



NOT FOR PROFIT SHIELD PLUS

DIRECTORS' AND OFFICERS' PERSONAL AND ENTITY LIABILITY INSURANCE POLICY

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Not-for-Profit Shield PLUS

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NOT FOR PROFIT SHIELD PLUS

DIRECTORS' & OFFICERS' PERSONAL AND ENTITY LIABILITY INSURANCE POLICY

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NOT FOR PROFIT SHIELD PLUS

DIRECTORS' AND OFFICERS' PERSONAL AND ENTITY LIABILITY INSURANCE POLICY

POLICY NO.: 0130583-6
REPLACING POLICY NO.: 0130583-5

DECLARATIONS

Item 1 NAME AND ADDRESS OF:

THE ENTITY:

STUDENT ENERGY
7804 - 5TH STREET NW
CALGARY, ALBERTA
T2K 1E1

THE BENEFIT PROGRAM:

All Benefit Programs sponsored by the Entity or for which the Entity provides Administration

Item 2 POLICY PERIOD: From January 16, 2018 (effective date) to January 16, 2019 (expiry date)
12:01 a.m. Standard Time at the address stated herein.

Item 3 LIMITS OF LIABILITY:

- (a) \$2,000,000. Limit of liability each **Policy Period** under **Insuring Agreements A, B and C.**
- (b) \$2,000,000. Limit of liability each **Policy Period** under **Insuring Agreement D.**
- (c) \$250,000. Limit of liability each **Policy Period** under **Insuring Agreement E i).**
- (d) \$250,000. Limit of liability each **Policy Period** under **Insuring Agreement E ii).**
- (e) \$2,000,000. Limit of liability each **Claim** for **Wrongful Employment or Membership Practice.**
- (f) \$2,000,000. Aggregate limit of liability each **Policy Period** under **Insuring Agreements A, B, C, D, E i)**
and **E ii)** including **Wrongful Employment or Membership Practice.**

Item 4 ADDITIONAL LIMIT OF LIABILITY – INSURED PERSONS ONLY:

\$250,000. Dedicated **ADDITIONAL LIMIT OF LIABILITY** under **Insuring Agreement A** only.

Item 5 RETENTIONS:

- (a) \$1,000. each **Loss** under **Insuring Agreement B.**
- (b) \$1,000. each **Loss** under **Insuring Agreement C.**
- (c) \$1,000. each **Loss** under **Insuring Agreement D ii).**
- (d) \$1,000. each **Loss** under **Insuring Agreement D iii).**
- (e) \$Nil each **Derivative Demand** under **Insuring Agreement E i).**
- (f) \$Nil each **Loss** for **Wrongful Employment or Membership Practice.**

Item 6 PREMIUM: \$1,125.



DECLARATIONS (continued)

Item 7 DISCOVERY CLAUSE:

- a) Additional Premium: 100 % of annual premium at cancellation
- b) Additional Period: 365 days

Item 8 ENDORSEMENTS attached at issuance: N/A**Item 9 INSURER ISSUING OFFICE:** Suite 810 - 400 Burrard Street, Vancouver, BC V6C 3A6

These **Declarations** along with the completed and signed **Application** and any **Application Information** and this **Directors' and Officers' Personal and Entity Liability Insurance Policy** and any endorsements thereto shall constitute the contract between the **Insured Persons**, the **Entity** and the **Insurer**.

Signed and sealed this 28th day of February, 2018.

THE GUARANTEE COMPANY OF NORTH AMERICA


Digitally signed by Noreen
Fukuhara, Attorney-in-fact
Date: 2018-03-01 17:11-08:00

Noreen Fukuhara, Attorney-in-fact



Digitally signed by Mary da
Costa, Attorney-in-fact
Date: 2018-03-01 17:18+16:00

Mary da Costa, Attorney-in-fact



SECTION I - INSURING AGREEMENTS

IN CONSIDERATION OF the payment of the premium and in reliance upon all statements made and information furnished to **The Guarantee Company of North America** (hereinafter called the "**Insurer**") including the statements and information in the **Application** and the additional **Application Information** and subject to all the terms, conditions and limitations of this **Policy** :

A Personal Insurance:

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

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

B Entity Indemnification Insurance:

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

C Entity Insurance:

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

D Fiduciary Insurance:

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

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

This **Insuring Agreement D** shall not apply to and no coverage is afforded by this **Policy** for any **Fiduciary Claim** made against the **Insureds** or the **Benefit Program** if the **Benefit Program** is **NOT** named in the **DECLARATIONS** or added to this **Policy** by endorsement during the **Policy Period**;

E Derivative Demand and Crisis Costs Coverage

the **Insurer** agrees:

- i) with the **Insureds** that if, during the **Policy Period**, a **Derivative Demand** is made upon the Board of Directors of the **Entity**, and notice is given to the **Insurer** in accordance with **SECTION VII** of this **Policy**, the **Insurer** will pay in accordance with the terms of this **Policy**, on behalf of the **Insureds**, all **Investigation Costs** which the **Entity** or the Board of Directors incur and which arise from the **Derivative Demand**.
- ii) with the **Entity** that if the **Entity** incurs **Crisis Costs** as a direct result of a **Claim** covered under this **Policy**, the **Insurer** will pay in accordance with the terms of this **Policy**, on behalf of the **Entity**, all **Crisis Costs** which the **Entity** incurs and which arise directly from the **Claim**.

SECTION II - DEFINITIONS

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

1 "Administration" means:

- (a) giving advice, counsel or interpretation regarding a **Benefit Program** to **Employees**, beneficiaries or participants;
- (b) undertaking the enrolment, termination or cancellation of a **Benefit Program**, or
- (c) maintaining or administering records or data in any form for the purposes of a **Benefit Program**.

- 2 **"Applicant"** means any natural person who is not an **Employee, Member or Volunteer** but who has been acknowledged by the **Entity** as applying or as having applied, or is or was an acknowledged candidate, for:
 - (a) full-time or part-time employment by the **Entity**, or
 - (b) membership in the **Entity**, or
 - (c) full-time or part-time volunteer work for the **Entity**.
- 3 **"Application"** means the most recent written application form completed, signed and submitted to the **Insurer** on behalf of the **Proposed Insureds** in support of their request that this **Policy** be issued or renewed, as the case may be.
- 4 **"Application Information"** means all documents and all information, whether in paper or any other form, submitted to the **Insurer** with an **Application**, or otherwise submitted or made available to the **Insurer** in support of a request that this **Policy** be issued or renewed, as the case may be.
- 5 **"Arbitration"** means any formal and binding **Arbitration** process pursuant to **Statute** or agreement, by which parties submit a dispute for final resolution by one or more arbitrators.
- 6 **"Based Upon"** means "based upon, resulting from, arising out of or in any way involving or alleging, directly or indirectly".
- 7 **"Begun"**, when used with reference to a **Prosecution** or **Inquiry**, means either the beginning of the **Prosecution** or **Inquiry** or the **Insured's** first notice thereof, whichever comes first.
- 8 **"Benefit Program"** means:
 - (a) any **Employee Benefit Plan**; or
 - (b) any **Government Sponsored Benefit Plan**, but coverage under this **Policy** is only afforded to such plan for any actual or alleged negligent act, error or omission solely in the **Administration** of the **Government Sponsored Benefit Plan**; or
 - (c) any other plan, fund, program or government-mandated benefit program if listed as a **"Benefit Program"** in an endorsement to this **Policy**.
- 9 **"Claim"** means:
 - (a) a written notice from any party:
 - i) that it is the intention of such party to hold any **Insured** civilly liable for **Damages** caused by a **Wrongful Act**, or
 - ii) that it is the intention of such party to seek an **Oppression Remedy** against any **Insured** with respect to a **Wrongful Act**, or
 - iii) that it is the intention of such party to seek an injunctive, administrative or any other non-monetary remedy or relief from any **Insured** with respect to a **Wrongful Act**;
 - (b) a civil suit against any **Insured**:
 - i) claiming **Damages** caused by a **Wrongful Act**, or
 - ii) seeking an **Oppression Remedy** with respect to a **Wrongful Act**, or
 - iii) seeking an injunctive, administrative or any other non-monetary remedy or relief from any **Insured** with respect to a **Wrongful Act**;
 - (c) a **Prosecution** of any **Insured** for a **Wrongful Act**;
 - (d) an **Inquiry Based Upon** a **Wrongful Act** by any **Insured**;
 - (e) a demand or notice of an **Arbitration** claiming **Damages** against any **Insured** caused by a **Wrongful Act**;
 - (f) a **Regulatory or Administrative Proceeding** against any **Insured** alleging a **Wrongful Act**;
 - (g) an **Extradition Proceeding**,
including any appeals therefrom.
- 10 **"Crisis Costs"** means all reasonable and necessary costs, charges, fees and expenses incurred, with the prior written consent of the **Insurer** and directly resulting from a **Claim**, by the **Entity** for services provided by any public relations firm, crisis management firm or law firm to reduce damage to reputation suffered by the **Entity** or the **Insured Persons** arising out of information publicly accessible by third parties via the media.
- 11 **"Damages"** means:
 - (a) with respect to the **Insured Persons**:
 - i) direct compensatory civil damages which the **Insured Persons** are legally liable to pay as a result of a judgment or settlement;
 - ii) civil fines or penalties and punitive or exemplary damages or the multiple portion of any multiplied damage award, awarded pursuant to a judgement or settlement, but only if not declared uninsurable under the law pursuant to which this **Policy** is construed;

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

However, "**Damages**" shall not include:

- i) civil or criminal fines or penalties imposed by law other than (i) **Statutory Liabilities** and (ii) civil fines or penalties imposed on **Insured Persons** but only if such civil fines or penalties are not declared uninsurable under the law pursuant to which this **Policy** is construed;
 - ii) any costs or expenses incurred or to be incurred by the **Entity** or the **Benefit Program** which are **Based Upon** any order for, grant of or agreement to provide injunctive, administrative or any other non-monetary remedy or relief;
 - iii) any costs or expenses incurred or to be incurred by the **Entity** or the **Benefit Program** which are **Based Upon** any order, grant, judgment or agreement under the *Canadian Human Rights Act*, the *Employment Equity Act*, the *Americans with Disabilities Act*, the *Civil Rights Act of 1964* or similar provisions of any other pertinent **Statute**;
 - iv) any amount that represents or is substantially equivalent to dividends or distributions of earnings;
 - v) **Damages** that are declared uninsurable under the law pursuant to which this **Policy** is construed.
- 12 "**Defence Costs**" means the amounts incurred in accordance with **SECTION VI** of this **Policy** for the defence or legal representation of **Insureds** in respect of **Claims**, such as legal, accounting, adjusting or investigating expenses, **Crisis Costs** and the cost of any appeal bond, attachment bond, or similar bond. However, the term is exclusive of i) the regular or overtime salaries or wages, fees, benefit costs and travel or accommodation expenses of **Insured Persons** in connection with **Claims** and ii) **Investigation Costs**.
- 13 "**Derivative Demand**" means any written notice, as described in Section 251(2)(a) of the *Canada Not-for-profit Corporations Act* S.C. 2009, c. 23 to the directors of the **Entity** of the complainant's intention to apply to the Court under Section 251 for leave to bring an action in the name and on behalf of the **Entity**, or intervene in an action to which the **Entity** is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the **Entity**, or any similar provision of any provincial or foreign **Statute**.
- 14 "**Employee**" means a natural person (except when acting in a non-employee capacity) who currently provides or previously provided services to the **Entity**, whether part-time or full-time, in the ordinary course of the **Entity's** business and whom the **Entity** compensates or compensated by salary, wages or commissions and maintains or maintained the right to control and direct in the performance of such services. However, **Employee** does not mean any broker, factor, commission merchant, consignee, independent or dependent contractor, consultant, or other agent or representative of the same general character.
- 15 "**Employee Benefit Plan**" means:
- (a) any plan so defined by the *Pension Benefits Standard Act*, 1985, R.S. 1985, c.32 (2nd Supp), the *Ontario Pension Benefits Act*, R.S.O 1990, c P-8, or similar provincial **Statute**, which is operated for the benefit of the **Employees** of the **Entity**;
 - (b) any medical or welfare benefit plan or disability benefit plan as defined by the *Canada Health Act*, R.S.C. 1985, c. C-6, the *Ontario Health Insurance Act*, R.S.O. 1990, c. H.6, or, any other similar provincial **Statute**;
 - (c) any plans as defined in the *Ontario Insurance Act*, R.S.O. 1990, c. 1.8, or, similar provincial **Statute**;
 - (d) any retirement compensation agreement, flexible employee benefit plan or registered supplementary unemployment benefit or stock ownership plan not subject to Canadian **Statute** if sponsored by the **Entity** for the benefit of the **Insured Persons** of the **Entity**;
 - (e) in the United States of America, any plan, including a welfare benefit plan, as defined in **ERISA**,
- provided, however, **Employee Benefit Plan** shall not include any multi-employer plan as defined in the *Pension Benefits Standards Act*, R.S. 1985, c.32 (2nd Supp.), the *Ontario Pension Benefits Act*, R.S.O 1990, c. P.8 or **ERISA** or by the common, civil or statutory law of Canada, the United States of America or any province, territory, state or other jurisdiction anywhere in the world.

- 16 **"Entity"** means:
- (a) any non-profit corporation, organization or association named in **Item 1** of the **DECLARATIONS**; and
 - (b) any **Subsidiary** at the effective date of this **Policy**, any **Subsidiary** created by the **Entity**, directly or indirectly, after the effective date of this **Policy** or any former **Subsidiary**, but coverage with respect to such former **Subsidiary** is only afforded with respect to **Loss** arising from **Wrongful Acts** committed or allegedly committed while it was a **Subsidiary**; and
 - (c) any **Subsidiary** acquired by the **Entity**, directly or indirectly, after the effective date of this **Policy**, but coverage with respect to such acquired **Subsidiary** is only afforded with respect to **Loss** arising from **Wrongful Acts** committed or allegedly committed after it became a **Subsidiary**; and
 - (d) any other entity which during the **Policy Period** is or was formally constituted and recognized by the **Entity** as part of or a member of the **Entity**, but coverage is only afforded with respect to **Loss** arising from **Wrongful Acts** committed or allegedly committed while the other entity was so formally constituted and recognized; and
 - (e) in the event of **Insolvency**, any receiver, conservator, liquidator, trustee, sequestrator or similar official, including foreign equivalents, which has been appointed by a provincial, state or federal court, agency, official or foreign equivalents or by a creditor to take control of, supervise, manage or liquidate the **Entity**.
- However, **"Entity"** shall not include any **Benefit Program(s)**.
- 17 **"ERISA"** means the *Employee Retirement Income Security Act of 1974* of the United States of America, as amended.
- 18 **"Extradition Proceeding"** means a formal proceeding, including the execution of a warrant for the arrest or detention of any **Insured Persons**, to extradite any **Insured Person** from the country in which he or she is presently residing to another country which is a sovereign state, for the purposes of either **Prosecution** by that state or imposing a sentence on any **Insured Person** by that state in respect of a criminal or penal offence actually or allegedly committed or attempted by such **Insured Person** even if that offence would not have constituted a criminal or penal offence if it had been committed or attempted in Canada.
- 19 **"Fiduciary Claim"** means a **Claim Based Upon a Fiduciary Wrongful Act**.
- 20 **"Fiduciary Wrongful Act"** means:
- (a) any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty (including fiduciary duty) by the **Insureds**, individually or collectively, in the discharge of their legal obligations, including without limitation any violation of the responsibilities, obligations or duties imposed by the *Pension Benefit Standards Act of Canada R.S. 1985 c.32(2nd Supp.)*, by the *Employee Retirement Income Security Act of 1974*, as amended, of the United States of America, or by similar provisions of any other **Statute**, solely in their capacity as fiduciaries of a **Benefit Program**;
 - (b) any actual or alleged negligent act, error or omission solely in the **Administration of a Benefit Program**; and
 - (c) any other matter claimed against the **Insureds** solely because of their service as a fiduciary of a **Benefit Program**.
- 21 **"Government Sponsored Benefit Plan"** means any benefit or compensation plan created by any **Statute** of which the funds and contingent liabilities are held or managed by a government or governmental body and which provides for workers' compensation benefits, employment (or unemployment) insurance, unemployment compensation, retirement benefits, social or old age security, Canada Pension Plan or Quebec Pension Plan benefits, health insurance or disability benefits, or automobile insurance or accident benefits.
- 22 **"Inquiry"** and **"Inquiries"** mean any inquiry, investigation or commission **Begun** pursuant to **Statute** during the **Policy Period** which an **Insured Person** reasonably believes may lead to disclosures or findings of fact or of law which are relevant to the civil, penal or criminal liability of an **Insured Person** or of the **Entity** or **Benefit Program**.
- 23 The term **"Insolvency"** means the financial position of the **Entity** or a **Benefit Program** as a debtor as that term is defined and used in Canada within the provisions of the *Bankruptcy and Insolvency Act. R.S.C. c. B-3*. or similar provisions of any other provincial or foreign **Statute**. Without limiting the generality of the foregoing, **Insolvency** shall occur when (i) any receiver, conservator, liquidator, trustee, sequestrator or similar official has been appointed by a provincial, state or federal court, agency or official or by a creditor to take control of, supervise, manage or liquidate the **Entity** or the **Benefit Program**, (ii) a reorganization proceeding relating to the **Entity** or the **Benefit Program** has been brought in Canada under the *Companies' Creditors Arrangement Act. R.S.C. c. C-36*, (iii) the **Entity** becomes a debtor in possession under Chapter 11 of the *United States Bankruptcy Code*, or (iv) a reorganization proceeding relating to the **Entity** or the **Benefit Program** has been brought in any foreign jurisdiction under similar provisions of any pertinent **Statute**.
- 24 **"Insured"** and **"Insureds"** may be used interchangeably and shall mean any one or more of **Entity**, a **Benefit Program** and the **Insured Persons**, whether jointly or severally.

- 25 **"Insured Person"** and **"Insured Persons"** may be used interchangeably and shall mean, but solely when acting in the described capacity:
- (a) any person or persons, individually or collectively, who were, now are, or will be duly elected, appointed or *de facto* chairpersons, directors, officers, trustees, executive directors, executive officers, treasurers, secretaries or managers of the **Entity**, or any equivalent executive position under applicable law in any country other than Canada or the United States of America;
 - (b) a chairperson or member of a duly constituted committee of the **Entity** or its board;
 - (c) an **Employee**;
 - (d) a **Member**;
 - (e) a **Volunteer**;
 - (f) any person contemplated by (a) to (e) above who, at the written request of the **Entity** or with the written consent of the **Entity**, served or serves as a director or officer of any other non-profit entity, but solely in their capacity as a director of such other non-profit entity;
 - (g) any person contemplated by (a) to (e) above who, at the written request of the **Entity**, was, now is or shall be a trustee, director, (*de facto* or otherwise), officer, employee, administrator or committee member while acting in their capacity as a fiduciary of or performing **Administration** for any **Benefit Program**;
 - (h) the estates, heirs, legal representatives or assigns of any of the natural persons contemplated in (a) to (g) above, in the event of their death, incapacity, bankruptcy or insolvency;
 - (i) the **Spouse** of any person contemplated in (a) to (g) above, if such **Spouse** is named as a co-defendant in a **Claim** against any such person as a result of an alleged **Wrongful Act** solely by reason of i) such **Spouse's** status as a **Spouse**, or ii) such **Spouse's** ownership interest in property which the claimant seeks as recovery.
- However, **"Insured Person"** shall not include any trustee, director, officer or employee of a **Government Sponsored Benefit Plan**.
- 26 **"Interrelated Wrongful Acts"** means any and all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or individual, or series of causally or logically connected facts, circumstances, situations, events, transactions, causes or individuals.
- 27 **"Investigation Costs"** means reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred by the **Entity**, its Board of Directors or any committee of its Board of Directors in connection with the investigation or evaluation of any **Derivative Demand**. However, the term is exclusive of i) the regular or overtime salaries or wages, fees, benefit costs and travel or accommodation expenses of **Insured Persons** in connection with the investigation or evaluation of any **Derivative Demand**, and ii) **Defence Costs**.
- 28 **"Loss"** means: i) **Damages**, and ii) **Defence Costs**.
- 29 **"Member"** means any natural person who is or has been formally admitted to and recognized by the **Entity** as a member of the **Entity**.
- 30 **"Oppression Remedy"** means an order or other remedy sought under Section 253 of the *Canada Not-for-Profit Corporations Act* S.C. 2009, c. 23, or similar provisions of any provincial or foreign **Statute**.
- 31 **"Pay Differential"** means any actual or alleged differential in pay or salary between **Employee(s)** who perform the same work or substantially the same work.
- 32 **"Pay Equity"** means any actual or alleged differential in pay or salary between **Employee(s)** who perform different work of equal or comparable value.
- 33 **"Policy Period"** means the period of time from the effective date shown in **Item 2** of the **DECLARATIONS** to the earlier of the expiry date shown in **Item 2** of the **DECLARATIONS** or the effective date of cancellation of this **Policy**. If the **DISCOVERY CLAUSE** option is engaged in accordance with **SECTION III**, then such period (herein the **Discovery Period**) shall be part of and not in addition to the **Policy Period**.
- 34 **"Pollutants"** means any solid, liquid or gaseous substance, emanation, irritant, radiation, or contaminant in any form (including but not limited to noise, smoke, vapours, fumes, odours, electromagnetic radiation, thermal contamination, greenhouse gas emissions, soot, oil or oil products, asbestos or asbestos products, silica, mould, acids, alkalis, chemicals, medical waste or any other waste materials) which constitutes a nuisance, hazard or pollutant of any kind.
- 35 **"Proposed Insureds"** means all persons who would be insured in any capacity under the insurance policy being applied for.
- 36 **"Prosecution"** means any prosecution, charge, information, indictment or other proceeding **Begun** against an **Insured** during the **Policy Period** by the Crown or by any other government or governmental body or regulatory authority seeking penal or criminal sanctions anywhere in the world, including, without limitation, a criminal prosecution.

- 37 **"Regulatory or Administrative Proceeding"** means any formal proceeding pursuant to a **Statute** before a board, tribunal, commissioner, adjudicator or other judicial or quasi-judicial officer which may lead to a ruling or decision binding on an **Insured**, including without limitation a proceeding before a labour standards commission, labour relations board or other similar body.
- 38 **"Spouse"** means a spouse or domestic partner recognized as such by **Statute** or in the written provisions of any benefits program established by the **Entity**.
- 39 **"Statute"** shall include all applicable federal, state, provincial, territorial or local statutes or by-laws or common or civil law in force and any amendments thereto and all applicable regulations or statutory instruments promulgated thereunder, anywhere in the world. Any reference to a **Statute** by name shall include all amendments, all regulations or all other statutory instruments promulgated thereunder and any new **Statute** which replaces or is substituted for the named **Statute** in whole or in part.
- 40 **"Statutory Liabilities"** means unpaid liabilities of the **Entity** or any **Benefit Program**, including unpaid tax liabilities and unpaid wages and deductions at source, for which any **Insured Person** becomes personally liable in their capacity as such under any applicable **Statute** if the **Entity** or the **Benefit Program** is in **Insolvency**.
- 41 **"Subsidiary"** means:
- (a) any non-profit corporation, organization or association in which the **Entity**, named in **Item 1** of the **DECLARATIONS**, owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities or voting rights representing the right to vote for the election of, or to appoint, such entity's board of directors, board of trustees or a functional equivalent thereof, or in cases where no such securities have been issued, the ability to control or direct such entity's managerial decisions; or
 - (b) any for-profit entity added specifically by endorsement as a **Subsidiary** to this **Policy**.
- 42 **"Third Party"** means any natural person who is a customer, vendor, service provider, client or other business invitee of the **Entity**.
- 43 **"Volunteer"** means a natural person (except when acting in a non-volunteer capacity) who currently provides or previously provided services to the **Entity**, or to any third party under the auspices and with the knowledge and authorization of the **Entity**, without monetary compensation.
- 44 **"Whistleblower Activity"** means an activity whereby an **Insured Person**:
- (a) reports or submits complaints regarding financial statement disclosure issues, accounting, internal accounting controls, auditing matters or violations of the **Entity's** or **Benefit Program's** code of business conduct and/or ethics; or
 - (b) provides information, causes information to be provided or otherwise assists in a **Prosecution, Inquiry, Regulatory or Administrative Proceeding** or official investigation of any kind regarding any conduct which he or she reasonably believes to be a violation of employment or labour **Statutes** or any other **Statutes** regarding fraud or the commission or possible commission of a criminal or penal offence.
- 45 **"Wrongful Act"** means:
- (a) with respect to **Insured Persons**, any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty (including fiduciary duty) by the **Insured Persons**, individually or collectively, in the discharge of their legal obligations solely in their capacity as **Insured Persons**, including without limitation **Wrongful Employment or Membership Practices** and **Whistleblower Activity**, or any other matters, including **Statutory Liabilities**, claimed against them solely by reason of their being **Insured Persons**;
 - (b) with respect to the **Entity**, any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **Entity**, including without limitation **Wrongful Employment or Membership Practices**;
 - (c) with respect to the **Insureds**, a **Fiduciary Wrongful Act**.
- 46 **"Wrongful Employment or Membership Practice(s)"** means, with respect to an **Employee, Applicant, Third Party, Member** or **Volunteer** only, any actual or alleged:
- (a) wrongful denial of admission or status to a **Member** or **Volunteer**;
 - (b) wrongful termination, dismissal, or discharge (either actual or constructive) of an **Employee**;
 - (c) wrongful termination of status or expulsion of a **Member** or **Volunteer**;
 - (d) breach of any oral or written employment contract or agreement, or quasi-employment contract or agreement, or any contract or agreement relating to status as a **Member** or **Volunteer**;
 - (e) misrepresentation relating to employment or to status as a **Member** or **Volunteer**;
 - (f) discrimination relating to employment or to status as a **Member** or **Volunteer**;
 - (g) wrongful failure to employ or promote, or wrongful discipline, demotion, deprivation of a career opportunity, or failure to grant tenure, or negligent **Employee, Member** or **Volunteer** evaluation;
 - (h) libel or slander relating to employment or relating to an individual in their capacity as a **Member** or **Volunteer**;

- (i) workplace harassment (including sexual harassment), or retaliation, or invasion of privacy, or employment-related defamation, or employment-related wrongful infliction of emotional distress, or other unwelcome verbal, visual or physical conduct of a provocative nature that creates an intimidating, hostile or offensive working environment;
- (j) retaliatory treatment of an **Employee, Member or Volunteer** as a result of such **Employee's, Member's or Volunteer's** exercise of their rights pursuant to any **Statute**, or arising from such **Employee's, Member's or Volunteer's Whistleblower Activity** or arising from such **Employee's, Member's or Volunteer's** involvement with or report to a regulatory or government agency with respect to the **Entity's** activities or operations.

47 **"Wrongful Employment or Membership Practices Claim"** means a **Claim Based Upon Wrongful Employment or Membership Practices**.

SECTION III - DISCOVERY CLAUSE

- 1 If the **Insurer** cancels or refuses to renew this **Policy** or the **Entity** cancels or elects to not renew this **Policy**, the **Insureds** may, upon payment of an **Additional Premium** as specified in **Item 7**, of the **DECLARATIONS**, extend the period for discovery of a **Loss** for an **Additional Period** as specified in **Item 7**, of the **DECLARATIONS** from the date this **Policy** terminates (herein the **Discovery Period**). The extension of this **Policy's** coverage is for any **Claim** first made or **Begun** during the **Discovery Period**, of which notice is given to the **Insurer** in accordance with **SECTION VII** of this **Policy** during the **Discovery Period**, but only if the **Claim** is **Based Upon Wrongful Acts** committed before the date of such cancellation or non-renewal, whichever is applicable.
- 2 The right of the **Insureds** to engage the **DISCOVERY CLAUSE** is conditional upon the following:
 - (a) the **DISCOVERY CLAUSE** must be engaged by the **Insureds** by written notice to the **Insurer** and payment of the **Additional Premium** to be received by the **Insurer** not later than thirty (30) days after the date of cancellation or non-renewal;
 - (b) there is no right to engage the **DISCOVERY CLAUSE** in the event of cancellation of the **Policy** resulting from non-payment of premium or if the **Insured Persons** are otherwise not in compliance with the terms and conditions of this **Policy**;
 - (c) the **Insurer's** offer of any renewal terms, conditions, limits of liability or premiums different from those of the expiring policy shall not constitute a cancellation or refusal to renew;
 - (d) the **DISCOVERY CLAUSE** shall not be cancelled or rescinded once engaged and the **Additional Premium** due for the period shall be fully earned at inception of the **Discovery Period**;
 - (e) the engagement of the **DISCOVERY CLAUSE** shall not increase the **LIMITS OF LIABILITY** otherwise available to pay **Loss**;
 - (f) **Claims** made and **Prosecutions** or **Inquiries Begun** during the **Discovery Period** shall be subject to the same **LIMITS OF LIABILITY** applicable to **Claims, Prosecutions** or **Inquiries**, as the case may be, made or **Begun** during the **Policy Period**.

SECTION IV - EXCLUSIONS

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

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

- 1 which is insured by another valid and collectible policy or policies, including without limitation any policy of general liability insurance, professional liability insurance or any insurance policy for pollution liability or environmental liability, except with respect to any excess **Loss**, or **Investigation Costs** beyond the amount or amounts of coverage under such other policy or policies, and then only when the limits of coverage under such policy or policies have been exhausted by payment by the other insurer(s). The **Insurer** shall have no obligation to defend or to make any contribution to the cost of defending or to pay **Investigation Costs** in respect of any **Claim** or **Derivative Demand** insured by another policy or policies unless and until the limits of coverage under the other policy or policies have been exhausted by payment by the other insurer(s);
- 2 for bodily injury, sickness, disease, handicap, impairment or death of any person.
However, this exclusion shall not apply:
 - (a) to **Defence Costs** in connection with a **Prosecution** against the **Insured Persons** by the Crown in Canada pursuant to Section 217.1 of the *Criminal Code of Canada* (as amended by Bill C-45) or similar provisions of any provincial or foreign **Statute** including, without limitation, the *Corporate Manslaughter and Corporate Homicide Act 2007* of the United Kingdom; or
 - (b) to any **Claim** that specifically alleges that **Wrongful Employment or Membership Practices** have been committed; or
 - (c) to any **Claim** against the **Insured Persons** for retaliatory treatment of any claimant as a result of such claimant's exercise of collective bargaining rights or rights under any collective agreement;
- 3 for damage to or destruction of any tangible or intangible property, including loss of use thereof;

- 4 **Based Upon:**
- (a) any demand, suit or other proceeding pending, or order, decree or judgment entered against any **Insured** on or prior to the effective date of this **Policy**, or, if this **Policy** is part of a series of consecutive renewals issued by the **Insurer**, the effective date of the original **Policy**, or **Based Upon** the same or substantially the same underlying or alleged facts; or
 - (b) any **Claim** or **Derivative Demand** already made, commenced or **Begun** against any **Insured**, or which arises from any fact, circumstance or situation indicating the possibility of a **Claim** or **Derivative Demand** and already known to any **Insured**, upon the effective date of this **Policy**, or, if this **Policy** is part of a series of consecutive renewals issued by the **Insurer**, the effective date of the original **Policy**;
- 5 by or on behalf of the **Entity**, or any **Subsidiary** of the **Entity**, whether directly or derivatively, except:
- (a) where such **Subsidiary** bringing the **Claim** is acting totally independently of, and totally without the solicitation of, or assistance of, or participation of, or intervention of, any of the **Insureds** other than when the solicitation, assistance, participation or intervention of any of the **Insureds** arises from the **Insureds** engaging in **Whistleblower Activity**; or
 - (b) where the **Claim** is brought in the name of the **Entity** by way of derivative action, and totally without the solicitation of, or assistance of, or participation of, or intervention of, the governing board or body of the **Entity** other than when the solicitation, assistance, participation or intervention of the governing board or body of the **Entity** arises from the governing board or body engaging in **Whistleblower Activity**; or
 - (c) in the event of an **Insolvency** any **Claim** brought by the examiner, trustee, receiver, receiver manager, liquidator or rehabilitator (or any assignee thereof), if any, of the **Entity**; or
 - (d) where the **Claim** is made against an **Insured Person** engaging in **Whistleblower Activity**;
- 6 if the **Claim** was first made, or the **Claim** is **Based Upon** a **Wrongful Act** which was committed, before the **Entity** became a **Subsidiary**, or before the **Benefit Program** was added to this **Policy** by endorsement, as the case may be;
- 7 **Based Upon:**
- (a) the actual or threatened presence, discharge, dispersal, release, escape or disposal of **Pollutants** in or on real or personal property (immoveable or moveable), water or the atmosphere, whether such presence, discharge, dispersal, release, escape or disposal is intentional or accidental; or
 - (b) any direction or request that the **Entity** or the **Benefit Program** test for, monitor, reduce, clean up, remove, contain, treat, detoxify or neutralize **Pollutants** or any voluntary decision to do so.
- However this exclusion shall not apply:
- i) to **Loss** resulting from any **Claim** brought by any **Member** of the **Entity** in his capacity as such, whether in his own right or on behalf of the **Entity** by way of derivative action, provided that such **Claim** is brought and maintained totally without the solicitation of, assistance of, participation of or intervention of the governing board or body of the **Entity**; or
 - ii) to any **Fiduciary Claim**, **Derivative Demand** or to any coverage provided under **Insuring Agreement A** of this **Policy Based Upon** the matters described in 7(a) and 7(b) above; or
 - iii) to **Loss** resulting from a **Claim** for **Wrongful Employment or Membership Practice(s)**; or
 - iv) to **Defence Costs** incurred in respect of a **Claim Based Upon** the matters described in 7(a) and 7(b) above, which alleges a violation of the *Canadian Environmental Protection Act*, S.C. 1999, c. 33, or the *Ontario Environmental Protection Act*, R.S.O. 1990, c. E-19, or similar provisions of any Canadian provincial, territorial or local environmental protection law.
- 8 **Based Upon** their service as directors of any for-profit entity, even if directed or requested by the **Entity** to serve as directors of such for-profit entity.
- However, this exclusion shall not apply to any **Claim Based Upon** their services as directors of any other non-profit entity where there is prior written consent of the **Entity**;
- 9 **Based Upon** any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty (including fiduciary duty) by the **Insured Persons**, individually or collectively, in the discharge of their legal obligations, including without limitation any violation of the responsibilities, obligations or duties imposed by the *Pension Benefit Standards Act of Canada R.S. 1985 c.32 (2nd Supp.)*, by the *Employee Retirement Income Security Act of 1974* of the United States of America, or by similar provisions of any other **Statute**, solely in their capacity as fiduciaries, trustees, administrators or members of the pension committee of any pension, profit sharing, health and welfare or other employee or member benefit plan or trust which is **NOT** named in the **DECLARATIONS**, or added to this **Policy** by endorsement during the **Policy Period**;
- 10 **Based Upon** any violation of the responsibilities, obligations or duties imposed by or pursuant to any **Statute** governing or in any way relating to a **Government Sponsored Benefit Plan**.
- However, this exclusion shall not apply to any **Claim** (i) for retaliatory treatment of any claimant as a result of such claimant's exercise of rights pursuant to such **Government Sponsored Benefit Plan**, or (ii) **Based Upon** any actual or alleged negligent act, error or omission solely in the **Administration** of the **Government Sponsored Benefits Plan**, or (iii) for **Statutory Liabilities**;

11 **Based Upon:**

- (a) any breach of any contract or agreement, whether verbal or written, by the **Entity**, including without limitation any commercial contractual liability of the **Entity** to an existing or potential customer, client, consumer, distributor, supplier, franchisee, franchisor, vendor, agent or representative, or any other third party; or
- (b) any liability of others assumed by the **Entity** under any contract or agreement, whether verbal or written.

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

12 **Based Upon:**

- (a) any violation of or failure to meet the responsibilities, obligations or duties imposed by the *Canada Labour Code* or similar provisions of any other **Statute**;
- (b) any employer vs employee conflict or dispute of any kind relating to a collective bargaining agreement.

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

13 for taxes, duties, levies, fees, charges or any other amount due by the **Entity** to any level of government or governmental agency.

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

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

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

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

B BENEFIT OF DOUBT EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

1 If a **Claim** is made against an **Insured Person** alleging that the **Insured Person** committed a criminal or other intentionally dishonest act, the **Insurer** will defend and indemnify the **Insured Person**, subject to the terms and conditions of this **Policy**, until such time as the **Insured Person** shall be held to have committed a criminal or other intentionally dishonest act by final, unappealable judgment. Once such final, unappealable judgment has occurred, however, the **Insurer** shall then have no further obligations to the **Insured Person** in question in relation to the **Claim** under this **Policy**, whether for defence or the payment of **Loss** or otherwise.

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

C COVERAGE FOR DEFENCE ONLY

1 The **Insurer** shall have no obligation under **Insuring Agreements C** and **D** to indemnify the **Entity** or the **Benefit Program** or to pay any **Damages** on its behalf with respect to **Claims**:

- (a) for salary, wages, pay in lieu of notice, termination or severance pay (including an enhancement to amounts paid as termination or severance pay or pay in lieu of notice on account of bad faith or inducement), "back pay", bonuses, benefits, expenses (including mitigation expenses), or any other type of employment-related compensation or benefit; or
- (b) for "front pay", future damages or other future economic relief for failure to reinstate or rehire; or
- (c) **Based Upon Pay Differential**.

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

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

SECTION V - LIMITS OF LIABILITY

- 1 The **Insurer** shall be liable to pay all **Damages** in excess of the **RETENTIONS** set forth in **Item 5** of the **DECLARATIONS** up to the **LIMITS OF LIABILITY** stated in **SECTION V 2** below. One **RETENTION** shall apply (i) to each and every **Loss**, and (ii) to each and every **Derivative Demand**.
- 2 The **LIMITS OF LIABILITY** shall be the amounts set forth in **Item 3** of the **DECLARATIONS**, and the amount shown in **Item 3 (f)** of the **DECLARATIONS** shall be the maximum aggregate liability of the **Insurer** with respect to the all **Damages** and **Investigation Costs** arising from all **Claims** and **Derivative Demands** made or **Begun** during the **Policy Period**, regardless of the number of **Insureds** involved, subject however to subsection 3 of **SECTION V** below.
- 3 In the event that:
 - (a) the **LIMIT OF LIABILITY** stated in **Item 3 (f)** of the **DECLARATIONS** is exhausted by the payment of **Damages** and/or **Investigation Costs**; and
 - (b) a **Claim** made or **Begun** against the **Insured Persons** during the **Policy Period** which is covered under **Insuring Agreement A** of **SECTION I** remains outstanding (the "**Outstanding Claim**"); and
 - (c) the **Insured Persons** are not covered for **Loss** arising from the **Outstanding Claim** under any other insurance policy, whether primary or excess, or are covered but the limits under the policy in question have been exhausted by the payment of **Damages** and/or **Investigation Costs**,
 the **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4** of the **DECLARATIONS** shall apply, but only to **Damages** arising from the **Outstanding Claim**. The **Insurer's** maximum aggregate liability for **Damages** arising from all **Claims** made or **Begun** during the **Policy Period** shall then be the sum of the **LIMIT OF LIABILITY** stated in **Item 3 (f)** of the **DECLARATIONS** and the **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4** of the **DECLARATIONS**. However, the **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4** of the **DECLARATIONS** shall not apply to **Damages** arising from **Claims** which are covered under **Insuring Agreements B, C, D** or **E**.
In the event that more than one of the **Insured Persons** is included in the same **Outstanding Claim** and the **ADDITIONAL LIMIT OF LIABILITY** is insufficient to pay all **Damages** arising from the **Claim**, the **ADDITIONAL LIMIT OF LIABILITY** shall be prorated among the **Insured Persons** in proportion to their respective legal liability for the awards of **Damages** i) unless otherwise mutually agreed upon by such **Insured Persons** and the **Insurer**, or ii) unless a court of competent jurisdiction shall decide otherwise.
- 4 **Claims Based Upon** the same **Wrongful Act(s)**, or **Interrelated Wrongful Acts**, committed by one or more **Insureds**, shall be considered a single **Loss** and the **Insurer's** liability for **Damages** arising from such single **Loss** shall be limited to the **LIMITS OF LIABILITY** stated in **SECTION V 2** above.
Derivative Demands Based Upon the same **Wrongful Act(s)**, or **Interrelated Wrongful Acts**, committed by one or more **Insureds**, shall be considered a single **Derivative Demand** and the **Insurer's** liability for **Investigative Costs** arising from such single **Derivative Demand** shall be limited to the **LIMITS OF LIABILITY** stated in **SECTION V 2** above.
- 5 Where **Loss** covered under this **Policy** is due and payable in accordance with the terms of this **Policy**, it shall be paid in the following order, unless a court of competent jurisdiction shall decide otherwise:
 - (a) firstly, and to the extent that the **LIMITS OF LIABILITY** permit, to the **Insured Persons** where such **Loss**, or portion thereof, is payable under **SECTION I, INSURING AGREEMENTS A** or **D i)**. However, in the event that more than one of the **Insured Persons** is legally liable or has incurred the same **Loss** and such **Loss** is due and payable at the same time to or on behalf of one or more than one of the **Insured Persons** under this **Policy**, the total amount of such **Loss** and the **RETENTION**, if applicable, shall be prorated amongst the **Insured Persons** in proportion to their respective legal liability for that **Loss** unless otherwise mutually agreed by such **Insured Persons** and the **Insurer**;
 - (b) secondly, to the extent that all **Loss** due and payable under (a), above, has been paid and the **LIMITS OF LIABILITY** permit, to the **Entity** or the **Benefit Program** in respect of the **Loss**, or portion thereof, payable under **SECTION I, INSURING AGREEMENTS B** or **D ii)**;

- (c) thirdly, to the extent that all **Loss** due and payable under (a) or (b), above, has been paid and the **LIMITS OF LIABILITY** permit, to the **Entity** or the **Benefit Program**, in respect of **Loss** payable under **SECTION I, INSURING AGREEMENTS C or D iii)**.
 - (d) fourthly, to the extent that all **Loss** due and payable under (a), (b) or (c) above has been paid and the **LIMITS OF LIABILITY** permit, to the **Entity** and/or the **Insured Persons**, in respect of **Investigation Costs** incurred by them which are payable under **Insuring Agreement E i)**.
- 6 The **Insured** shall only pay one of the **RETENTIONS** stated in **Item 5** of the **DECLARATIONS** in respect of the sum of all **Loss** arising from a **Claim** or **Investigation Costs** arising from a **Derivative Demand** which is covered in part under more than one of **Insuring Agreements A, B, C, D and E**. The applicable **RETENTION** shall be whichever is greater.

SECTION VI - DEFENCE AND SETTLEMENT

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

However, if the **Insured Persons** are covered under **Insuring Agreements A or D i)** with respect to the **Claim** described in the foregoing subparagraph (b), the **Insurer** will pay the share of **Defence Costs** attributable to the **Entity**.
 - (d) In the event that the **Insurer** and the **Insureds** and the party or parties who are not **Insureds** are unable to agree on the allocation of **Defence Costs** or **Investigation Costs** or the retention of counsel or the carriage and conduct of the **Insureds'** defence against a **Claim** or **Derivative Demand** described in this subsection 4 of **SECTION VI**, then any of them may, by written notice, require that the disputed issue be settled by binding **Arbitration** before a single arbitrator. The binding **Arbitration** shall occur as soon as possible, according to the rules agreed on by the parties. Failing agreement on the arbitrator, the rules of binding **Arbitration** or the schedule of hearing dates, the binding **Arbitration** shall proceed as determined by a court of competent jurisdiction.

SECTION VII - NOTICE OF CLAIM OR DERIVATIVE DEMAND

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

If the **Insureds** shall fail to give timely notice of a **Claim** or **Derivative Demand** to the **Insurer** and the **Insurer** suffers prejudice therefrom, the **Insureds** shall forfeit their entitlement to indemnity, defence or any other coverage or benefit in respect of the **Claim** or **Derivative Demand** under this **Policy**.
- 2 If, during the **Policy Period**, any past, present, or future President, Chief Executive Officer, Executive Director, Chief Financial Officer or Treasurer or anyone holding an equivalent position with the **Entity** shall become aware of any facts or circumstances which may reasonably be expected to give rise to a specific **Claim** or **Derivative Demand** for which coverage would be afforded by this **Policy**, and written notice of such facts or circumstances and the anticipated **Claim** or **Derivative Demand** is given as soon as practicable to the **Insurer** during the **Policy Period**, then the **Claim(s)** or **Derivative Demand (s)** subsequently arising from such facts or circumstances shall be deemed to have been made or **Begun** during the **Policy Period** in which the facts or circumstances were reported.
- 3 If the **Insureds** give notice to the **Insurer** of a **Claim** or **Derivative Demand** under **Section VII 1**, then any subsequent **Claim** or **Derivative Demand Based Upon** essentially the same facts, **Wrongful Acts** or **Interrelated Wrongful Acts** shall be aggregated with and deemed to be the same as the **Claim** or **Derivative Demand** which was first reported, as the case may be.
- 4 All such aggregated **Claims** or **Derivative Demands** shall attach to the **Policy Period** during which the first **Claim** or **Derivative Demand** was reported and shall be subject to the same **LIMITS OF LIABILITY** stated in **Item 3** of the **DECLARATIONS**, or the sum of the same **LIMITS OF LIABILITY** stated in **Item 3** of the **DECLARATIONS** and the same **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4** of the **DECLARATIONS** if available under subsection 3 of **SECTION V**.
- 5 The **Insureds** shall, as a condition precedent to any and all obligations of the **Insurer** under this **Policy**, give to the **Insurer** such information, financial guarantees, and cooperation as it may reasonably require, including but not limited to a description of the **Claim** or **Derivative Demand**, or the facts or circumstances, the nature of the specific **Wrongful Act**, the nature of the alleged or potential **Loss**, the names of actual or potential claimants or complainants, and the manner in which the **Insureds** first became aware of the **Claim**, **Derivative Demand** or facts or circumstances.
- 6 Notice hereunder shall be given to **The Guarantee Company of North America**, at the address of the **INSURER ISSUING OFFICE** as set forth in **Item 9** of the **DECLARATIONS**.
- 7 After notice is given as provided in **SECTIONS VII 1** and **2** above, the **Insureds** shall, as a condition precedent to any and all obligations of the **Insurer** under this **Policy**, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and all other documents reasonably connected with the **Claim** or **Derivative Demand** in question. At any time after notice is given, the **Insurer** shall have the right to examine any **Insured Person** under oath for the purpose of investigating the coverage available.

SECTION VIII - GENERAL CONDITIONS

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

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

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

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

- 2 **SEVERABILITY:**

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

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

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

This **Policy** may also be cancelled by the **Insurer** only (i) in the event of non-payment of premium by the **Entity**, or (ii) by providing to the **Entity's** insurance broker written notice of its intent not to renew this **Policy**.

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

If the **Insurer** elects not to renew this **Policy**, the **Insurer** shall provide written notice to the **Entity's** insurance broker and the **Policy Period** will be extended, if necessary, to ensure that the **Policy** expiry 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. An offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

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

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

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

- 5 **MERGER, ACQUISITION, CONSOLIDATION or LOSS OF CONTROL:** In the event that fifty percent (50%) or more of the voting shares of the **Entity** named in **Item 1** of the **DECLARATIONS** are acquired by any person, entity or group of affiliated persons or entities other than whoever was holding said shares at the effective date stated in **Item 2** of the **DECLARATIONS**, or in the event that the **Entity** named in **Item 1** of the **DECLARATIONS**, or any **Benefit Program** named in the **DECLARATIONS** or otherwise added to this **Policy** by endorsement, merges or amalgamates with or is consolidated into another entity or into another benefit program, or otherwise ceases to govern and administer its own affairs, written notice thereof shall be given to the **Insurer** as soon as practicable, and in no event later than ninety (90) days thereafter, together with such information as the **Insurer** may request.

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

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

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

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

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

- 7 **CURRENCY:** **Loss** shall be paid in the legal currency of Canada. In the event that judgment is rendered or a settlement is denominated in a currency other than Canadian dollars, payment under this **Policy** shall be made in Canadian dollars at the rate of exchange published in *The Globe and Mail* on the date the final judgement becomes enforceable or the amount of settlement is agreed upon, respectively.

- 8 **PRESUMPTIVE INDEMNIFICATION:** For purposes of the coverage afforded to **Insured Persons** by this **Policy**, the **Entity** and any **Benefit Program** shall be deemed conclusively to have indemnified the **Insured Persons** for any **Claim** or **Loss** for which it is permitted or required by law to indemnify them, unless the **Entity** or the **Benefit Program** is in **Insolvency**.

If for any reason, other than **Insolvency**, the **Entity** or the **Benefit Program** refuses to indemnify its **Insured Persons** for any **Claim** or **Loss** for which it is permitted or required by law to indemnify them, the **Insurer** will pay the **Claim** or **Loss** on behalf of the **Insured Persons**. In such instances, the **Insurer** shall have the contractual right hereunder to recover from the **Entity** or the **Benefit Program** the amount of such **Claim** or **Loss** equal to the **RETENTION** set forth in **Item 5** of the **DECLARATIONS** not satisfied by the **Entity** or the **Benefit Program** and the **Insurer** shall be subrogated to the rights of the **Insured Persons** insured hereunder.

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

SECTION IX - ENTITY AS AGENT

By acceptance of this **Policy**, the **Insureds** agree that unless a) there exists a real and present conflict between their interests and those of the **Entity** and b) written notice of the conflict has been given to the **Entity** and the **Insurer**, the **Entity** shall act on behalf of all **Insured Persons**:

- (i) in preparing, signing and submitting the **Application** and **Application Information** to the **Insurer**;
- (ii) in paying premiums due to the **Insurer**;
- (iii) in providing notice under subsection 1 of **SECTION III**;
- (iv) in agreeing on allocation, the retainer of counsel or the carriage and conduct of the defence, as the case may be, under subsection 4 of **SECTION VI** or in arbitrating any dispute under subsection 4 of **SECTION VI**;
- (v) in giving notice of any **Claim** or **Derivative Demand** under subsection 1 of **SECTION VII** or of facts or circumstances under subsection 2 of **SECTION VII**;
- (vi) in cancelling the **Policy** or receiving notice of cancellation under subsection 3 of **SECTION VIII**;
- (vii) in receiving any return premiums that may be due under the **Policy**;
- (viii) in providing cooperation under subsection 5 of **SECTION VII**;
- (ix) in providing notice under subsection 5 of **SECTION VIII**.

**IN WITNESS WHEREOF, THE INSURER HAS CAUSED THIS POLICY
TO BE EXECUTED ON THE DECLARATIONS PAGE**