



## **DIRECTORS AND OFFICERS LIABILITY AND ORGANIZATION REIMBURSEMENT INSURANCE POLICY**

**Please read this Policy carefully**

**NOTICE:** This Policy subject to its terms applies only to any **Claim** made against the Directors and Officers during the **Policy Period**. The Limit of Liability available to pay damages or settlements shall be reduced and may be exhausted by amounts incurred as **Costs, Charges and Expenses** and these shall be applied to the retentions. This Policy does not provide for any duty by the Insurer to defend those insured under the Policy.

### **PREAMBLE**

The Declarations along with the completed signed Application, including attachments, and the Policy with Endorsements shall constitute the contract between the **Organization**, its **Directors and Officers** and the Insurer.

### **I. INSURING CLAUSE**

- A. To pay on behalf of the **Directors and Officers** for **Loss** sustained as a result of any **Claim** arising from a Wrongful Act except for **Loss** which is covered under Insuring Clause IB.
- B. To pay on behalf of the **Organization** for **Loss** sustained as a result of any **Claim** arising from a **Wrongful Act** where an indemnity has been given or is required or permitted by law to be given to the **Directors or Officers** by the **Organization**.

### **II. EXTENSION**

#### **Optional Extension Period.**

If this Policy is cancelled or not renewed by the Insurer for any reason other than non-payment of premium, the **Organization** has the right to purchase an Optional Extension Period of 180 days following the effective date of cancellation or non renewal. However, coverage during the Optional Extension Period shall only apply to **Claims** made in respect of **Wrongful Acts** committed prior to such effective date.

In order to invoke the Optional Extension Period:

1. the **Organization** must give written notice within 30 days before the effective date of cancellation or non renewal.
2. the **Organization** must pay an additional premium calculated at 50% of the premium shown in Item 5. of the Declarations. This premium shall be fully earned and non refundable in whole or in part.

The purchase of the Optional Extension Period does not increase the Limit of Liability shown in Item 3. of the Declarations.

### III. DEFINITIONS

- A. **Claim** shall mean any judicial or administrative proceeding initiated against a **Director or Officer** for damages or other relief.
- B. **Costs, Charges and Expenses** shall mean legal fees, and expenses incurred in defending, investigating or monitoring a Claim and appeals and the cost of appeal, attachment or similar bonds, excluding salaries and expenses of any **Director or Officer** of the **Organization**.
- C. **Directors and Officers** shall mean any persons who were, are now or shall be directors or officers of the **Organization** and shall include employees, trustees, volunteers or committee members and any other person acting on behalf of the **Organization**. In the event of death or bankruptcy the above shall include their estates, heirs, legal representatives or assigns.
- D. **Loss** shall mean damages, judgments, settlements and **Costs, Charges and Expenses**, excluding:
  - 1) Punitive or exemplary damages
  - 2) criminal or civil fines or penalties
  - 3) taxes;
  - 4) matters deemed uninsurable under law.
- E. **Organization** shall mean:
  - 1) The entity named in Item 1 of the Declarations and any **Subsidiary**;
  - 2) those affiliated organizations but only when listed in a Schedule of affiliated organizations attached to this Policy.
- F. **Policy Period** shall mean the period shown in Item 2 of the Declarations plus the Optional Extension Period if applicable.
- G. **Subsidiary** shall mean any non-profit entity which is more than 50% owned by the organization.

- H. **Wrongful Act** shall mean any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **Directors and Officers**, individually or collectively, in the discharge of their duties solely in their capacity as **Directors and Officers** of the **Organization**.

#### IV. EXCLUSIONS

The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against the **Directors and Officers**:

- A. for actual or alleged:
- 1) libel/slander or defamation;
  - 2) bodily injury, sickness, disease or death;
  - 3) damage to, destruction of, or loss of use of any tangible property.
- B. directly or indirectly resulting from or any **Wrongful Act** or circumstances or situation which has been the subject of any notice given under any prior policy.
- C. based upon or arising out of:
- 1) the **Directors and Officers** gaining any personal profit or advantage to which they were not legally entitled;
  - 2) the return by the **Director and Officer** of remuneration to which they were not legally entitled.
- D. which is insured under any other existing policy regardless of whether such **Claim** is collectable or recoverable. However, this exclusion shall not apply to **Loss** which exceeds the retention or deductible and limit of such other existing policy.
- E. directly or indirectly resulting from actual or alleged seepage, pollution or contamination of any kind.
- F. for any dishonest or fraudulent act or omission.
- G. of any **Subsidiary**, directly or indirectly relating to any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**.
- H. for an accounting of profits made from the purchase or sales by the **Directors and Officers** of securities of the **Organization**.
- I. for Nuclear Liability described in the attached endorsement.

- J. by or at the behest of the **Organization**.
- K. by or on behalf of any other **Director or Officer** except and to the extent that such **Claim** is in the form of a cross claim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded by the terms of this Policy.
- L. actual or alleged discrimination including but not limited to discrimination based on religion, race, creed, sex, age, marital status, sexual preference, political beliefs, physical or mental disability.
- M. which arises out of or is attributable to the failure to effect or maintain insurance either for the **Organization** or its members.
- N. which arises out of or is attributable to any property ownership or transactions.
- O. for any actually or alleged wrongful dismissal, including but not limited to:
  - 1) any liability assumed by the **Organization** under contract or agreement;
  - 2) severance pay or allowances required to be paid by statute or required under the terms of an employment contract or a collective agreement;
  - 3) any amount that would have been payable if the employee had been rightfully dismissed;
  - 4) any **Claim** arising out of dismissal due to redundancy or a dispute with organized labor or a union grievance procedure;
  - 5) any **Claim** arising out of the cost of defending a wrongful dismissal suit.
- P. which **Claim** is brought in a jurisdiction outside of Canada.

**Note:** Any **Wrongful Act** pertaining to any **Director and Officer** shall not be imputed to any other person for the purpose of determining the applicability of Exclusions C.1), C.2) and F.

## V. **LIMIT OF LIABILITY**

The limit of Liability, as shown under Item 3. of the Declarations, shall be the maximum aggregate amount payable thereunder inclusive of **Costs, Charges and Expenses**.

## VI. **RETENTION**

- A. No **Loss** shall be paid by the Insurer until the applicable retention is exceeded.
- B. If more than one **Claim** arises from the same **Wrongful Act**, then it will be

deemed a single **Claim**.

C. The Retention amounts are shown under Item 4. of the Declarations.

## VII. GENERAL CONDITIONS

### A. **Warranty and Severability Clause:**

1. The application for this Policy is considered as part of the Policy, which is issued based upon the statements contained in the application and in reliance on any other material submitted to the Insurer.
2. In the event that material misrepresentations have been made within the application, then this Policy shall be void and of no effect.
3. This Policy is a severable contract or series of contracts with each of the **Directors and Officers**. This does not increase the Limit of Liability shown in Item 3. of the Declarations.

### B. **Cancellation:**

This policy may be cancelled:

1. by the **Organization** giving written notice in which event a return of premium calculated at short rate will be made.
2. by the Insurer giving written notice, but such notice must be given 30 days before the effective date of cancellation. In this event a pro rata premium will be made.

### C. **Authorization:**

It is agreed that the **Organization** shall act on behalf of the **Directors and Officers** in matters concerning this Policy including cancellation and the giving of notice.

### D. **Subrogation:**

In the event of payment under this Policy, the Insurer has the right of subrogation against any person or entity.

### E. **Assignment:**

This policy may not be assigned without the Insurer's consent.

### F. **Changes:**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this Policy or stop the Insurer from asserting any right under the terms of this Policy, nor shall the terms be waived or changed except by written endorsement issued to form a part of the Policy.

**G. Settlements:**

The **Organization** or the **Directors and Officers** will not, except at their own cost, voluntarily make a payment, assume any obligation or incur any expense without the Insurer's consent, such consent not to be unreasonably withheld.

**H. Notification:**

1. In the event of a **Claim**, notice must be given to the Insurer as soon as practicable, but in no event later than 60 days after such **Claim** is first made.
2. If during the **Policy Period**, the **Organization** or the **Directors and Officers** become aware of a **Wrongful Act** which they believe will lead to a **Claim**, notice must be given to the Insurer as soon as practicable, but in no event later than 60 days after the **Directors and Officers** become aware of such **Wrongful Act**. Any **Claim** arising out of such **Wrongful Act** shall then be deemed to have been made during the **Policy Period**. Such notice must state why it is believed that a **Claim** will be made.

**I. Adjustment:**

1. If the **Organization** acquires or creates a **Subsidiary** subsequent to the inception of the Policy, the following provisions apply:
  - a. Coverage hereon shall attach from the date of acquisition or creation for subsequent acts.
  - b. If the **Subsidiary** exceeds 10% of the Consolidated Assets of the **Organization** as listed in the Declarations, then full information must be supplied to the Insurer within 60 Days. In this event the Insurer reserves the right to charge an additional premium and if deemed necessary, to alter the terms of the Policy.
2. From the date that an entity ceases to be a **Subsidiary** during the **Policy Period** or ceases to be a **Subsidiary** during any policy which this is a renewal, the following provisions apply:

- a. There shall be no coverage for subsequent **Wrongful Acts**
- b. Coverage shall continue for the remainder of the **Policy Period** including the Optional Extension Period if applicable for **Claims** arising from prior **Wrongful Acts**
- J. **Assistance and co-operation in the event of Loss:**

The **Directors and Officers** and the **Organization** agree to provide the Insurer with such information, assistance and co-operation as the Insurer and/or its counsel may reasonably request, and they further agree that they shall not take

any

action which in any way increases the Insurer's exposure for **Loss** under this Policy resulting from any **Claim**.

- K. **Jurisdiction Clause:**

It is agreed that in event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer, at the request of the **Organization** or its **Directors and Officers**, will submit to the jurisdiction of any court of competent jurisdiction within Canada and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.

Attached to and forming part of Policy No.  
**NUCLEAR LIABILITY EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD)**

It is agreed that this Policy does not apply:

- (a) to liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof; or
- (b.) to bodily injury or property damage with respect to which an Insured under this Policy is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other Insurer or group or pool of Insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (c) to bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
  - i. the ownership, maintenance, operation or use of nuclear facility by or on behalf of an Insured;
  - 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 substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

As used in this Policy:

1. The term “nuclear energy hazard” means the radioactive, toxic, explosive or other hazardous properties of radioactive material;
2. The term “radioactive material” means uranium, thorium plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by or pursuant to any law, act or statute, or law amendatory thereof as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
3. The term “nuclear facility” means:
  - 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 or 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, fabrication or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- 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;

- 4. The term “fissionable substance” means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
- 5. With respect to property, loss of use of such property shall be deemed to be property damage.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.