

Form #S72061 - D&O Smart – Complete Solution
(Rev. July 2019)

PLEASE READ CAREFULLY THIS INSURANCE POLICY IS WRITTEN ON A CLAIMS MADE AND REPORTED BASIS WITH ALL DEFENCE COSTS, CHARGES AND EXPENSES REDUCING THE LIMIT OF LIABILITY. PLEASE REFER TO THE CONDITIONS AND EXCLUSIONS CONTAINED IN THIS CONTRACT.

Key words and phrases which appear in bold type and quotations have special meanings. Refer to Part III Policy Definitions section.

PART 1

WHAT WE AGREE TO INSURE

We will pay on behalf of an **"Insured"** a **"Loss"** arising from a **"Claim"** against an **"Insured"** for a **"Wrongful Act"** subject to the terms and conditions and exclusions contained herein. In consideration of the payment of the premium and in reliance upon the statements made in the application, the supplementary applications and any additional document(s) for this insurance which are made a part thereof, the **"Insurer"** agrees to provide insurance as follows:

1. BASIC COVERAGE

This Form insures only those items for which a limit of insurance is specified on the "Declarations Page".

- A -** If during the **"Policy Period"** any **"Claim(s)"** are made against any of the **"Insured Person(s)"** for **"Wrongful Act(s)"** and reported to the **"Insurer"** pursuant to the terms of this policy, the **"Insurer"** shall pay on behalf of the **"Insured Person(s)"** all **"Loss"** for which the **"Insured Person(s)"** shall become legally obligated to pay, except for such **"Loss"** which the **"Named Insured(s)"** is required by law, or agrees as permitted by law, to indemnify such **"Insured Person(s)"** unless and to the extent that the **"Named Insured(s)"** is unable or unwilling to make actual indemnification solely by reason of its **"insolvency"**.
- B -** If during the **"Policy Period"** any **"Claim(s)"** are made against any of the **"Insured Person(s)"** for a **"Wrongful Act(s)"** and reported to the **"Insurer"** pursuant to the terms of this policy, the **"Insurer"** shall pay on behalf of the **"Named Insured(s)"** all **"Loss"** for which the **"Named Insured(s)"** is required by law, or agrees as permitted by law, to indemnify such **"Insured Person(s)"**.
- C -** If during the **"Policy Period"** any **"Claim(s)"** are made against the **"Named Insured"** for **"Wrongful Act(s)"** and reported to the **"Insurer"** pursuant to the terms of this policy, the **"Insurer"** shall pay on behalf of the **"Named Insured(s)"** all **"Loss"** for which the **"Named Insured"** shall become legally obligated to pay.
- D -** If during the **"Policy Period"** any **"Claim(s)"** are made against the **"Insured(s)"** for a **"Employment Practices Liability Wrongful Act(s)"** and reported to the **"Insurer"** pursuant to the terms of this policy, the **"Insurer"** shall pay on behalf of the **"Insured(s)"** all **"Loss"** for which the **"Insured(s)"** shall become legally obligated to pay.

WHERE COVERAGE APPLIES

2. TERRITORY

The coverage provided under this policy shall apply worldwide except in those jurisdictions where it is prohibited by law.

WHAT WE AGREE TO DEFEND

3. DEFENSE & SETTLEMENT

- (a) With respect to **"Claim(s)"** covered under Part I, Item 1 – Basic Coverage, the **"Insurer"** shall have the right and duty to:
 - (i) defend any **"Claim(s)"** against the **"Insured(s)"**;
 - (ii) select defense counsel to defend any **"Claim(s)"**;
 - (iii) investigate and negotiate the settlement of any **"Claim(s)"** as it deems expedient.
- (b) The **"Insured(s)"** shall not incur **"Costs, Charges and Expenses"**, or admit liability, offer to settle, or agree to any settlement in connection with any **"Claim(s)"** without the express prior written consent of **"Premier"**, which consent shall not be unreasonably withheld. The **"Insured(s)"** shall provide **"Premier"** with all information and particulars it may reasonably request in order to reach a decision as to such consent. The **"Insurer"** shall not be liable to make any payment for any **"Loss"** resulting from any admission of liability, agreement to settle, or **"Costs, Charges and Expenses"** incurred prior to **"Premier's"** express written consent.
- (c) The **"Insurer"** shall not settle or compromise any **"Claim(s)"** without the written consent of the **"Named Insured(s)"**. If, however, the **"Named Insured(s)"** does not consent to any settlement recommended by the **"Insurer"** and shall elect to contest the **"Claim(s)"**, then the **"Insurer's"** liability for the **"Claim(s)"** is limited to:
 - (i) the amount in excess of the **"Deductible"** for which the **"Claim(s)"** would have been so settled plus the **"Costs, Charges and Expenses"** incurred with its consent up to the date of such refusal settle; plus
 - (ii) eighty per cent (80%) of any additional covered **"Loss"** including **"Costs, Charges and Expenses,"** in excess of the amount in clause (i) above, incurred subsequent to such refusal.
- (d) The **"Insurer's"** duty to defend any **"Claim(s)"** covered by this Policy shall cease upon exhaustion of the Limit of Liability as shown in the Declarations.

HOW THE LIMITS AND "DEDUCTIBLES" APPLY

4. LIMIT OF LIABILITY & "DEDUCTIBLE"

- (a) The amount shown in the Declarations shall be the **"Insurer's"** maximum aggregate liability for **"Loss"** in respect of all **"Claim(s)"** made against the **"Insured(s)"** during any one **"Policy Period"** and reported in accordance with Part IV Item 14 – Notice of **"Claim(s)"**
- (b) More than one **"Claim(s)"** involving the same **"Wrongful Act(s)"** or **"Employment Practices Liability Wrongful Act(s)"** of one or more **"Insured(s)"** is an **"Inter-related Wrongful Act(s)"** and will constitute a single **"Claim(s)"** and such single **"Claim(s)"** shall be deemed to have been made pursuant to Part IV, Item 12 – **"Inter-related Wrongful Act(s)"** and Date of **"Claim(s)"** Clause.
- (c) The **"Insurer"** shall only be liable for **"Loss"** in excess of the **"Deductible"** as stated in the Declarations. The **"Deductible"** shall not apply to **"Costs, Charges and Expenses."**
- (d) **"Costs, Charges and Expenses"** shall be part of and not in addition to the Limit of Liability as shown in the Schedule and such **"Costs, Charges and Expenses"** shall reduce the Limit of Liability as shown in the Declarations.
- (e) In the event a single **"Loss"** is covered in part under Part I, Items 1(a), 1(b), and 1(c) – Basic Coverage, the **"Deductibles"** as stated in the Schedule shall be applied separately to that part of the **"Loss"** covered by each insuring clause and the sum of the **"Deductibles"** so applied shall constitute the **"Deductible"** for each single **"Loss"** provided, the total **"Deductible"** as finally determined shall in no event exceed the largest applicable **"Deductible"** as shown in the Declarations.

5. Spousal Extension

This Policy shall cover **"Loss"** arising from any **"Claim(s)"** for an actual or alleged **"Wrongful Act(s)"** of an **"Insured Person(s)"** made against the lawful spouse (whether such status is derived by reason of a statutory law, common law or otherwise of any applicable jurisdiction in the world) of such **"Insured Person(s)"**, but only to the extent that the spouse is a party to such **"Claim(s)"** solely out of his or her capacity as the spouse of an **"Insured Person(s)"**, and only for the purpose of any such **"Claim(s)"** seeking damages recoverable from marital community property, property jointly held by the

"Insured Person(s)" and the spouse or property transferred from an "Insured Person(s)" to the spouse. However, this Policy shall not afford coverage for any "Claim(s)" for any actual or alleged "Wrongful Act(s)" of the spouse.

6. Fiduciary Liability:

The "Insurer" will pay on behalf of the "Named Insured" Loss for which the "Named Insured" is legally liable in the administration of an "Employee Benefit Plan", excluding Defined Benefit Pension Plans. The Limit of Liability shall not exceed one hundred thousand (\$100,000) and is also subject to the Policy Aggregate as per Item 4(a) of the Limit of Liability & "Deductible" section.

7. Outside Non-Profit Entity Directorship Coverage

This Policy shall cover any "Loss" related to "Claims" for "Wrongful Act(s)" made against any Insured Person(s) who acts as a director, officer, or trustee of any "Outside Non-Profit Entity"; provided that such position is with the knowledge and consent of, or is at the direction or request of the "Named Insured(s)."

Coverage under this clause shall be specifically excess of any insurance obtained by the "Outside Non-Profit Entity" and any indemnification provided to the Insured Person(s) by such "Outside Non-Profit Entity".

REPORTING CLAIMS AFTER TERMINATION OF POLICY

8. AUTOMATIC REPORTING PERIOD

This Policy shall automatically provide an extended reporting period of sixty (60) days, following the termination of this Policy, for the reporting of any "Claim(s)", but only with respect to "Wrongful Act(s)" or "Employment Practices Liability Wrongful Act(s)" committed prior to such termination date. This extended sixty (60) day reporting period will not apply if the Policy is cancelled because of non-payment of the premium by the "Insured(s)" or if replacement coverage is obtained.

OPTIONAL ADDITIONAL EXTENDED REPORTING PERIOD

9. DISCOVERY PERIOD

If the "Insurer" or the "Insured(s)" cancel or refuse to renew this Policy, and provided that the premium has been fully paid, the "Insured(s)" shall have the right, upon payment of an additional premium, to an extension of the coverage granted by this Policy in respect of any "Claim(s)" which are made during the twelve (12) months after the termination of the Policy, but only with respect to any "Wrongful Act(s)" or "Employment Practices Liability Wrongful Act(s)" committed or alleged to have been committed prior to such termination date. Such twelve (12) month period is hereinafter referred to as the Discovery Period. The additional premium to be charged will be fifty per cent (50%) of the previous annual premium. This right of extension shall cease unless written notice is given to the Insurer within sixty (60) days after the termination date, together with full payment of the premium for this extension. The Discovery Period will be part of the immediately preceding "Policy Period" and shall not operate to increase the Limit of Liability of such "Policy Period".

The additional premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period, once incepted, is not cancellable.

For the purposes of this clause, the Insurer's quote of differing terms for renewal purposes, including differing conditions, premium, Limits of Liability or "Deductible", does not constitute a refusal to renew this Policy.

PART II

WHAT IS NOT COVERED

PART II - EXCLUSIONS

The "Insurer" shall not be liable to make any payment for "Loss" in connection with any "Claim(s)" made against the "Insured(s)."

1. Bodily Injury/Property Damage:

For any actual or alleged:

- (a) bodily injury, sickness, disease, death, assault or battery or molestation of any person;
- (b) property damage, or any actual or alleged damage to or destruction of any tangible property including loss of use thereof;
- (c) mental anguish, emotional distress, defamation, invasion of privacy, slander or humiliation; however, part (c) shall not apply with respect to any "Employment Practices Liability Wrongful Act(s)".

2. Contractual:

Based upon, or arising out of, any actual or alleged breach of contract or failure to proceed with a contract whether oral or written, however this exclusion will not be applicable to:

- (a) "Claim(s)" made against the "Insured Person(s)" alleging wrongful or unjust dismissal, but only to the extent that such "Claim(s)" is seeking damages arising from the manner in which the claimant was dismissed from employment by the "Insured Person(s)" with respect to Insuring Agreement 1(D) only; or
- (b) the "Costs, Charges and Expenses" subject to Part IV Item 3- Allocation, in respect of "Employment Practices Liability Wrongful Act(s)" under Insuring Agreement 1(D) only; or
- (c) "Claim(s)" for which the "Insured(s)" would have liability in the absence of such contract but only to the extent that such liability arises in the absence of such contract.

3. Employee Benefits:

Based upon, arising out of, or attributable to any actual or alleged violation of the responsibilities, duties or obligations imposed upon any "Insured(s)" by the Pension Benefits Standards Act, R.S.C. 1985, c. 32 (2nd Supp.), the Ontario Pension Benefits Standards Act, R.S.O.1990, c. P-8, the Employee Retirement Income Security Act of 1974 of the United States of America and amendments thereto or by similar provincial, state, territorial or local legislation, the Canada Health Act, R.S.C. 1985, c. C-6, the Ontario Health Insurance Act, R.S.O. 1990, c.H.6, or similar provincial, state, territorial or local legislation, the Ontario Insurance Act, R.S.O.1990, C. I.8 or similar provincial, state, territorial or local legislation. Legislation governing the Canada Pension Plan, workers compensation, employment insurance, social or old age security, employee disability or health insurance or similar provisions of any federal, provincial, state, territorial or local law, or for the cost of compliance therewith.

4. Employment Standards:

Based upon, arising out of, or attributable to any actual or alleged violation of the responsibilities, duties or obligations imposed upon any "Insured(s)" by the Canada Labour Code, the Occupational Health and Safety Act of Ontario, or any rules or regulations promulgated there under or any similar federal, provincial, state, territorial or local, statutory or common law or for the cost of compliance therewith.

5. Fraudulent Acts/Personal Profit or Remuneration:

Based upon, brought by or attributable to:

- (a) the fraudulent, dishonest or criminal acts of the "Insured Person(s)"; or

- (b) the **"Insured Person(s)"** gaining any personal profit, remuneration or advantage to which they were not legally entitled; provided however the provisions of this exclusion shall not apply unless a judgment or other final adjudication of the **"Claim(s)"** shall establish that such conduct in fact occurred.

Note: For the purposes of determining the applicability of Part II Item 5 – Fraudulent Acts/Personal Profit or Remuneration exclusion, it is understood and agreed that:

- (i) any fact pertaining to or knowledge possessed by any one **"Insured Person(s)"** shall not be imputed to any other **"Insured Person(s)"**; and
- (ii) any fact pertaining to or knowledge possessed by any past, present or future chair of the board, president, executive director or chief financial officer of the **"Named Insured(s)"** shall be imputed to the **"Named Insured(s)"**.

6. "Insured(s)" versus "Insured(s)" – Claims brought by Insiders:

- By or on behalf of, or at the direction of, or for the benefit, directly or indirectly, of any **"Insured(s)"**, however, this exclusion shall not apply to **"Claim(s)"**:
- (a) brought under Insuring Agreement 1(a) made directly or derivatively provided that such **"Claim(s)"** is maintained without the solicitation, assistance, participation or intervention of any or all of the **"Insured Person(s)"**; or
 - (b) brought by any **"Insured(s)"** in the form of cross claim or third party claim for contribution or indemnity which results directly or indirectly from a **"Claim(s)"** not otherwise excluded by the terms of the Policy; or
 - (c) brought or maintained by a trustee in bankruptcy of the **"Named Insured(s)"**, an interim receiver appointed pursuant to the provisions of the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, a liquidator appointed pursuant to the provisions of the Winding-up and Restructuring Act, R.S.C. 1985, c.W-11, a monitor appointed pursuant to the provisions of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, or a receiver or receiver and manager appointed pursuant to the Courts of Justice Act, R.S.O. 1990, c.C.43, or pursuant to other similar federal, provincial, state or territorial legislation; or
 - (d) brought by any **"Insured Person(s)"** who has not served as a duly elected or appointed director or officer of the **"Named Insured(s)"** for at least three (3) years preceding the date upon which the **Claim(s)** is first made or
 - (e) for **"Employment Practices Liability Wrongful Act(s)"**, brought by an employee of the **"Named Insured(s)"**; or
 - (f) brought and maintained independently of, and without the assistance, participation or intervention of any **"Named Insured(s)"**; provided however, if any **"Insured Person(s)"** has protection for any retaliatory conduct by the **"Named Insured(s)"** under any federal, provincial, state or territorial legislation, then for the purpose of this exception, such activity will not alone be considered to be with the solicitation, assistance or active participation of any **"Named Insured(s)"** or any such **"Insured Person(s)"**.

7. Intellectual Property

Based upon, arising out of, directly or indirectly resulting from, attributable to, in any way involving, or in connection with any actual or alleged intentional or unintentional breach or infringement or any patent or copyright or trademark or any other form of intellectual property.

8. Nuclear Liability:

- (a) for liability imposed by or arising under the Nuclear Liability Act; nor
- (b) for "Loss" with respect to which an **"Insured Person(s)"** under this Policy is also **Insured** under a contract of nuclear energy liability insurance (whether the **"Insured Person(s)"** is unnamed in such contract or whether or not it is legally enforceable by the **"Insured Person(s)"** issued by the Nuclear Insurance Association of Canada or any other Insurer or group or pool of Insurers or would be an **"Insured Person(s)"** under any such Policy but for its termination upon exhaustion of its limit of liability; nor
- (c) for **"Loss"** resulting directly or indirectly from the "Nuclear Energy Hazard" arising from:
 - (i) the ownership, maintenance, operation or use of a "Nuclear Facility" by or on behalf of an **"Insured Person(s)"**;
 - (ii) 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"; and
 - (iii) the possession, consumption, use, handling, disposal or transportation of "Fissionable Substance(s)"s, 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 usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an **"Insured Person(s)"**.

9. Pollution:

Based upon, arising out of, directly or indirectly attributable to or in consequence of

- (a) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants into, in or upon real or personal property, water or the atmosphere;
- or;
- (b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **"Pollutants"**;

Provided however, this exclusion shall not apply to:

- i) any **"Claim(s)"** for **"Employment Practices Liability Wrongful Act(s)"** arising from actual or threatened disclosure of the matters described in this exclusion.
- ii) **'Costs, Charges and Expenses'** arising out of **"Wrongful Acts"** within the territorial limits and jurisdiction of Canada to a maximum \$100,000 Limit of Liability and is included in the Aggregate Policy Limit.

10. Professional Services:

Based upon, arising out of directly or indirectly, or in any manner attributable, in whole or in part, to the rendering or failure to render **"Professional Services"** to others either gratuitously or for a fee.

11. Prior Knowledge:

Based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **"Wrongful Acts"** or **"Employment Practices Liability Wrongful Act(s)"**, prior and/or pending civil, criminal, administrative or investigative proceeding involving the **"Insured(s)"** and known to the **"Insured(s)"** or any fact, circumstance or situation underlying or alleged prior to the issuance of this coverage.

12. Prior or Pending Litigation:

Based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **"Wrongful Act(s)"** or **"Employment Practices Liability Wrongful Act(s)"** or any fact, circumstance or situation which has been the subject of any notice given as of or prior to the applicable Prior and Pending Litigation Date set forth in the Declarations for which this coverage is a direct or indirect renewal or replacement.

13. Securities:

Based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or attempted offering, solicitation, sale, distribution or issuance of securities to the **Public**, whether or not a prospectus has been issued.

14. Major Shareholders:

Made or instigated by or on behalf of, or for, the benefit of any person or entity holding beneficially or otherwise more than 25% of the issued share capital of the **"Named Insured(s)"**.

15. **Subsidiaries:**

Arising out of any “**Wrongful Act(s)**” or “**Employment Practices Liability Wrongful Act(s)**” committed or alleged to have been committed by the “**Insured Person(s)**” of any “**Subsidiary**” occurring prior to the date such entity became a “**Subsidiary**” or after such entity ceased to be a “**Subsidiary**”. Furthermore, there shall be no protection under this Policy for any individuals who only became “**Insured Person(s)**” of the “**Subsidiary**” after it ceased to be a “**Subsidiary**”.

16. **Fiduciary Liability:**

Based upon, arising out of, directly or indirectly resulting from or in consequence of the administration of any Employee Defined Benefit Pension Plan.

Part III

Policy Definitions

As used in this policy, the following words or expressions shall mean:

1. “**Claim(s)**”:

- (a) A written or oral demand for monetary or non-monetary relief; or,
- (b) A civil, criminal, administrative, regulatory or arbitration proceeding for monetary or non-monetary relief which is commenced by:
 - (i) a Writ of Summons, statement of claim or similar originating legal document; or
 - (ii) return of a summons, information or similar document (in the case of a criminal proceeding).

2. “**Costs, Charges and Expenses**”:

Reasonable and necessary legal fees and expenses incurred by the “**Insured(s)**” solely in the defense of any “**Claim(s)**” and appeals there from, or in connection with an appearance before any administrative tribunal and/or board of enquiry, and cost of attachment or similar bonds; provided, however, “**Costs, Charges and Expenses**” shall not include the following:

- (a) salaries, wages, overhead or benefit expenses associated with officers or employees of the “**Named Insured(s)**”; or
- (b) any amounts incurred in defense of any “**Claim(s)**” for which any other Insurer has a duty to defend, regardless of whether or not such other Insurer undertakes such duty.

3. “**Deductible**”

The amount the **Insured** is required and obligated to pay by the insurance policy.

4. “**Employee Benefit Plan**”

Any dental, medical, life and accident or employee profit sharing plan which at the inception date of the Policy, is sponsored by the “**Named Insured**”, except any multi-employer plan. Including any “**Employee Benefit Plan**” acquired or created during the “**Policy Period**”, but only with respect to “**Wrongful Acts**” or “**Employment Practices Liability Wrongful Act(s)**” occurring subsequent to the date of such acquisition or creation. “**Employee Benefit Plan**” does not include any, defined benefits, employee pension plan or welfare benefit plan.

5. “**Employment Practices Liability Wrongful Act(s)**”:

The following acts related to employment if alleged by or on behalf of any past, present or future employee of the “**Named Insured**” or any applicant for employment with the “**Named Insured(s)**”

- (a) discrimination;
- (b) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
- (c) employment related misrepresentation, whether written or oral;
- (d) wrongful failure to employ or promote or grant tenure;
- (e) sexual or workplace harassment of any kind;
- (f) failure to create or enforce adequate workplace or employment policies and procedures;
- (g) wrongful discipline, denial of training, deprivation of career opportunity, negligent evaluation including defamatory statements made in connection with an employee reference;
- (h) retaliation;
- (i) employment related libel, slander, defamation, humiliation or invasion of privacy; or
- (j) breach of an employment agreement whether written or oral, other than a collective bargaining agreement.

6. “**Fissionable Substance(s)**”:

Any prescribed substances that is, or from which can be obtained a substance capable of releasing atomic energy by nuclear fission.

7. “**Insolvency**”:

- (a) The appointment of a Receiver or a Receiver Manager of the “**Named Insured(s)**”;
- (b) The filing of a proposal or plan of arrangement for the “**Named Insured(s)**” pursuant to the provisions of the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, or similar federal, provincial, territorial or state legislation; or
- (c) The “**Named Insured(s)**” filing a proposal, assignment or being placed in bankruptcy pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended.

8. “**Insured Person(s)**”: “**You**” “**Your**”

Applicable to **Non-Profit Organization**

- (a) Any persons who were or now are directors, officers (including de facto directors and officers), trustees, volunteers or members of any duly constituted committee of the “**Named Insured(s)**”;
- (b) The functional equivalent of any duly elected or appointed director or officer of the “**Named Insured(s)**” in a foreign jurisdiction.
- (c) The estates, heirs, legal representatives or assigns of directors, officers, trustees, employees, volunteers or members of any such committees in the event of their death, incompetency, “**Insolvency**” or bankruptcy.
- (d) any past, present and future employee of the “**Named Insured(s)**” including part-time, seasonal and temporary employee, but not an independent contractor,

Applicable to **Private Companies**

- (a) Any persons who were or now are directors, officers (including de facto directors and officers), or trustees of the “**Named Insured(s)**”;
- (b) The functional equivalent of any duly elected or appointed director or officer of the “**Named Insured(s)**” in a foreign jurisdiction.
- (c) The estates, heirs, legal representatives or assigns of directors, officers in the event of their death, incompetency, “**Insolvency**” or bankruptcy.
- (d) any past, present and future employee of the “**Named Insured(s)**” including part-time, seasonal and temporary employee, but not an independent contractor,

9. “**Insured(s)**” “**You**”, “**Your**”

The “**Insured Person(s)**” and the “**Named Insured(s)**”

10. **"Insurer" "Company" "we"**
Shall mean the insurance companies whose names appear in the Declarations.
11. **Inter-related Wrongful Act(s)™:**
Any **"Wrongful Act(s)"** or **"Employment Practices Liability Wrongful Act(s)"** that has a common nexus, any fact, circumstance, situation, event, transaction, series of facts, circumstances, situations, events or transactions.
12. **"Loss":**
Any **"Costs, Charges and Expenses"**, damages, settlement and judgment including taxable costs, pre-judgment interest and any post-judgment interest providing, however, that **"Loss"** shall not include:
 - (a) criminal or civil fines or taxes;
 - (b) penalties imposed by law;
 - (c) liability for matters which are uninsurable under the law pursuant to which this Policy shall be construed;;
 - (d) amounts based upon, arising out of, or attributable to any liability of the **"Named Insured(s)"** under any contract or agreement, either oral or written, except to the extent set out in Part II Item 2.(a), 2.(b) and 2.(c);
 - (e) damages for the failure to afford reasonable notice upon the termination of an employment contract;

However, with respect to coverage provided by Insuring Agreement 1(a) **"Loss"** shall include:

 - (i) taxes and related penalties assessed against a director based upon, arising out of or attributable to the failure to deduct, withhold or remit tax from a payment of salary or wages of an employee under the provisions of any federal, provincial, territorial, local statutory, civil or common law;
 - (ii) any amount constituting payment of wages and similar provisions of any federal, provincial, territorial, or local statutory, civil or common law; and
 - (iii) unpaid tax liabilities of the **"Named Insured(s)"** arising under the federal laws of Canada, or similar provisions of any provincial, territorial or local law due to the **"Insolvency"** of the **"Named Insured(s)"**.
13. **"Named Insured(s)":**
 - (a) The legal entity as Named in the Declarations;
 - (b) Any **"Subsidiary"** of such legal entity, which existed prior to or at the inception date of this Policy, provided such **"Subsidiary"** is Named in the application for this Policy;
 - (c) Any **"Subsidiary"** or such legal entity which is acquired or created subsequent to the inception date of this Policy, subject to the provisions of Part III – Item 20.
14. **"Nuclear Energy Hazard":**
The radioactive toxic, explosive or other hazardous properties of **"Radioactive Material"**.
15. **"Nuclear Facility":**
 - (a) 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;
 - (b) Any equipment or device designed or used for:
 - (i) separating the isotopes of plutonium, thorium and uranium or any one of more of them;
 - (ii) processing or utilizing spent fuel; or
 - (iii) handling, processing or packaging waste;
 - (c) 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 Person(s)"** 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;
 - (d) 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.
16. **"Policy Period":**
The period shown on the Declarations. If this Policy is cancelled, the **"Policy Period"** shall be amended accordingly. If the Discovery Period is exercised in accordance with Part 1, Item 9 – Discovery Period, it shall be part of the last **"Policy Period"** and not an additional period.
17. **"Pollutant(s)":**
Any solid, liquid, gaseous or thermal irritant or contaminant including smoke, odour, vapour, soot, fumes, acids, alkalis, chemicals, waste, reconditioned waste, waste water, reclaimed materials, asbestos or asbestos products, lead or lead products, mould of any type, oil or oil products, infectious, medical or biological waste, or any noise located anywhere in the world.
18. **Professional Services:**
Services rendered requiring specialized knowledge and skill acquired through rigorous intellectual training.
19. **"Radioactive Material":**
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.
20. **"Subsidiary":**
 - (a) any legal entity more than 50% owned by the **"Named Insured(s)"** either directly or indirectly, on or before the inception date of this Policy; or
 - (b) any legal entity acquired or created subsequent to the inception date of this Policy whose assets are more than 50% owned by the **"Named Insured(s)"** either directly or indirectly, and whose assets do not exceed 30% of the consolidated assets of the **"Named Insured(s)"** as of the inception date of this Policy; or
 - (c) any legal entity acquired or created subsequent to the inception date of this Policy whose assets are more than 50% owned by the **"Named Insured(s)"** either directly or indirectly, and whose assets exceed 30% of the consolidated assets of the **"Named Insured(s)"** as of the inception date of this policy, but such organization shall be a **"Subsidiary"** only:
 - (i) for a period of ninety (90) days from the date it became a **"Subsidiary"**; or
 - (ii) until the **"Policy Period"** ends, whichever occurs first; and provided written notice of such acquisition or creation has been given to **"Premier"**, and specific application has been submitted on the **"Premier's"** form in use at the time, together with such documentation and information as **"Premier"** may require, all within ninety (90) days after the effective date of such acquisition or creation. Coverage shall not be afforded following such ninety (90) day period unless the **"Insurer"** has agreed to provide such coverage, subject to any premium adjustment and/or coverage revision that may be required by the **"Insurer"**.

21. **"Wrongful Act(s)":**
(a) any actual or alleged error or misstatement or misleading statement, act or omission, neglect or breach of duty including fiduciary or statutory duty, other than an **"Employment Practices Liability Wrongful Act(s)"** by any **"Insured Person(s)"** in the discharge of their duties, individually or collectively in their capacity with the **"Named Insured(s)"**;
(b) any actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty, other than an **"Employment Practices Liability Wrongful Act(s)"** by the **"Named Insured(s)"** but only in respect to Insuring Agreement 1(C);
22. **"Outside Non-Profit Entity"**
Any legally constituted non-profit organization or association
23. **"Premier"**
The Insurance manager whose name and address appear in the Declarations and who is authorized to be the agent of the **"Insurer"** for the purpose of issuing this policy, receiving notices and managing **"Claim(s)"** on behalf of the **"Insurer"**. **"Premier"** is not a party to this contract of insurance.
24. **"Public"**
Investors conducting the buying and selling of securities on a public exchange. This does not include members of co-operative holding shares in such co-operative or mutual organization.

Part IV

Policy Conditions

Our liability is conditional upon you fulfilling your obligations to comply with the Policy Conditions.

- A. 1. **Action against the "Insurer"**
No action shall lie against the **"Insurer"** for the enforcement of any entitlement under this Policy. All disputes under the Policy shall be resolved by way of arbitration in accordance with Part IV, Item 4 – Arbitration.
2. **Adjustment**
This Policy is issued and the premium computed on the basis of the information submitted to **"Premier"** as part of the application referred to in the declarations. **"Premier"** may require premium adjustment and coverage revision in the event:
(a) the **"Named Insured(s)"** acquires any other entity; or
(b) the **"Named Insured(s)"** creates or acquires a **"Subsidiary"** subsequent to the inception date of the Policy. Where the value of the assets of such acquisition or creation represents more than thirty (30) per cent of the **"Named Insured(s)"** total assets prior to the acquisition or creation, the **"Named Insured(s)"** agrees to give notice to **"Premier"** in writing no later than ninety (90) days after the effective date of such event and to furnish such information in connection therewith as **"Premier"** may require.
3. **Allocation**
If any **"Claim(s)"** made against the **"Insured(s)"** includes both covered and uncovered matters, or is made against any **"insured(s)"** and any other party or parties not covered under this Policy, the **"Insurer"** and the **"Insured(s)"** agree to allocate the **"Loss"** amounts as follows:
(i) with respect to **"Costs, Charges and Expenses"**, the **"Insured(s)"** and **"Insurer"** agree to use their best efforts to determine a fair and proper allocation between covered matters and uncovered matters based on the relative legal and financial exposures of all parties to such matters. The **"Insurer"** shall not be liable under this policy for the portion of such amounts allocated to **"Costs, Charges and Expenses for Loss"** not covered by this policy.
(ii) with respect to **"Loss"** other than **"Costs Charges and Expenses"**, the **"Insured(s)"** and **"Insurer"** agree to use their best efforts to determine a fair and proper allocation between covered **"Loss"** and uncovered **"Loss"** based on the relative legal and financial exposures of all parties to such matters. The **"Insurer"** shall not be liable under this policy for the portion of such amounts allocated to **"Loss"** not covered by this policy.
(iii) If the **"Insured(s)"** and **"Insurer"** cannot agree on a fair allocation under item (ii) the **"Insurer"** shall advance payment of loss on a current basis pursuant to the terms of this policy, which the **"Insurer"** determines to be a covered loss until a different allocation is determined in accordance with Part IV Conditions Item 4 Arbitration.
4. **Arbitration**
Any dispute between the **"Insured(s)"** and the **"Insurer"** arising in connection with or relating to this Policy shall be submitted to binding arbitration in accordance with the commercial arbitration legislation that applies in the jurisdiction of the **"Named Insured(s)"** as stated in the Declarations. The arbitration panel shall consist of one arbitrator selected by the **"Insured(s)"**, one arbitrator selected by the **"Insurer"** and a third independent arbitrator selected by the first two arbitrators. If all parties consent, the arbitration can proceed with a single arbitrator in any such arbitration, each party will bear its own legal fees and expenses but the costs and expenses of the arbitration, including the arbitrators, shall be shared equally by the parties to the dispute unless otherwise agreed
5. **Assignment**
No assignment of interest under this Policy shall bind the **"Insurer"** until the **"Insurer's"** consent is endorsed hereon.
6. **Assistance and Co-operation of the Insured**
The **"Insured(s)"** shall co-operate with **"Premier"** in the investigation and defense of any **"Claim(s)"**, the investigation of the availability of coverage under this Policy, and the prosecution of the subrogated **"Claim(s)"**, and shall give to **"Premier"** such information and written statements as **"Premier"** may require, attend examinations for discovery, hearings and trials and give evidence in connection with the defense of such **"Claim(s)"**, all without charge to the **"Insurer"**. The **"Insured(s)"** shall not voluntarily make any payment, assume any liability or obligation or incur any expense, without the prior written consent of **"Premier"**.
7. **Authorization**
By acceptance of this policy, the **"Named Insured(s)"** per the Declarations agree to act on behalf of all **"Insured(s)"** with respect to the giving of all notices to the **"Premier"** as required herein, the receiving of notices of **"Claim(s)"** or cancellation, the payment of premiums, and the receiving of any return premiums that may become due under this Policy, and the **"Insured(s)"** agree that the **"Named Insured(s)"** shall act on their behalf. As respects the giving of notice to exercise the Discovery Period under Part 1, Item 9, the **"Insured Person(s)"** may give such notice directly to the **"Premier"**.
8. **Currency**
Except as otherwise stated, all limits of insurance, premiums and other amounts as expressed in this Policy are in Canadian currency.

9. **Cancellation**

This Policy may be cancelled:

- (a) by the **Insurer** giving to the **Named Insured(s)**, by registered mail, fifteen (15) days notice of cancellation if cancellation is due to non-payment of premium;
- (b) by the **Named Insured(s)**, giving written notice at any time. Cancellation will take effect on the date that written notice given by the **Named Insured(s)** is received by **Premier** or at a later date if specified therein. **Insurer** will refund the unearned premium on a short-rate basis, but in no event shall the short-rate premium for the cancelled time be deemed to be less than any minimum retained premium specified. This Policy may not be cancelled during the Discovery Period.

10. **Changes**

This Policy contains all the agreements between the **Insured(s)** and the **Insurer** concerning the insurance afforded. The **Named Insured(s)** shown in the Schedule is authorized to make changes in the terms of this Policy with the **Insurer's** consent. The terms of this Policy may be amended or waived only by endorsement issued by the **Insurer** and made a part of this Policy.

11. **Sale or Dissolution**

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Named Insured(s)** through the acquisition of more than fifty per cent (50%) of the assets of the **Named Insured(s)**, the **Named Insured(s)** merges into another entity or consolidates with another entity such that the **Named Insured(s)** is not the surviving entity, or the **Named Insured(s)** ceases to qualify as a non-profit entity under any federal, provincial or territorial legislation:

- (a) the **Named Insured(s)** must give written notice of such transaction to **Premier** within ninety (90) days after the effective date of such transaction and provide **Premier** with such information in connection therewith as **Premier** may deem necessary;
- (b) this Policy shall continue in full force and effect, but only with respect to **Claim(s)** for **Wrongful Act(s)** committed on or before the effective date of such transaction; and the entire premium for this Policy shall be deemed earned as of the date of such transaction.

12. **Inter-Related Wrongful Act(s) and Date of Claim(s)**

More than one **Claim(s)** involving either the same **Wrongful Act** or an **Inter-related Wrongful Act(s)** shall constitute a single **Claim(s)** and such single **Claim(s)** shall be deemed to have been first made at the earliest of either:

- (a) the time the earliest **Claim(s)** was made and reported in accordance with Part IV, Item 14(a); or
- (b) the earliest time in which notice was given under any insurance Policy of any actual or alleged **Wrongful Act(s)** or **Employment Practices Liability Wrongful Act(s)** which is the basis of any **Claim(s)**.

13. **Non- Rescindable**

This policy may not be rescinded by the **Insurer** solely with respect to coverage provided to the **Insured Person(s)** for Claims for which the Entity is not permitted to indemnify them or cannot indemnify them due to its financial insolvency.

14. **Notice of Claim(s)**

- (a) If during the **Policy Period** or Discovery Period, any **Claim(s)** is made against the **Insured(s)**, the **Insured(s)** shall, as a condition precedent to their right to coverage under this policy, give to **Premier** notice in writing as soon as practicable, but in no event later than 60 days after the termination date of this policy, of any such **Claim(s)**.
- (b) If during the **Policy Period** or the Discovery Period:
 - (i) the **Insured(s)** shall receive written or oral notice from any party that it is the intention of such party to hold the **Insured(s)** responsible for a **Wrongful Act(s)**; or,
 - (ii) The **Insured(s)** shall become aware of any fact, circumstance or situation which may reasonably be expected to give rise to a **Claim(s)** being made against the **Insured(s)** for a **Wrongful Act(s)** or **Employment Practices Liability Wrongful Act(s)**;
 And shall in either case during such period give written notice as soon as practicable to **Premier** of the receipt of such written or oral notice under Part IV, Item 14(b) (i) – Notice of **Claim(s)** or of such fact, circumstance or situation under Part IV, Item 14 (b) (ii) - Notice of **Claim(s)** then any **Claim(s)** which is subsequently made against the **Insured(s)** arising out of such **Wrongful Act(s)** or **Employment Practices Liability Wrongful Act(s)** shall for the purpose of this Policy be treated as a **Claim(s)** made during the **Policy Period** or Discovery Period.

- (c) The **Insured(s)**, following the furnishing of notice as provided in paragraphs (a), (b) and (c) of this section shall, as soon as practicable, furnish **Premier** with:
 - (i) names of potential Claimants and a description of the specific **Wrongful Act(s)** or **Employment Practices Liability Wrongful Act(s)** which forms the basis of their potential **Claim(s)**, including the specific date(s) of the alleged **Wrongful Act(s)**;
 - (ii) The identity of the specific **Insured(s)** allegedly responsible for such specific **Wrongful Act(s)** or **Employment Practices Liability Wrongful Act(s)**;
 - (iii) The consequences which have resulted or may result from such specific **Wrongful Act(s)** or **Employment Practices Liability Wrongful Act(s)**;
 - (iv) The nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Act(s)** or **Employment Practices Liability Wrongful Act(s)**; and,
 - (v) the circumstances by which the **Insured(s)** first became aware of such specific **Wrongful Act(s)** or **Employment Practices Liability Wrongful Act(s)**. **Premier** shall have the right to examine under oath any **Insured Person(s)** of the **Named Insured(s)** at any time following the furnishing of such notice. Any notice shall be deemed to be given and received on the day and at the time it is so received by **Premier** at the address indicated in the Declarations.

15. **Order of Payments**

If **Loss** from any **Claim(s)** covered under this Policy exceeds the remaining applicable Limit of Liability as set forth in Item 1 of the Declarations:

- (a) The **Insurer** will first pay **Loss** for such **Claim(s)** to which Insuring Agreement 1(a) applies; then
- (b) To the extent that any amount of the applicable Limit of Liability shall remain available, the **Insurer** shall pay **Loss** for such **Claim(s)** to which Insuring Agreements 1(b) and 1(c) apply.

16. **Other Insurance**

If other valid and collectable insurance is available to any **Insured(s)** for any **Loss** that is covered under this policy, the **Insurer** under this Policy shall be liable for only the excess, if any, of any **Loss** over the applicable limit of the other insurance covering such **Loss**.

This Policy shall not contribute to any **Claim(s)** that is less than or equal to the applicable limit of the other insurance covering such **Claim(s)**. In the event that any part of such other valid and collectable insurance is provided by another Policy of any member company of the Co-operators Group, the **Insurer's** liability hereon shall be reduced by the amount payable under such other policy.

17. **Severability of Application**

In the event that the Application contains misrepresentations or material non-disclosures which materially affect either the acceptance of the risk or the hazard assumed by the **"Insurer"** under this Policy, this Policy shall be void and of no effect whatsoever, but only as against any **"Insured Person(s)"** who completed or signed the Application or had actual knowledge of such misrepresentation. However, Insuring Agreement 1(a) of this Policy shall not be rescinded by the **"Insurer"**.

Nothing in this clause shall increase the **"Insurer's"** maximum liability as set forth in Part I, Item 4 – Limit of Liability and **"Deductible"** of this Policy.

18. **Statutory Conformity**

Terms of this policy, which are in conflict with the statutes of the province or territory where the **"Named Insured(s)"** has its main address, are hereby amended to conform to such statutes.

19. **Subrogation**

In the event of any payment under this policy, the **"Insurer"** shall be subrogated to the extent of such payment to all rights or recovery therefore, and the **"Named Insured(s)"** or the **"Insured Person(s)"** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the **"Insurer"** effectively to bring suit in the name of the **"Named Insured(s)"** or the **"Insured Person(s)"**.

SAMPLE