**. However, in the event that more than one of the "Insured Persons" is legally liable or has incurred the same "Loss" and such "Loss" is due and payable at the same time to or on behalf of one or more than one of the "Insured Persons" under this Policy, the total amount of such "Loss" and the **Deductible**, if applicable, shall be prorated amongst the "Insured Persons" in proportion to their respective legal liability for that "Loss" unless otherwise mutually agreed by such "Insured Persons" and the "Insurer",
- (b) secondly, to the extent that all "Loss" due and payable under (a), above, has been paid and the **LIMITS OF LIABILITY** permit, to the "Entity" or the "Benefit Program" in respect of the "Loss", or portion thereof, payable under **SECTION I, INSURING AGREEMENTS B or D 2.**;
- (c) thirdly, to the extent that all "Loss" due and payable under (a) or (b), above, has been paid and the **LIMITS OF LIABILITY** permit, to the "Entity" or the "Benefit Program", in respect of "Loss" payable under **SECTION I, INSURING AGREEMENTS C or D 3**.
- (d) fourthly, to the extent that all "Loss" due and payable under (a), (b) or (c) above has been paid and the **LIMITS OF LIABILITY** permit, to the "Entity" and/or the "Insured Persons", in respect of "Investigation Costs" incurred by them which are payable under **Insuring Agreement E**.

- 6. The "Insured" shall only pay one **Deductible** applicable and as stated on the "Declarations" in respect of the sum of all "Damages" arising from a "Claim" or "Investigation Costs" arising from a "Derivative Demand" which is covered in part under more than one of **Insuring Agreements A, B, C, D and E**. The applicable **Deductible** applicable shall be whichever is greater.

Except as otherwise specified in any endorsements attached to this Policy, the "Entity" agrees that, with respect to each and every "Claim", to reimburse the Insurer's payment of "Damages" or, with respect to each and every "Derivative Demand", to reimburse the "Insurer's" payment of "Investigation Costs", up to the amount of the applicable **Deductible** set forth on the "Declarations".

The "Insurer" may pay part or all of the **Deductible** to effect settlement of any "Claim" or suit and upon notification of the action taken, the "Entity" shall promptly reimburse the "Insurer" for such part of the **Deductible** as has been paid by the "Insurer".

SECTION VI - DEFENCE AND SETTLEMENT

- 1. The "Insurer" shall have the right and the duty to defend, with respect to such insurance as is afforded by this Policy, any "Claim" against any of the "Insureds" covered under the terms of this Policy and shall have the right to make such investigation of any "Claim" as it deems expedient, but the "Insurer" shall not settle any "Claim" without the written consent of the "Insureds" who are the subject of the "Claim".
- 2. The right and duty of the "Insurer" to defend any "Claim" or "Claims" made during the "Policy Period" and all the "Insurer's" obligations with respect to "Defence Costs" and "Investigation Costs" under this Policy shall terminate at the earlier of:

- (a) the date on which the "Insurer" tenders to the "Insureds" the remainder of the **LIMIT OF LIABILITY** stated on the "Declarations" or the remainder of the **LIMIT OF LIABILITY** stated on the "Declarations" and the **ADDITIONAL LIMIT OF LIABILITY** stated on the "Declarations" if available under subsection 3 of **SECTION V**, in respect of any "Damages" and/or "Investigation Costs" or aggregation of "Damages" and/or "Investigation Costs" payable under the Policy arising from "Claims" and/or "Derivative Demands" for which notice has been given in the same "Policy Period", or
 - (b) the date on which the **LIMIT OF LIABILITY** stated on the "Declarations", or the **LIMIT OF LIABILITY** stated on the "Declarations" and the **ADDITIONAL LIMIT OF LIABILITY** stated on the "Declarations", if available under subsection 3 of **SECTION V**, is exhausted by the payment of any "Damages" and/or "Investigation Costs" or aggregation of "Damages" and/or "Investigation Costs" payable under this Policy arising from "Claims" and/or "Derivative Demands" for which notice has been given in the same "Policy Period".
3. No "Defence Costs" or "Investigation Costs" shall be incurred, nor shall any settlements of "Claims" be made, without the Insurer's consent, such consent not to be unreasonably withheld. However, in the event of such consent being given, the "Insurer" will pay, subject to the provisions of **SECTION V** and of this Policy generally, such "Defence Costs" or "Investigation Costs" and "Loss" resulting from settlements of "Claims" or "Derivative Demands".
- 4 (a) In any "Claim" or "Derivative Demand" against the "Insureds" and any other party or parties who are not "Insureds" under this Policy, the "Defence Costs" or "Investigation Cost" for which the "Insurer" is responsible shall be limited to those incurred on behalf of and for the principal benefit of the "Insureds" as distinguished from any such other party or parties who are not "Insureds", who shall bear responsibility for their fair share of the "Defence Costs" or "Investigation Costs". In such circumstances the "Insurer" and the "Insureds" and the party or parties who are not "Insureds" will endeavour in good faith to establish, at the earliest opportunity:
- i) a proportional basis for the fair allocation of the "Defence Costs" or "Investigation Costs" that reflects the actual exposure of each of the parties; and
 - ii) agreement as to the retention of counsel and the carriage and conduct of the defence or the investigation.
- (b) In any "Claim" or "Derivative Demand" against the "Insureds" with respect to which one or more "Insureds" are entitled to coverage under this Policy but other "Insureds" are not, the "Defence Costs" or "Investigation Costs" for which the "Insurer" is responsible shall be limited to 100% of all "Defence Costs" or "Investigation Costs" incurred by the "Insureds" in respect of the "Claim", and the balance of 0% shall be paid by the "Insureds" who are not entitled to coverage.
- (c) In any "Claim" or "Derivative Demand":
- i) against the "Insured Persons" with respect to which the "Insured Persons" are entitled only to partial coverage under this Policy, the "Defence Costs" or "Investigation Costs" for which the "Insurer" is responsible shall be limited to 100% of all "Defence Costs" or "Investigation Costs" incurred by the "Insured Persons" or by the "Entity" on their behalf in respect of the "Claim" or "Derivative Demand", and the balance of 0% shall be paid by the "Insured Persons".
 - ii) against the "Entity" with respect to which the "Entity" is entitled only to partial coverage under this Policy, the "Defence Costs" or "Investigation Costs" for which the "Insurer" is responsible shall be limited to 100% of all "Defence Costs" or "Investigation Costs" incurred by the "Entity" in respect of the "Claim" or "Derivative Demand", and the balance of 0% shall be paid by the "Entity".

However, if the "Insured Persons" are covered under **Insuring Agreements A or D 1** with respect to the "Claim" described in the foregoing subparagraph (b), the "Insurer" will pay the share of "Defence Costs" attributable to the "Entity".

- (d) In the event that the "Insurer" and the "Insureds" and the party or parties who are not "Insureds" are unable to agree on the allocation of "Defence Costs" or "Investigation Costs" or the retention of counsel or the carriage and conduct of the "Insureds" defence against a "Claim" or "Derivative Demand" described in this subsection 4 of **SECTION VI**, then any of them may, by written notice, require that the disputed issue be settled by binding "Arbitration" before a single arbitrator. The binding "Arbitration" shall occur as soon as possible, according to the rules agreed on by the parties. Failing agreement on the arbitrator, the rules of binding "Arbitration" or the schedule of hearing dates, the binding "Arbitration" shall proceed as determined by a court of competent jurisdiction.

SECTION VII - NOTICE OF CLAIM OR DERIVATIVE DEMAND

1. If, during the "Policy Period", any past, present, or future President, Chief Executive Officer, Executive Director, Chief Financial Officer or Treasurer or anyone holding an equivalent position with the "Entity" shall become aware of a "Claim" or "Derivative Demand" for which coverage would be afforded by this Policy, the "Insured" shall, as a condition precedent to any and all obligations of the "Insurer" under this Policy, give written notice thereof to the Authorized Agent as soon as practicable and in no event later than ninety (90) days after the expiration of the "Policy Period", or the Discovery Period if the **DISCOVERY CLAUSE** is engaged, within which the "Claim" or "Derivative Demand" was first made or "Begun".

If the "Insureds" shall fail to give timely notice of a "Claim" or "Derivative Demand" to the Authorized Agent and the "Insurer" suffers prejudice therefrom, the "Insureds" shall forfeit their entitlement to indemnity, defence or any other coverage or benefit in respect of the "Claim" or "Derivative Demand" under this Policy.

2. If, during the "Policy Period", any past, present, or future President, Chief Executive Officer, Executive Director, Chief Financial Officer or Treasurer or anyone holding an equivalent position with the "Entity" shall become aware of any facts or circumstances which may reasonably be expected to give rise to a specific "Claim" or "Derivative Demand" for which coverage would be afforded by this Policy, and written notice of such facts or circumstances and the anticipated "Claim" or "Derivative Demand" is given as soon as practicable to the "Insurer" during the "Policy Period", then the "Claim(s)" or "Derivative Demand(s)" subsequently arising from such facts or circumstances shall be deemed to have been made or "Begun" during the "Policy Period" in which the facts or circumstances were reported.
3. If the "Insureds" give notice to the Authorized Agent of a "Claim" or "Derivative Demand" under **Section VII 1**, then any subsequent "Claim" or "Derivative Demand" "Based Upon" essentially the same facts, "Wrongful Acts" or "Interrelated Wrongful Acts" shall be aggregated with and deemed to be the same as the "Claim" or "Derivative Demand" which was first reported, as the case may be.
4. All such aggregated "Claims" or "Derivative Demands" shall attach to the "Policy Period" during which the first "Claim" or "Derivative Demand" was reported and shall be subject to the same **LIMITS OF LIABILITY** stated on the "Declarations", or the sum of the same **LIMITS OF LIABILITY** on the "Declarations" and the same **ADDITIONAL LIMIT OF LIABILITY** stated on the "Declarations" if available under subsection 3 of **SECTION V**.
5. The "Insureds" shall, as a condition precedent to any and all obligations of the "Insurer" under this Policy, give to the Authorized Agent such information, financial guarantees, and cooperation as it may reasonably require, including but not limited to a description of the "Claim" or "Derivative Demand", or the facts or circumstances, the nature of the specific "Wrongful Act", the nature of the alleged or potential "Loss", the names of actual or potential claimants or complainants, and the manner in which the "Insureds" first became aware of the "Claim", "Derivative Demand" or facts or circumstances.
6. Notice hereunder shall be given to Frank Cowan Company Limited as the Authorized Agent of the "Insurer" for the purpose of any notice required to be given to the "Insurer" or Authorized Agent under the terms and conditions of this Policy.
7. After notice is given as provided in **SECTIONS VII 1** and **2** above, the "Insureds" shall, as a condition precedent to any and all obligations of the "Insurer" under this Policy, as soon as practicable, furnish the Authorized Agent with copies of reports, investigations, pleadings and all other documents reasonably connected with the "Claim" or "Derivative Demand" in question. At any time after notice is given, the Authorized Agent shall have the right to examine any "Insured Person" under oath for the purpose of investigating the coverage available.

SECTION VIII - GENERAL CONDITIONS

1. **WARRANTY:** By acceptance of this Policy, the "Insureds" warrant that the information and statements contained in the "Application" and the "Application Information" are true, correct and complete, and acknowledge that the "Application" and the "Application Information" constitute the basis of this Policy and are to be considered as incorporated in and constituting part of this Policy.

However, in respect of this **WARRANTY**, the "Application" and the "Application Information":

- (a) this Policy shall be construed as a separate agreement with each "Insured"; and
- (b) each "Insured Person" shall be bound only by misstatements, misrepresentations or omissions of which they had personal knowledge.

Nothing in this **SECTION VIII 1** shall be construed to increase the Insurer's maximum aggregate liability as set forth in **SECTION V** of this Policy.

2. **SEVERABILITY:**

- (a) For the purposes of applying the **EXCLUSIONS** under this Policy, this Policy shall be construed as a separate agreement with each "Insured".
- (b) For the purpose of determining the applicability of the **EXCLUSIONS** to the "Insured Persons", or any of them, the "Wrongful Act" of any one of the "Insured Persons" shall not be imputed to any other "Insured Person".
- (c) For the purpose of determining the applicability of the Exclusions to the "Entity", the "Wrongful Act" of any one or more of the duly elected or appointed President, Chief Executive Officer, Executive Director, Chief Financial Officer or Treasurer of the "Entity", whether acting jointly or severally, shall be imputed to the "Entity".

Nothing in this **SECTION VIII 2** shall be construed to increase the Insurer's maximum aggregate liability as set forth in **SECTION V** of this Policy.

3. **CANCELLATION:** This Policy may be cancelled by the "Entity" at any time by mailing written notice to the "Insurer" or by the surrender of this Policy to the Insurer. If this Policy is cancelled by the "Entity", the "Insurer" shall refund to the "Entity" the unearned premium, computed in accordance with the Insurer's standard pro-rata table.

This Policy may also be cancelled by the "Insurer" only (i) in the event of non-payment of premium by the "Entity", (ii) by providing to the "Entity's" insurance broker written notice of its intent not to renew this Policy or (iii) at such other time as mutually agreed upon by the "Insurer" and the "Entity".

In the event of non-payment of premium by the "Entity", the "Insurer" shall deliver to the "Entity" or mail to the "Entity" by registered, certified or other first class mail, at the "Entity's" address shown in this Policy, a written notice stating when, not less than fifteen (15) days thereafter, the cancellation shall become effective. Such notice, if delivered, shall be deemed to be received by the "Entity" on the date of its delivery or, if mailed, on the date it is deposited in the post office.

4. **ACTION AGAINST INSURER:** No action shall be taken against the "Insurer" unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy.

No suit or action by the "Insureds" or by any other person claiming through the "Insureds" or on their behalf shall lie against the "Insurer" unless such suit or action is first brought in a court of competent jurisdiction within Canada. No person or organization shall have any right under this Policy to join the "Insurer" as a party to any action against the "Insureds" to determine their liability, nor shall the "Insurer" be impleaded by the "Insureds" or their legal representatives.

The "Insolvency" of any of the "Insureds", or of their respective estates, shall not relieve the "Insurer" of any of its obligations hereunder.

5. **MERGER, ACQUISITION, CONSOLIDATION or LOSS OF CONTROL:** In the event that fifty percent (50%) or more of the voting shares of the "Entity" named on the "Declarations" are acquired by any person, entity or group of affiliated persons or entities other than whoever was holding said shares at the effective date stated on the "Declarations", or in the event that the "Entity" named on the "Declarations", or any "Benefit Program" named on the "Declarations" or otherwise added to this Policy by endorsement, merges or amalgamates with or is consolidated into another entity or into another "Benefit Program", or otherwise ceases to govern and administer its own affairs, written notice thereof shall be given to the "Insurer" as soon as practicable, and in no event later than ninety (90) days thereafter, together with such information as the "Insurer" may request.

Effective the date of such merger, acquisition, consolidation or loss of control:

- (a) the entire Premium charged for this Policy will be deemed to be fully earned and no refund will be paid; and
- (b) this Policy shall only apply to "Wrongful Acts" and "Fiduciary Wrongful Acts" committed on or before the effective date of such merger, acquisition, consolidation or loss of control and to any "Claims" or "Derivative Demands" made prior to the expiration of the "Policy Period" unless the Insurer, at its option, agrees to insure the surviving entity or the surviving "Benefit Program's".

If the "Insurer" elects to not insure the surviving entity or "Benefit Program's", the "Entity" or the surviving entity shall have the right to exercise the **DISCOVERY CLAUSE**. Should the **DISCOVERY CLAUSE** be exercised by the "Entity" or the surviving entity or surviving "Benefit Program's", the extension of coverage shall be limited to "Insured Persons", "Entity" and "Benefit Program's" as they existed prior to such merger, acquisition, consolidation or loss of control.

6. **SUBROGATION:** In the event of any payment under this Policy, the "Insurer" shall be subrogated to the extent of such payment in all the rights and recourses of the "Insureds". The "Insureds" shall execute all papers required and shall do everything that may be necessary to secure such actual or potential rights, including the execution of such documents as may be necessary to enable the "Insurer" effectively to bring suit in the name of the "Insureds".

The "Insurer" shall not exercise its rights of subrogation against an "Insured Person" unless and to the extent that any of the **EXCLUSIONS** in subsection **B: BENEFIT OF DOUBT EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS** of SECTION IV, **EXCLUSIONS** of this Policy applies to such "Insured Person".

7. **CURRENCY:** "Loss" shall be paid in the legal currency of Canada. In the event that judgment is rendered or a settlement is denominated in a currency other than Canadian dollars, payment under this Policy shall be made in Canadian dollars at the rate of exchange published in The Globe and Mail on the date the final judgment becomes enforceable or the amount of settlement is agreed upon, respectively.
8. **PRESUMPTIVE INDEMNIFICATION:** For purposes of the coverage afforded to "Insured Persons" by this Policy, the "Entity" and any "Benefit Program" shall be deemed conclusively to have indemnified the "Insured Persons" for any "Claim" or "Loss" for which it is permitted or required by law to indemnify them, unless the "Entity" or the "Benefit Program" is in "Insolvency".

If for any reason, other than "Insolvency", the "Entity" or the "Benefit Program" refuses to indemnify its "Insured Persons" for any "Claim" or "Loss" for which it is permitted or required by law to indemnify them, the "Insurer" will pay the "Claim" or "Loss" on behalf of the "Insured Persons". In such instances, the "Insurer" shall have the contractual right hereunder to recover from the "Entity" or the "Benefit Program" the amount of such "Claim" or "Loss" equal to the **Deductible** set forth on the "Declarations" not satisfied by the "Entity" or the "Benefit Program" and the "Insurer" shall be subrogated to the rights of the "Insured Persons" insured hereunder.

9. **TERRITORY:** This Policy shall apply to "Claims" or "Derivative Demands" made against any "Insured" anywhere in the world.

SECTION IX - ENTITY AS AGENT

By acceptance of this Policy, the "Insureds" agree that unless:

- (a) there exists a real and present conflict between their interests and those of the "Entity"; and
- (b) written notice of the conflict has been given to the "Entity" and the "Insurer"; the "Entity" shall act on behalf of all "Insured Persons":
 - (i) in preparing, signing and submitting the "Application" and "Application Information" to the "Insurer";
 - (ii) in paying premiums due to the "Insurer";
 - (iii) in providing notice under subsection 1 of **SECTION III**;
 - (iv) in agreeing on allocation, the retainer of counsel or the carriage and conduct of the defence, as the case may be, under subsection 4 of **SECTION VI** or in arbitrating any dispute under subsection 4 of **SECTION VI**;
 - (v) in giving notice of any "Claim" or "Derivative Demand" under subsection 1 of **SECTION VII** or of facts or circumstances under subsection 2 of **SECTION VII**;
 - (vi) in cancelling this Policy or receiving notice of cancellation under subsection 3 of **SECTION VIII**;
 - (vii) in receiving any return premiums that may be due under this Policy;
 - (viii) in providing cooperation under subsection 5 of **SECTION VII**;
 - (ix) in providing notice under subsection 5 of **SECTION VIII**.