

Policy

Non-Profit Entity Management Liability and Errors and Omissions Insurance

SECTION I – INSURING AGREEMENTS

The INSURER, in consideration of the payment of premium, in reliance upon the attachments to and the statements made in the application for this insurance which is made a part thereof and subject to all of the terms and conditions of this policy, agrees as follows:

A. Errors and Omissions Liability

With the INSUREDS to pay on their behalf LOSS that they may become legally obligated to pay as a result of a CLAIM for an E&O WRONGFUL ACT.

B. Directors and Officers Liability

With the INSUREDS to pay on their behalf LOSS that they may become legally obligated to pay as a result of a CLAIM for a D&O WRONGFUL ACT.

C. Non-Profit Outside Directorship Liability

With the INSUREDS to pay on their behalf LOSS that they may become legally obligated to pay as a result of a CLAIM for an OUTSIDE DIRECTORSHIP WRONGFUL ACT for which an OUTSIDE ENTITY is not permitted to indemnify them or is unable to indemnify them due to its financial insolvency.

D. Employment Practices Liability

With the INSUREDS to pay on their behalf LOSS that they may become legally obligated to pay as a result of a CLAIM for an EMPLOYMENT PRACTICES WRONGFUL ACT.

E. Fiduciary Liability

With the INSUREDS to pay on their behalf LOSS that they may become legally obligated to pay as a result of a CLAIM for a FIDUCIARY WRONGFUL ACT.

F. Defence

With the INSUREDS to have the duty and right to defend any CLAIM made against the INSUREDS for which coverage is provided by this policy.

This policy applies only to CLAIMS first made against the INSUREDS during the POLICY PERIOD and then only if reported to ENCON as outlined in Section VI.

SECTION II – DEFINITIONS

A. “BENEFIT PLAN” means:

1. any employee pension plan or employee welfare benefit plan which, at the inception date of the policy, is operated solely by the ENTITY, or jointly by the ENTITY and a labour organization for the benefit of the employees of the ENTITY;
2. any medical, dental, life and accident or employee profit sharing plan which, at the inception date of the policy, is sponsored by the ENTITY, except any multi-employer plan;
3. any BENEFIT PLAN acquired or created during the POLICY PERIOD but only with respect to FIDUCIARY WRONGFUL ACTS occurring subsequent to the date of such acquisition or creation.

B. “CLAIM” means:

1. a written or oral demand for compensatory damages or non-monetary relief;
2. a civil proceeding commenced by the service of a notice of action, statement of claim or similar proceeding;
3. a formal administrative or regulatory proceeding commenced by the filing of a notice of hearing or formal investigative order or similar document;

against any INSURED for a WRONGFUL ACT;

4. a criminal or penal proceeding commenced by the laying of an information or similar proceeding against any INSURED PERSON for a WRONGFUL ACT.

C. “D&O WRONGFUL ACT” means any actual or alleged defamation, breach of duty, neglect, error, misstatement, misrepresentation, omission or other act done or attempted by any INSURED in the discharge of their duties solely in their capacity with the ENTITY or any matter claimed against them solely by reason of their status as an INSURED PERSON.

D. “DAMAGES” means:

1. compensatory damages;

2. punitive or exemplary damages first rendered by a court in Canada;

which the INSUREDS are legally obligated to pay as a result of a judgement or settlement including pre and post-judgement interest. DAMAGES shall not include fines, penalties, multiplied damages, or damages which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

- E. "DEFENCE COSTS" means reasonable and necessary legal, accounting, adjusting, investigating, expert or appeal expenses incurred for the defence of CLAIMS for which coverage is provided by this policy. DEFENCE COSTS does not include salaries, wages, overhead or benefit expenses of any INSURED PERSON.
- F. "EMPLOYMENT PRACTICES WRONGFUL ACT" means any actual or alleged:
1. wrongful termination of an individual employment contract;
 2. discrimination or harassment of any employee or applicant for employment with the ENTITY;
 3. wrongful deprivation of career opportunity or failure to employ or promote;
 4. wrongful discipline of employees;
 5. negligent evaluation of employees;
 6. employment-related misrepresentation;
 7. employment-related defamation;
 8. retaliatory treatment against an employee of the ENTITY on account of such employee's exercise of his/her rights under law;
 9. discrimination or harassment with respect to any past, present or prospective customers or clients of the ENTITY.
- G. "ENCON" means the insurance manager whose name and address appear in the Declarations which is authorized to be the agent of the INSURER. ENCON is not a party to this contract of insurance.
- H. "ENTITY" means
1. the non-profit organization or association named in the Declarations;
 2. any SUBSIDIARY at the inception date of the policy;
 3. any former SUBSIDIARY but coverage is only afforded with respect to WRONGFUL ACTS occurring during its currency as a SUBSIDIARY;
 4. any SUBSIDIARY acquired or created after the inception date of this policy on condition that:
 - (a) written notice together with full information thereof, is provided to ENCON within ninety (90) days of the acquisition or

creation of any new SUBSIDIARY whose total annual revenues exceed twenty-five per cent (25%) of the total annual revenues of the ENTITY as reflected in the ENTITY'S most recent annual financial statements prior to such acquisition or creation;

- (b) coverage shall apply only to WRONGFUL ACTS occurring subsequent to the effective date of such acquisition unless the INSURER agrees, after presentation of a complete application and all appropriate information, to provide coverage by endorsement for WRONGFUL ACTS occurring prior to such acquisition;
- (c) an additional premium as may be required by the INSURER be paid.

- I. "E&O WRONGFUL ACT" means an error or omission arising out of insured services performed for the ENTITY by any INSURED, as defined in Endorsement No. 1.
- J. "FIDUCIARY WRONGFUL ACT" means any actual or alleged act, error or omission arising out of the management or administration of a BENEFIT PLAN.
- K. "INSURED" means any INSURED PERSON and the ENTITY.
- L. "INSURED PERSON" means:
1. any individual who was, now is or shall be a director, officer, trustee, employee, volunteer or member of any duly constituted committee of the ENTITY, including the estates, heirs, legal representatives or assigns of any said deceased, incompetent, insolvent or bankrupt individuals;

and includes with respect to Insuring Agreement A of Section I:

2. any individuals or personal corporations retained by the ENTITY under personal services contracts or personal services agreements;
 3. employees of others on loan to and while working for and under the guidance of the ENTITY.
- M. "INTERRELATED WRONGFUL ACTS" means WRONGFUL ACTS that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- N. "INSURER" means the insurance companies whose names appear in the Declarations.
- O. "LOSS" means DAMAGES and DEFENCE COSTS resulting from a CLAIM for which coverage is provided by this policy.
- P. "ORIGINAL POLICY" means the first policy purchased by the ENTITY providing coverage of a similar nature to this policy and which has continued

through renewal or reinstatement on an uninterrupted basis since its inception. Each Insuring Agreement is considered separately.

- Q. "OUTSIDE DIRECTOR" means any INSURED PERSON acting in the capacity as a duly elected or appointed director, officer or trustee of an OUTSIDE ENTITY provided such position is being held at the specific request of the ENTITY.
- R. "OUTSIDE DIRECTORSHIP WRONGFUL ACT" means a D&O WRONGFUL ACT committed by an OUTSIDE DIRECTOR.
- S. "OUTSIDE ENTITY" means any legally constituted non-profit organization or association.
- T. "POLICY PERIOD" means the period from the inception date of this policy to the policy expiration date as set out in the Declarations, or a shorter period in the event the policy is cancelled.
- U. "POLLUTANTS" means any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste reconditioned or reclaimed materials as well as any air emission, odour, waste water, oil or oil products, infectious or biological waste, asbestos or asbestos products or any noise.
- V. "SUBSIDIARY" means any non-profit organization or association more than fifty per cent (50%) owned by the ENTITY.
- W. "WRONGFUL ACT" means an E&O WRONGFUL ACT, a D&O WRONGFUL ACT, an EMPLOYMENT PRACTICES WRONGFUL ACT, a FIDUCIARY WRONGFUL ACT, and/or an OUTSIDE DIRECTORSHIP WRONGFUL ACT.

SECTION III – EXTENSIONS

Subject to the terms, conditions and exclusions of this policy:

A. Discovery Period (Bilateral)

If the INSURER cancels or refuses to renew this policy for reasons other than non-payment of the premiums due hereunder or if the ENTITY cancels or non-renews this policy and provided there are no outstanding premiums due hereunder, the INSURED shall have the right within thirty (30) days of the effective date of cancellation or expiry of this policy and upon payment of a premium calculated as a percentage (see below) of the "full annual premium", to an extension of the cover granted by this policy for CLAIMS made against the INSURED during the period of one (1) year after the effective date of cancellation or expiry of this policy, but only with respect to any WRONGFUL ACT occurring prior to the date of such cancellation or expiry.

As used herein, "full annual premium" means the premium level in effect immediately prior to the effective date of cancellation or expiry.

Premium Calculation:

1. If the INSURER cancels or refuses to renew:
 - 50% if purchased following the initial policy issued by the INSURER;
 - 40% if purchased following the second consecutive policy issued by the INSURER;
 - 30% if purchased following the third consecutive policy issued by the INSURER;
 - 20% if purchased following the fourth or subsequent consecutive policy issued by the INSURER.
2. If the ENTITY cancels or non-renews: 100%.

If the Discovery Period extension is purchased, the entire premium shall be deemed earned at its commencement without any obligation by the INSURER to return any part thereof and it shall not in any way increase the limit of liability set forth in the Declarations.

The acceptance by the INSURED of the INSURER'S offer of a new policy relieves the INSURER of any obligation it may have had to provide Discovery Period coverage under this policy.

B. Spousal/Co-defendant Clause

Coverage as afforded by this policy shall apply to the spouse (including a domestic partner) of an INSURED PERSON provided that: (a) such spouse is named as a co-defendant in a CLAIM against an INSURED PERSON; and (b) such spouse is so named solely by reason of (i) his/her status as the spouse of an INSURED PERSON or (ii) his/her ownership interest in property which the claimant seeks as recovery in such CLAIM; and (c) it is not alleged in the CLAIM that the spouse is liable to the claimant for any reasons other than those contemplated above; and (d) coverage is provided by this policy to the INSURED PERSON for the CLAIM.

SECTION IV – EXCLUSIONS

1. The following exclusions apply to an E&O WRONGFUL ACT:
 - A. CLAIMS arising out of estimates of profit, return on capital, economic return, or other estimates giving rise to forecasts of economic return.
 - B. CLAIMS made against the INSURED, when such CLAIMS are made by or involve another organization:
 1. owned totally or partially by an INSURED; or
 2. controlled or managed totally or partially by an INSURED; or
 3. which is directly or indirectly involved in any way in the ownership or management of an INSURED'S organization; or

4. of which an INSURED is a partner, director, officer or employee.
2. The following exclusion applies to all WRONGFUL ACTS except an E&O WRONGFUL ACT:
- A. CLAIMS for bodily injury, sickness, mental anguish, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof or injury resulting from false arrest, detention, imprisonment, wrongful entry or eviction. However, this exclusion shall not apply to allegations of mental anguish in a CLAIM for an EMPLOYMENT PRACTICES WRONGFUL ACT.
3. The following exclusions apply to all WRONGFUL ACTS:
- A. CLAIMS arising out of or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of POLLUTANTS into or upon real or personal property, the atmosphere or water, whether such discharge, dispersal, release or escape is intentional or accidental; or to LOSS resulting from any direction or request to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize POLLUTANTS. However, this exclusion shall not apply to:
1. any CLAIM for an EMPLOYMENT PRACTICES WRONGFUL ACT arising from an employee's actual or threatened disclosure of the matters described in this exclusion;
 2. DEFENCE COSTS incurred in defending the INSURED PERSONS arising from a CLAIM covered under Insuring Agreement B of Section I first brought within the territorial limits and jurisdiction of Canada.
- B. CLAIMS based upon, arising out of, directly or indirectly resulting from or in consequence of:
1. ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 2. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- C. CLAIMS arising from any WRONGFUL ACT if notification has been given under any policy which has expired prior to or upon the inception of this policy and if such prior policy affords coverage (or would afford such coverage except for the exhaustion of its limits of liability) for such LOSS, in whole or in part, as a result of such notice.
- D. CLAIMS based upon, arising out of, directly or indirectly resulting from or in consequence of any pending or prior litigation as at the inception date of the ORIGINAL POLICY or derived from the same or essentially the same facts as alleged in such pending or prior litigation.
- E. CLAIMS arising out of or attributable to any deliberate fraudulent, dishonest or criminal act committed deliberately by an INSURED PERSON as determined by a judgement or other final adjudication.
- F. CLAIMS arising out of or attributable to any INSURED PERSON gaining any profit, remuneration or advantage to which such INSURED PERSON was not legally entitled as determined by a judgement or other final adjudication.
- G. CLAIMS initiated or instituted, directly or indirectly, by or on behalf of the ENTITY. However, this exclusion shall not apply to:
1. any CLAIM made derivatively provided that such CLAIM is brought totally without the solicitation, assistance, participation or intervention of any INSURED PERSONS or the ENTITY; and
 2. any CLAIM brought by a liquidator, receiver or trustee in bankruptcy.
- H. CLAIMS for an actual or alleged breach of contract except that this exclusion shall not apply to:
1. allegations of tortious conduct arising out of or attributable to an actual or alleged breach of contract; and
 2. DEFENCE COSTS for CLAIMS arising from an actual or alleged termination of an individual employment contract.
- I. CLAIMS arising out of or attributable to any grievance brought pursuant a collective agreement.
- J. CLAIMS for an OUTSIDE DIRECTORSHIP WRONGFUL ACT initiated or instituted, directly or indirectly, by or on behalf of the OUTSIDE ENTITY or a duly elected or appointed director, officer or trustee of the OUTSIDE ENTITY.
- K. CLAIMS already covered under another valid and collectible insurance policy. However, this exclusion shall not apply to the difference in limit between the limit of liability under this policy and that of such other insurance policy. Any coverage provided by this policy shall be specifically excess of and shall not act in contribution with such other insurance policy.
- NOTE: The WRONGFUL ACT of any INSURED shall not be imputed to any other INSURED for purposes of determining the applicability of the Exclusions in Section IV.

SECTION V – COMPUTATION OF AMOUNTS PAYABLE

- A. The INSURER shall pay one hundred per cent (100%) of LOSS in excess of the deductible stated in the Declarations up to the limit of liability stated in the Declarations except that DEFENCE COSTS shall be paid over and above the limit of liability stated in the Declarations provided the said limit has not been previously exhausted by the payment of LOSS or currently exhausted by the payment of DAMAGES. The deductible shall apply to DAMAGES but not DEFENCE COSTS.
- B. All LOSS arising out of the same WRONGFUL ACT and all INTERRELATED WRONGFUL ACTS shall be deemed to be one LOSS, and such LOSS shall be deemed to have originated in the earliest POLICY PERIOD in which a CLAIM is first made against any INSURED alleging any such WRONGFUL ACT or INTERRELATED WRONGFUL ACTS.
- C. If a CLAIM triggers more than one (1) deductible amount, the highest of such deductible amounts shall be deemed the deductible amount applicable to LOSS arising from such CLAIM.
- D. The fact that this policy may be extended by virtue of the exercise of the Discovery Period shall not in any way increase the limit of liability set forth in the Declarations.

SECTION VI – NOTICE OF CLAIM

The INSUREDS shall, as soon as practicable, provide written notice to ENCON at the address indicated in the Declarations after being made aware of a CLAIM for which coverage would be afforded by this policy, but in no event later than thirty (30) days following the expiration date of the POLICY PERIOD. This thirty (30) day extended reported period will only apply if no replacement coverage is obtained during such thirty (30) day period.

If during the POLICY PERIOD the INSUREDS become aware of a WRONGFUL ACT which could reasonably give rise to a CLAIM and the INSUREDS deliver written notice thereof to ENCON prior to the date of expiry of the policy, any CLAIM arising out of such reported WRONGFUL ACT shall be treated as a CLAIM made during the POLICY PERIOD in which such written notice was delivered. The written notice shall include:

1. the names of the potential claimants and a description of the specific WRONGFUL ACT which forms the basis of their potential CLAIM;
2. the consequences which have resulted or may result from such specific WRONGFUL ACT;
3. the nature of the potential damages arising from such specific WRONGFUL ACT; and
4. the circumstances by which the INSUREDS first became aware of the specific WRONGFUL ACT.

If the effective date of termination of the policy is a Saturday, Sunday, or Statutory Holiday, any CLAIM reported to ENCON on the business day immediately

following the termination date, will be deemed to have been reported within the POLICY PERIOD.

Notwithstanding the aforementioned, any late notice or absence of notice is cause of forfeiture of the rights of the INSUREDS, if the INSURER sustains injury therefrom.

SECTION VII – DEFENCE AND SETTLEMENT

No DEFENCE COSTS payable under this policy shall be incurred without the INSURER'S consent which is not to be unreasonably withheld. The INSURER shall not settle or compromise any CLAIM without the written consent of the INSUREDS involved in the CLAIM. If, however, the INSUREDS shall refuse to consent to any settlement recommended by defence counsel and the INSURER and shall elect to contest the CLAIM, then the INSURER'S liability for the CLAIM shall not exceed:

1. the amount for which the CLAIM could have been so settled plus the DEFENCE COSTS incurred with its consent up to the date of such refusal; and
2. eighty per cent (80%) of LOSS, including DEFENCE COSTS, in excess of the amount referenced in paragraph 1 above. The remaining twenty per cent (20%) of LOSS, including DEFENCE COSTS, shall be paid by the INSUREDS, uninsured and at their own risk, notwithstanding anything to the contrary in Article E of Section VIII of the policy.

Such amounts are subject to the provisions of Section V of the policy.

The INSUREDS shall give the INSURER such information and co-operation as it may reasonably require and as shall be in the power of the INSUREDS to provide.

SECTION VIII – GENERAL CONDITIONS

A. Authorized Agent of the INSUREDS

In consideration of the issuance of this policy, the INSUREDS agree that the ENTITY is hereby appointed and authorized to act as agent on behalf of the INSUREDS with respect to all matters of any nature or kind relating to or affecting this policy.

B. Non-rescindable

This policy may not be rescinded by the INSURER solely with respect to coverage provided to the INSURED PERSONS for CLAIMS for which the ENTITY is not permitted to indemnify them or cannot indemnify them due to its financial insolvency.

C. Non-renewal

If the INSURED submits a completed renewal application and the INSURER decides not to offer any renewal terms for this policy, the INSURER shall provide written notice to the INSURED'S broker and the POLICY PERIOD will be extended, if necessary, to ensure that the policy expiration date is at least sixty (60) days subsequent to the date of such notice of non-renewal. If an extension of the POLICY PERIOD is

required, the additional premium shall be computed on a pro rata basis.

D. Cancellation

This policy may be cancelled by the INSUREDS by delivering written notice to ENCON stating when thereafter such cancellation shall be effective. This policy may be cancelled by ENCON by said delivery of written notice of cancellation to the INSURED at the address shown in the Declarations stating when not less than one hundred and twenty (120) days thereafter, such cancellation shall be effective. However, if ENCON cancels the policy because of non-payment of premium when due, this policy may be cancelled by ENCON by said delivery of written notice of cancellation to the INSUREDS at the address shown in the Declarations stating when, not less than fifteen (15) days thereafter, such cancellation shall be effective. The delivery of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the POLICY PERIOD.

Unearned premium shall be computed on a pro rata basis. The INSURER'S cheque delivered as aforesaid shall be a sufficient tender of any refund of premium due hereunder. Payment or tender of any unearned premium by the INSURER shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

E. Payment of LOSS

If a CLAIM made against the INSUREDS includes both covered and uncovered allegations:

1. DEFENCE COSTS:

The INSURER shall pay one hundred per cent (100%) of DEFENCE COSTS incurred on account of such CLAIM made against the INSUREDS.

2. DAMAGES:

The payment of DAMAGES by the INSURER shall be based on the relative legal exposure of the INSUREDS to covered and uncovered allegations, which shall be determined upon settlement or final adjudication of the CLAIM.

In the event that the INSUREDS and INSURER cannot otherwise agree on the payment of DAMAGES, the issue of payment shall be submitted to binding arbitration pursuant to the *Arbitration Act* of the Canadian province or territory in which the policy was issued. In the absence of such provincial or territorial legislation, the *Arbitration Act* of Ontario shall govern the arbitration. The arbitration panel shall consist of one arbitrator appointed by the INSURED, one arbitrator appointed by the INSURER and a third independent arbitrator selected by the INSURED and INSURER'S appointees. The fees and disbursements of the arbitrators shall be shared equally by the INSURED and INSURER who shall otherwise bear their own costs of the arbitration.

F. Action Against INSURER

No action shall be taken against the INSURER unless, as a condition precedent thereto, the INSUREDS shall have been in full compliance with all the terms of this policy.

G. Subrogation

In the event of any payment under this policy, the INSURER shall be subrogated to the extent of such payment to all the rights of recovery of the INSUREDS and the INSUREDS shall execute all papers required and shall do everything that may be necessary to secure such 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 or the ENTITY.

H. Severability

Subject to all of its terms and conditions, this policy shall apply to each INSURED in the same manner and to the same extent as if a separate policy had been issued to each. With respect to the declarations and statements contained in the application for coverage, the knowledge of one INSURED shall not be imputed to any other INSURED. The total amount payable hereunder on behalf of all INSUREDS and, notwithstanding the number of INSUREDS involved, shall not exceed the limit of liability stated in the Declarations.

I. Territory

Except as otherwise stated, coverage shall apply worldwide.

J. Currency

Except as otherwise stated, all amounts under this policy are expressed and payable in the currency of Canada.

K. Headings

The headings to the provisions in this policy, including those found in any endorsements attached hereto, are provided solely for convenience, and form no part of the terms and conditions of coverage.

L. Suspension of Permit or Provisional Administration

If any INSURED has its permit or license to practice suspended by virtue of the laws governing its practice, or if a provisional administration is imposed by governmental authority, notice must be given to ENCON within a period of not more than thirty (30) days from such suspension or provisional administration. There will be no coverage afforded to anyone who fails to notify ENCON of such change unless specifically endorsed hereon.

M. Conformity to Statute

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

N. Interpretation

This policy shall be interpreted and construed in accordance with the laws of the Canadian province in which the policy was issued.

O. Declarations

In consideration of the payment of the premium, in reliance upon the statements made in the application for this insurance which is made a part hereof and subject to all of the terms and conditions of this policy, the INSURER has caused this policy to be executed on the Declarations.

SPECIMEN