

Management Liability Insurance Risk Profile

The Applicant

Name of Firm/Applicant

Business Address: Street Address

City, Province, Country

Postal Code

Applicant's Revenue and Activities

1. Is the Applicant a Financial Institution?

Yes

No

2. Is the Applicant involved in handling or training using firearms, explosives, dangerous chemicals or weapons?

Yes

No

3. Applicant's fees/revenue for their last complete financial year?

\$

4. Which of the following best describes the Applicant's legal status?

Registered Charity

Non-Profit Organization

Private Company

First Nations Government

None of the above

*Non-profit Organization means an organization:

- resident in Canada;
- that is a club, society, association or hobby group organized for the purpose of social, recreational, religious, charitable, educational, athletic, literary, political or certain festival event;
- that cannot operate solely for charitable purposes;
- that cannot issue official donation receipts for income tax purposes;
- that cannot use its income to personally benefit its members.

Applicant's Operations

1. Has the Applicant been in operation for at least 12 months?

Yes No

2. Does the Applicant operate in accordance with all legal and regulatory requirements relevant to their activities?

Yes No

3. Does the Applicant have any of the following in the USA?

- Premises/Operations
- Subsidiaries
- Employees

Yes No

4. Does the Applicant provide a pension plan to their employees?

Yes No

5. Is the Applicant a Condominium Corporation or Strata Corporation?

Yes No

Non-Profit Organisation

1. Is the Applicant and its subsidiaries insolvent or unable to meet their financial obligations as they fall due (including debt covenants or statutory obligations for taxes, pensions, benefits and wages)?
- Yes No

Declaration

1. Has the Applicant had any claims which would fall within the proposed insurance coverage within the last 5 years?
- Yes No
2. Has any director, manager, partner or trustee of the Applicant or any person insured or proposed for insurance
- been convicted, or charged but not yet tried, of any criminal offence other than a motoring offence?
 - been declared bankrupt, gone into insolvent liquidation, or been the subject of receivership or an administration order?
- Yes No
3. Is the Applicant aware of any fact or circumstance which could give rise to a claim against the Applicant or any of their present or former directors, managers, partner or trustees?
- Yes No



4. To the knowledge of any director, manager, partner or trustee of the Applicant, has any company declined or terminated the insurance for the Applicant, any present director, manager, partner, trustee or for any predecessor in the business, past directors, managers, partners or trustees?

Yes

No

*By submitting this application you declare that the above statements and particulars are true and that you have not suppressed or misstated any material facts, and that you agree that this declaration shall be the basis of any binder or contract of insurance with the Insurer, and that the limits and deductibles as stated in the said binder or contract of insurance shall govern.

It is understood and agreed that the completion of this application does not bind the Insurer to the issue of the insurance nor the Applicant to the purchase of the insurance.

It is further understood and agreed that if, following submission of this application to the Insurer and prior to the date requested for coverage to be effective, the Applicant becomes aware of any information which has a bearing with regards to this application, the Insurer shall be immediately notified in writing of such information.

Note: The policy does not cover any claim or circumstance stated above or any act, error, omission or circumstance which could give rise to a claim, of which the Applicant has knowledge prior to the inception of the policy.

Applicant 's Signature (Signing Authority)

Date (mm/dd/yyyy)

Key facts.

Non-profit organization and Charities highlights

Policy features

- Clear, concise insuring clause
- Limits of Liability – per Claim and aggregate
- Insurer duty to defend
- Pay on behalf with advancement of defence costs
- Final adjudication/personal exclusions
- Insured option to settle Claims within retention
- Automatic runoff coverage for past subsidiaries and outside directorships
- Notice of Claim or circumstances clearly defined
- Claims made during the Policy Period and reported as soon as practicable
- 60 days Claims reporting upon policy expiration
- Bi-lateral Discovery Period Extension
- Automatic ERP run-off upon acquisition of Policyholder
- No charge 6 year automatic ERP for Retired Insured Persons
- Non-cancellable except non-payment of premium
- No retention applicable in the event of financial impairment or indemnification restriction
- Full severability of all exclusions and application form
- Non-rescindable coverage

Coverage features

- Worldwide coverage
- 100% Defence Costs allocation
- Defence Costs Coverage carve-back under Personal Injury Exclusion for Bill 168 and Bill C-45
- Pollution Defence Costs Coverage automatic 50% of Limits up to \$1 Million
- Pending or Prior Litigation Date – Automatic prior inception date unless otherwise endorsed
- Blanket Non-Profit/Charities Outside Directorship Liability
- Employment Practices Liability coverage including whistle blower coverage
- Spousal and estates coverage
- Taxes and statutory liabilities coverage
- Order of payments provision
- Prior notice exclusion applies only to covered notices
- Defense costs for breach of contract Claims

- Punitive, exemplary or aggravated damages worldwide where insurable and pre/post judgment interest
- Broad Insured vs. Insured coverage including Claims arising from cross indemnity, employment practices, derivative and whistleblower, past directors and officers beyond 3 years
- ‘For’ Pollution exclusion and carve-back coverage for pollution defence costs up to \$1 Million
- ‘For’ BI/PD exclusion + coverage for employee Claims mental anguish/emotional distress
- ‘For’ pension/ERISA liability exclusion
- Softened hammer clause to 80% coverage
- No commissions exclusion
- No nuclear exclusion
- No terrorism exclusion
- No failure to maintain insurance exclusion

Definitions

- Broad definition of Claim including non-monetary or injunctive relief, criminal, administrative, regulatory, and arbitration proceedings
- Broad definition of Insured Persons including de facto directors, directors, officers, trustees, employees, volunteers and members of faculty

The above is for descriptive purposes intended only to provide a general overview of the insurance product.

This is not a contract and only the insurance policy issued by the coverholder on behalf of the underwriters provides actual limits of liability, terms, conditions, and exclusions which are subject to individual underwriting criteria.

Coverage is subject to conditions and exclusions described in the policy.

For complete terms and conditions, refer to the policy itself.



Management liability insurance for non-profit organizations and charities

PLEASE READ THE ENTIRE POLICY CAREFULLY

This insurance is subject to its Insuring Clauses, Exclusions, Conditions, **Claims** Conditions and Definitions as well as the Declarations and any Endorsements forming part of this Policy.

The Common Exclusions, Common Conditions, Policy Conditions and Common Definitions of the Policy apply to all Insuring Clauses in addition to the Exclusions, Conditions, Statutory Conditions and Definitions applicable under each individual Insuring Clause unless endorsed herein to the contrary.

In consideration of the payment of Premium, the undertaking of the Named **Insured** to pay the Retention for Claims as stated in the Declarations and in reliance upon the statements in the **Application**, which is agreed to be the basis of this contract and is considered as incorporated herein, we agree with the Named **Insured** to pay or indemnify to the extent and in the manner herein provided subject to the terms, limitations, exclusions and conditions of this Policy.

Words and phrases that appear in bold print have special meaning and are defined in the Common Definitions section of this Policy and within individual Insuring Clauses where applicable.

Throughout this Policy the words **You** and **Your** refer to the Named **Insured** shown in the Declarations and other persons or organizations qualifying as a Named **Insured** as described within each Insuring Clause. The words **We, Us** and **Our** refer to the Insurer providing this insurance.

THIS INSURANCE PROVIDES CLAIMS MADE COVERAGE FOR MANAGEMENT LIABILITY. EXCEPT AS OTHERWISE PROVIDED SUCH COVERAGE APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED AND NOTIFIED TO US DURING THE POLICY PERIOD

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In consideration of payment of the premium and subject to the terms of this Policy, the **Underwriters** and the **Policyholder** agree as follows

INSURING CLAUSE(S)

1. The **Underwriters** shall pay **Loss** on behalf of the **Insured**.

DEFINITIONS

2. In this Policy the word 'person(s)', wherever it appears, means legal or natural person(s) unless otherwise specified.

When used in bold type in this Policy:

Claim means

- (a) a written demand seeking monetary damages or non-monetary relief;
- (b) a civil proceeding, including a third party proceeding, counterclaim or arbitration proceeding, commenced by the service of a statement of claim or similar pleading;
- (c) a criminal proceeding commenced by the laying of an information, return of an indictment, or similar document, or receipt or filing of a notice of charges; or
- (d) a formal administrative or formal regulatory proceeding commenced by the filing of a notice of charges, investigative order or similar document,

including any appeal therefrom, first made against any **Insured(s)** during the **Policy Period**, or any applicable Extended Reporting Period, alleging a **Wrongful Act** and reported to the **Underwriters** in accordance with the provisions of this Policy; and

- (e) a formal demand or proceeding arising out of the failure of the **Insured Organization** to collect or remit sales taxes, pay salaries or wages to employees or deduct, withhold or remit tax, unemployment insurance contributions, or pension plan contributions from payments of such salaries or wages,

including any appeal therefrom, first made against any **Insured Person(s)** during the **Policy Period**, or any applicable Extended Reporting Period, alleging a **Wrongful Act** and reported to the **Underwriters** in accordance with the provisions of this Policy.

Defence Costs means that part of **Loss** consisting of reasonable and necessary costs, expenses, charges and fees, including but not limited to lawyers' fees and experts' fees, incurred, following the consent of the **Underwriters**, which shall not be unreasonably withheld, in defending a **Claim**. **Defence Costs** shall also include premium paid for insurance instruments or for bonds which are required in order to institute an appeal but without any obligation to furnish or procure such insurance instruments or bonds. **Defence Costs** shall not include wages, salaries, fees, overhead or benefit expense of the directors, officers, trustees, managers, or any other employee, of the **Insured Organization**.

Employment Claim means a **Claim** brought:

- (i) by any **Insured Person** or any past, present or prospective employee of an **Insured Organization**; or
- (ii) by any past, present or prospective employee of an **Outside Entity** against an **Insured Person** serving in an Outside Directorship; or

(iii) by any government authority regulating employment practice;

based upon or arising out of an actual or alleged wrongful or unfair dismissal, discharge or termination of employment, breach of any oral or written employment contract or quasi-employment contract, employment-related misrepresentation, employment-related discrimination, employment-related harassment, wrongful failure to employ or to promote, wrongful disciplinary action, wrongful deprivation of a career opportunity, failure to grant tenure, negligent evaluation, employment-related defamation, employment-related breach of data protection laws, or employment-related wrongful infliction of emotional distress, including any of these which may constitute retaliatory action in respect of whistle-blowing. **Employment Claim** shall not include any labour or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

Financial Impairment means the status of the **Insured Organization** resulting from:

- (i) the appointment by any provincial, state or federal official, agency or court of any liquidator, receiver, conservator, rehabilitator, administrator, supervisor, sequestrator, or bankruptcy trustee, or other similar official to take control of, supervise, manage or liquidate the **Insured Organization** or **Outside Entity**, or
- (ii) the **Insured Organization** or **Outside Entity** seeking to restructure its financial affairs by way of a proposal of a compromise or arrangement under the Canada Companies' Creditors Arrangement Act, or
- (iii) the **Insured Organization** or **Outside Entity** becoming a debtor in possession.

Insured(s) means the **Insured Organization(s)** and the **Insured Person(s)**.

Insured Capacity means the position which the **Insured Person** has been retained, appointed or employed to perform in their managerial, fiduciary or employed capacity within an **Insured Organization**.

Insured Organization means an entity which is the **Policyholder** and any non-profit **Subsidiary**.

Insured Person(s) means a natural person who has been, now is or shall become a director or officer, de facto director, trustee, employee, volunteer, or member of the staff, faculty or any duly constituted committee, or the equivalent in any jurisdiction, of the **Insured Organization** and their:

- (a) lawful spouse (including common law spouse or domestic partner) if named as co-defendant solely because of such relationship; or
- (b) estate, heirs, legal representatives or assigns, if such director or officer, de facto director, trustee, employee, volunteer, or member of the staff, faculty or any duly constituted committee is deceased or declared incompetent, insolvent, or bankrupt;

but solely for the **Wrongful Act** of such director or officer, de facto director, trustee, employee, volunteer, or member of the staff, faculty or any duly constituted committee, or the equivalent in any jurisdiction, of the **Insured Organization**.

Insured Person(s) does not include (i) external auditors of an **Insured Organization** or any liquidator, receiver, administrator, supervisor, sequestrator or bankruptcy trustee, or other similar official of an **Insured Organization** or of an **Insured Organization's** assets, or (ii), with respect to Exclusion 3(k), any employee or other person who receives wages or salary paid by the **Insured Organization**.

Loss means the amount which the **Insured** is legally obligated to pay on account of a **Claim** including:

- (a) **Defence Costs;**

- (b) judgments, prejudgment and post judgment interest, awards of Claimant's costs, sums payable pursuant to any settlements and awards of damages, and shall also include punitive, exemplary or aggravated damages that an **Insured** is legally obligated to pay in a jurisdiction where such punitive, exemplary or aggravated damages are insurable under the law of such jurisdiction.

Loss does not include:

- (a) matters uninsurable under the law pursuant to which this Policy shall be construed;
- (b) fines or penalties, or the multiple portion of any multiplied damages award;
- (c) punitive, exemplary or aggravated damages in any **Employment Claim** (unless awarded for employment-related defamation);
- (d) future salary or wages including bonuses, or any benefits (including perquisites, fringe benefits, payments in connection with any employee benefit plan) owed to a Claimant pursuant to the terms of any employment contract, settlement, order or other resolution; or any compensation claimed in respect of a notice period, or any of the foregoing owed to a Claimant who has been or shall be hired, promoted or reinstated to employment;
- (e) any amount for which any **Insured** is absolved from payment other than an **Insured Person** being indemnified by an **Insured Organization**;
- (f) any costs incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief, or
- (g) any amount incurred by an **Insured Organization**, including its board of directors or any committee of the board of directors, in connection with the investigation or evaluation of any **Claim** or potential **Claim** by or on behalf of an **Insured Organization**.

Outside Entity means an entity which is a tax-exempt non-profit entity, trade association or a registered charity.

Outside Entity does not include an entity that:

- (a) is within the definition of **Insured Organization**;
 - (b) is located in the **U.S.A.**;
- or
- (c) is a publicly traded company, privately held company, public limited company, government or crown owned corporation or any other entity which is not a non-profit entity, trade association or a registered charity,

unless included by endorsement.

Personal Injury means bodily injury, mental anguish or emotional distress (except mental anguish or emotional distress for which the Claimant seeks compensation in an **Employment Claim**), sickness, disease or death of any natural person.

Policyholder means the entity stated as the Named **Insured** in the **Declarations**.

Policy Period means the period of time stated in the **Declarations** but subject to prior termination when cover terminates in accordance with Section 22 below. If the period is less than or greater than one year, then the Limits of Liability stated in the **Declarations** shall constitute the **Underwriters'** maximum Limits of Liability for the entire period.

Pollutants means any substance exhibiting any characteristic hazardous to the environment or having an adverse impact on the environment, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals and waste materials, air emissions, odour, waste water, oil, oil products, infectious or medical waste, asbestos, asbestos products, noise, fungus (not fungi intended by **Insured** for consumption) and electric or magnetic or electromagnetic field.

Pollution means:

- (a) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any **Pollutants**; or
- (b) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

Property Damage means physical damage to or destruction or **Loss** of use of any tangible property, including intellectual property.

Retired Insured Person means a director, officer or trustee of the **Insured Organization** who has ceased to act in their **Insured Capacity** during the **Policy Period** for reasons other than disqualification from holding the office of director.

Subsidiary means any tax-exempt non-profit entity, association, registered charity, foundation, or any other non-profit entity which the **Policyholder** either directly or indirectly controls at the inception date of the **Policy Period**, or controlled prior to the inception date of the **Policy Period**, through:

- (a) holding a majority of the voting rights;
- (b) the right to appoint or remove a majority of its board of directors; or
- (c) controlling alone, pursuant to a written agreement with other shareholders, a majority of the voting rights therein.

Subsidiary shall not include any entity, non-profit or otherwise, located in the **U.S.A.**

Underwriters means Certain Lloyd's **Underwriters** as described in the **Declarations**.

U.S.A. means the United States of America, its territories and possessions and any state or political subdivision thereof.

Wrongful Act means any **Wrongful Act** or omission, error, misstatement, misleading statement, neglect, or breach of duty committed, attempted, or allegedly committed or attempted, by an **Insured Organization**, or by an **Insured Person**, individually or otherwise, in their **Insured Capacity**, or any matter claimed against an **Insured Person** solely by reason of their serving in such **Insured Capacity**.

EXCLUSIONS APPLICABLE TO ALL INSURING CLAUSES

- 3. The **Underwriters** shall not be liable for **Loss** on account of any **Claim**:
 - (a) based upon, arising from, or in consequence of any circumstance if written notice of such circumstance has been given under any policy which this Policy renews, replaces or follows in whole or in part 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;

- (b) based upon, arising from, or in consequence of any claim form, writ, demand, suit or other proceeding pending, or order, decree or judgment entered, for or against any **Insured** or **Outside Entity** on or prior to the inception date, unless otherwise specified by endorsement to this Policy, of the first Policy issued by the **Underwriters** to the **Insured(s)** providing coverage of a similar nature to that afforded by this Policy and which was continued through renewal or reinstatement on an uninterrupted basis since its inception, or derived from the same or essentially the same fact, circumstance or situation as any of those underlying or alleged in such claim form, writ, demand, suit, other proceeding, order, decree or judgment;
- (c) for **Personal Injury** or **Property Damage** except;
 - (i) **Defence Costs** arising from a **Claim** pursuant to Bill 168, Occupational Health and Safety Amendment Act; or
 - (ii) **Defence Costs** arising from a **Claim** pursuant to Section 217.1 of the Criminal Code of Canada (as amended by Bill C-45);
- (d) except that part of **Loss** which is **Defence Costs**, based upon, arising from, or in consequence of (i) any actual or alleged breach of any oral, written or implied contract or agreement; or (ii) for liabilities of others assumed by any **Insured** under any contract or agreement, except to the extent in either (i) or (ii) of this paragraph the **Insured** would have been liable in the absence of such contract or agreement; however, this exclusion shall not apply to an **Employment Claim**;
- (e) based upon, arising from, or in consequence of the actual or proposed payment by an **Insured Organization** of inadequate or excessive consideration in connection with any purchase by any **Insured** of any assets or of any securities issued by any entity except that part of **Loss** which is **Defence Costs**;
- (f) based upon, arising from or in consequence of:
 - (i) any criminal, dishonest or fraudulent act or omission committed deliberately by an **Insured**;
 - (ii) any wilful breach of law by an **Insured**; or
 - (iii) an **Insured** having gained any personal profit, remuneration or advantage to which such **Insured** was not legally entitled,as determined by final adjudication;
- (g) based upon, arising from or in consequence of the rendering or failure to render any professional service(s) for others whether compensated for such services or not;
- (h) for payment by the **Insured Organization** of salaries, wages, severance pay, vacation pay, bonus, fringe benefits, stock, stock options, or any other monetary allowances required to be paid by law or required by the terms of any applicable contract or agreement, or any consequential compensatory damages awarded against the **Insured Organization**, except that part of **Loss** which is **Defence Costs** and any liability imposed upon the **Insured Persons** by statute;
- (i) for breach of any law governing, breach of duty of, or breach of trust by, an **Insured** relating to any superannuation, pension plan, profit sharing, health and welfare or other employee benefit plan or programme, trust or scheme, whether or not established or maintained by the **Insured**, to provide benefits to **Insured Persons**, or for the cost of compliance therewith;
- (j) based upon, arising from or in consequence of any publication or utterance concerning any organization or business enterprise or its products or services made by or at the direction of any **Insured** with knowledge of the falsity thereof; or the printing of periodicals, advertising matter, or any or all jobs taken by any **Insured** to be printed for any other person or entity when the periodical, advertising matter or other printing is not a regular part of the **Insured's** own activities;

- (k) by or on behalf of any **Insured**, except:
 - (i) a derivative action brought on behalf of the **Insured Organization** without the solicitation, assistance, participation or intervention of any other **Insured**;
 - (ii) an **Employment Claim**;
 - (iii) a **Claim** by an **Insured Person** for contribution or indemnity if such **Claim** directly results from another **Claim** covered under this Policy;
 - (iv) a **Claim** by a former **Insured Person** who has not served in an **Insured Capacity** for at least 3 years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without any active assistance or participation of, or solicitation by, any other **Insured**; or
 - (v) a **Claim** by or on behalf of an **Insured Organization**, due to its insolvency or bankruptcy and at the instigation of its liquidator, receiver, administrator, supervisor, sequestrator or bankruptcy trustee, or other similar official;
- (l) for **Pollution** except **Defence Costs** incurred solely by the **Insured Person** and which are not indemnified by the **Insured Organization**. The aggregate limit of liability for such **Defence Costs** for **Pollution** shall be 50% of the aggregate Limits of Liability stated in the Declarations of this Policy up to a maximum aggregate limit of liability of \$1,000,000. for such **Defence Costs** for **Pollution** and shall be part of, and not in addition to, the aggregate Limits of Liability stated in the Declarations of this Policy.
- (m) based upon, arising from or in consequence of the operations of any political action committee.
- (n) based upon, arising from, or in consequence of any process, procedure, function or activity involving:
 - (i) peer review
 - (ii) credential certification, designation, license, award, rating or similar judgement; or
 - (iii) discipline, penalty, or punishment.

Unless such **Claim** is an **Employment Claim**.

SEVERABILITY OF EXCLUSIONS

4. For purposes of determining whether an Exclusion will apply, no fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**. Only facts pertaining to and knowledge possessed by any past, present, or future in-house general counsel, chief financial officer, chief executive officer, chief operating officer, executive director, trustee, duly constituted committee member or chairperson, president or chairman (or equivalent positions) of any **Insured Organization** shall be imputed to any **Insured Organization** for the purpose of determining if coverage is available under this Policy.

EXTENDED REPORTING PERIOD

5. (a) If the **Underwriters** refuse to renew this Policy or the **Policyholder** cancels or non-renews this Policy:
 - (i) the **Policyholder** and/or the **Insured Persons** may elect to obtain an Extended Reporting Period for an period of 1 year for an additional premium of 100% of the annual premium for this Policy provided that written notice of such election and payment of any additional premium are received by the **Underwriters** within 30 days following the expiry of the **Policy Period**. This Extended Reporting Period shall commence from the termination date of the **Policy Period** and shall apply only to **Wrongful Acts** occurring prior to such date; and

- (ii) each **Retired Insured Person** shall have the Extended Reporting Period of 6 years at no additional premium and this Extended Reporting Period shall commence from the date at which that person becomes a **Retired Insured Person** and shall apply only to **Wrongful Acts** occurring prior to such date.

Cancellation of this Policy by the **Underwriters** due to non-payment of premium shall not constitute refusal to renew by the **Underwriters** and shall not constitute cancellation or non-renewal by the **Policyholder**.

- (b) If, before or during an Extended Reporting Period obtainable or obtained under Section 5(a), any **Insured** acquires any other insurance policy which affords directors and officers liability cover (whether or not equivalent to this Policy in cover), for **Wrongful Acts** occurring prior to the date said Extended Reporting Period commenced, then that Extended Reporting Period shall terminate or, if not yet obtained, cease to be obtainable.
- (c) A **Claim** made during an Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**. The entire additional premium for the Extended Reporting Period shall be deemed fully earned at the inception of such Extended Reporting Period.

LIMITS OF LIABILITY, RETENTION AND ORDER OF PAYMENT

- 6. The **Underwriters'** maximum liability for all **Loss** covered under all Insuring Clause(s) as applicable on account of all **Claims** first made or deemed to be made during the **Policy Period**, whether against one or any number of **Insureds**, shall not exceed the Limits of Liability for each **Claim** and in the aggregate for all **Claims** during the **Policy Period** stated in the **Declarations**.

Notwithstanding the above, the **Underwriters'** maximum liability for **Loss** in respect of which a sublimit is specified for each **Loss** and/or for each **Policy Period** in the **Declarations**, within the Policy or any endorsement, shall be that specified sublimit. Sublimits are part of and not in addition to the maximum liability of the **Underwriters** referred to in the above paragraph in this Section 6.

Defence Costs are part of and not in addition to the Limits of Liability stated in the **Declarations** and the payment by the **Underwriters** of **Defence Costs** erodes and may exhaust the Limits of Liability.

All **Loss** arising out of the same **Wrongful Act** and/or arising out of causally-connected **Wrongful Acts**, whether by one or any number of **Insureds**, shall be deemed to be a single **Loss** and to have originated in the earliest **Policy Period** in which a **Claim** is first made alleging said **Wrongful Act** or causally-connected **Wrongful Acts**.

The **Underwriters'** liability for each and every **Claim** shall apply only to **Loss** which is allocated to covered **Loss** and only to that part of **Loss** so allocated which is in excess of the applicable Retention stated in the **Declarations**, which shall be borne by the **Insured** uninsured and at their own risk.

Amounts stated for Limits of Liability for each **Claim** and in the aggregate for all **Claims**, and sublimits stated in the Policy or by endorsement, are maximum liabilities of the **Underwriters** for all **Insureds** together, not maximum liabilities per **Insured**. Payment of **Loss** by the **Underwriters** shall reduce the Limits of Liability. **Underwriters** shall pay **Loss** in the order in which **Loss** is incurred and notified to the **Underwriters**.

REPORTING AND NOTICE

- 7. It is a condition precedent to the **Underwriters'** liability under this Policy for a **Claim** that the **Underwriters** are given written notice as soon as practicable of such **Claim** but in no event later than: (i) 60 days following the expiration of the **Policy Period** provided the **Insured** has not acquired during this 60 day period a replacement insurance policy which affords directors and officers liability cover (whether or not equivalent to this Policy in cover) for **Wrongful Acts** occurring prior to the expiration of the **Policy Period**; or (ii), if applicable, prior to the expiry of the Extended Reporting Period.

If, during the **Policy Period**, an **Insured** becomes aware of circumstances which are likely to give rise to a **Claim** and gives written notice of such circumstances to the **Underwriters**, then any **Claims** subsequently arising from such circumstances shall be deemed to have been made during the **Policy Period** in which the circumstances were first reported to the **Underwriters**. A **Claim** or circumstances shall not be regarded as notified unless, as a condition precedent to the **Underwriters'** liability under this Policy, the written notice expressly identifies the nature of the **Wrongful Act** and the date it was committed, the nature of the alleged or potential damage, the names of the actual or potential Claimants and defendants and the manner in which the **Insured** first became aware of the circumstances.

Notice to the **Underwriters** under this Policy shall be given in writing to the address stated in the **Declarations**, or by email to claims@markelintl.ca. Notice shall be effective on the date of receipt at such address.

DEFENCE AND SETTLEMENT

8. The **Underwriters** shall have the right and duty to defend any **Claim** covered by this Policy and to choose legal counsel for such defence, or alternatively, the **Underwriters** may, at their sole discretion, give written consent to the defence of any such **Claim** by the **Insureds**. Coverage shall apply even if any of the allegations are groundless, false or fraudulent. The **Underwriters'** duty to defend shall cease upon the exhaustion of the applicable Limits of Liability set forth in the **Declarations**. The **Underwriters** shall have the right, and shall be given the opportunity, to associate with each **Insured** in the investigation, defence, negotiation and settlement of any **Claim** that appears reasonably likely to be covered in whole or in part by this Policy.

Each **Insured** agrees not to settle or offer to settle any **Claim**, incur any **Defence Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the **Underwriters'** prior written consent, which shall not be unreasonably withheld. The **Underwriters** shall not be liable for any settlement, **Defence Costs**, assumed obligation or admission to which they have not consented in writing. However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount including **Defence Costs**, not exceeding such Retention, the consent of the **Underwriters** shall not be required for the settlement of such **Claims**.

Each **Insured** undertakes not to prejudice the **Underwriters'** interests or their potential or actual rights of recovery and to give to the **Underwriters** such information and co-operation as the **Underwriters** may require.

The **Underwriters** may make any investigation they deem necessary and may, with the consent of the **Insured**, make any settlement of any **Claim** it deems expedient. If such **Insured** withholds consent to such settlement, the **Underwriters'** liability for all **Loss** on account of such **Claim** shall not exceed: (a) the amount for which the **Underwriters** could have settled such **Claim** plus **Defence Costs** incurred as of the date such settlement proposed in writing by the **Underwriters** to such **Insured**; plus (b) 80% of any **Loss** in excess of the amounts in (a) above incurred in connection with such **Claim** with the remaining 20% to be borne by the **Insureds** uninsured and at their own risk, subject to the Limits of Liability set forth in the **Declarations**.

The **Underwriters** shall, subject to Section 10, **Allocation of Loss**, on a quarterly basis, advance on behalf of the **Insureds**, excess of any applicable Retention amount, covered **Defence Costs** which the **Insureds** have incurred in connection with **Claims** made against them, prior to disposition of such **Claims**. Any advancement of **Defence Costs** shall be repaid to the **Underwriters** by the **Insureds**, severally according to their respective interests, to the extent it is determined that such **Defence Costs** are excluded from coverage under this Policy by Exclusion 3(f) above.

FAILING TO INDEMNIFY

9. If an **Insured Person** is not indemnified or reimbursed by the **Insured Organization** for **Loss** arising out of **Claims** alleging **Wrongful Acts** committed in their **Insured Capacity**, or an **Insured Person** is not indemnified or reimbursed by an **Outside Entity** for a **Loss** arising out of **Claims** alleging **Wrongful Acts** committed by such **Insured Person** serving in an Outside Directorship, for reason other than **Financial Impairment**, then the **Underwriters** will pay that **Loss** on behalf of the **Insured Person** without applying such Retention in the **Declarations** as is otherwise applicable. The **Underwriters** shall be reimbursed for that Retention within 30 days of such payment by the **Insured Organization**. For purposes of this Section 9, it is assumed that the **Insured Organization** or **Outside Entity** is permitted or required to indemnify the **Insured Person** to the fullest extent permitted or required by statutory or common law regardless of any restrictions in contract or restrictions in an **Insured Organization's** or **Outside Entity's** constitution, memorandum, certificate or articles of association, bylaws, shareholders resolutions, or board or other governing body resolutions.

ALLOCATION OF LOSS

10. If the **Insureds** incur both **Loss** that is covered under this Policy and **Loss** that is not covered under this Policy because a **Claim** includes both covered and non-covered matters, or because such **Claim** is made against both the **Insureds** and others, the **Insureds** and the **Underwriters** shall agree:
- (a) to allocate 100% of all **Defence Costs** incurred by the **Insureds** in respect of such **Claim** to covered **Loss**; and
 - (b) to allocate all other amount(s) incurred by the **Insureds** for such **Claim** by exerting their best efforts to agree upon a fair and proper allocation between covered **Loss** and non-covered **Loss**.

Any allocation or payment of **Defence Costs** shall not create any presumption as to the allocation of other **Loss** and the **Underwriters** shall not be liable under this Policy for the portion of any amounts allocated to non-covered **Loss**.

If the **Insured** and the **Underwriters** cannot agree on an allocation, no presumption as to allocation shall exist in any arbitration, suit or other proceeding. The **Underwriters**, if requested by the **Insured**, shall submit the dispute to binding arbitration before a panel, which shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by the **Underwriters**, and a third independent arbitrator selected by the first two arbitrators. The arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the event of arbitration, the arbitrators' award shall not include attorneys' fees or other costs.

OTHER INSURANCE

11. If **Loss** is **Insured** under any other valid policy, then this Policy shall cover such **Loss**, subject to its terms, only to the extent that the amount of such **Loss** is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Policy.

CHANGES IN EXPOSURE

Acquisition or Creation of Another Entity

12. (a) If, during the **Policy Period**, any **Subsidiary** is created or acquired by the **Insured** which qualifies as a non-profit organization under the requirements of the applicable laws of the jurisdiction in which the **Subsidiary** is created or acquired, and would have been included within the meaning of **Insured** as a result of the definition of **Insured** under this Policy, then such **Subsidiary** and its **Insured Persons** shall automatically become **Insureds** under this Policy with effect from the date of such creation or acquisition but only with respect to **Wrongful Acts** occurring after such date of acquisition or creation and, as a condition precedent to the **Underwriters'** liability under this Policy, subject to:
- (i) the **Policyholder** giving written notice of such creation or acquisition to the **Underwriters** as soon as practicable, but in no event later than 60 days after the date of such creation or acquisition; and
 - (ii) the **Policyholder** giving any underwriting information required by the **Underwriters** and agreeing to amendment of any terms of this Policy including charging an additional premium.
- (b) If, during the **Policy Period**, any **Subsidiary** created or acquired by the **Insured** does not qualify as a non-profit organization under the requirements of the applicable laws of the jurisdiction in which the **Subsidiary** is created or acquired, such **Subsidiary** shall not be included until the **Policyholder**, as a condition precedent to the **Underwriters'** liability under this Policy, has:
- (i) given written notice of such creation or acquisition together with any underwriting information which may be required by the **Underwriters**; and
 - (ii) received written approval from the **Underwriters** and agreed to the amendments of any terms of this Policy including charging an additional premium.

- (c) If, during the **Policy Period**, the **Policyholder** acquires by merger, or consolidates with, or is merged into or acquired by any other entity, such that the **Policyholder** is not the surviving entity, coverage under this Policy shall continue until the end of the **Policy Period**, or applicable Extended Reporting Period, but only for **Wrongful Acts** occurring prior to the effective date of such merger, consolidation or acquisition. Upon the occurrence of such merger, consolidation or acquisition the entire premium for this Policy shall be deemed fully earned. The **Policyholder** shall give written notice of such merger, consolidation or acquisition to the **Underwriters** as soon as practicable, but in no event later than 60 days after the effective date of such merger, consolidation or acquisition, together with such other information as the **Underwriters** may require.

SUBSIDIARIES

13. In the event an entity ceases to be a **Subsidiary** before or after the inception date of the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of the Policy but only with respect to **Claims** for **Wrongful Acts** committed prior to the date that such entity ceased to be a **Subsidiary**.

REPRESENTATIONS AND SEVERABILITY

14. In issuing this Policy to the **Policyholder**, the **Underwriters** have relied upon the material declarations, statements and information in the written application for this Policy and, if granting continuity, upon any material declarations, statements and information in the original written application as applicable submitted to another insurer with respect to any prior policy. All such material declarations, statements and information are the basis of this Policy and shall be considered as incorporated in and constituting part of this Policy. Such written applications shall be construed as separate applications for coverage by each **Insured Person** but will be deemed to have been made by all **Insured Organizations**. With respect to the material declarations, statements and information contained in such written applications, for the purpose of determining if coverage under this Policy is available:

- (a) no statement in the applications or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**; and
- (b) only facts pertaining to and knowledge possessed by:
 - (i) the chief financial officer, in-house general counsel, president, chief executive officer, executive director, trustee, duly constituted committee member or chairperson of an **Insured Organization** shall be imputed only to that **Insured Organization**; and
 - (ii) the individuals signing the applications shall be imputed to all **Insured Organizations**.

In the event that such material declarations, statements or information contains any untruths or inaccuracies which would have materially affected the **Underwriters'** decision to issue this Policy, no **Insured Person** who knew of such untruths or inaccuracies at the inception date of the **Policy Period** and no **Insured Organization** by which that **Insured Person** is indemnified, shall have cover under this Policy for any **Loss**. This Policy shall not be rescinded with respect to any other **Insured** who had no knowledge of such untruths or inaccuracies.

OUTSIDE DIRECTORSHIP LIABILITY EXTENSION

15. Subject to the other terms of this Policy, coverage is extended to cover **Loss** arising out of an Outside Directorship provided however that:
- (a) such cover does not extend to the **Outside Entity** nor to any of the other directors, officers, trustees, governors, employees, volunteers or member of the staff, faculty or any duly constituted committee, or equivalent in any jurisdiction, of the **Outside Entity**;

- (b) the **Underwriters'** liability for each and every **Claim** shall apply only to that part of the **Loss** which is excess of:
- (i) all other insurance payable;
 - (ii) the amount of the **Loss** for which the **Insured Person** serving in such Outside Directorship is indemnified by the **Outside Entity**; and
 - (iii) the applicable Retention stated in the Declarations if applicable;
- (c) if the **Insured Person** is entitled to be indemnified by the **Insured Organization** for the **Loss** and the **Insured Organization** does not pay on their behalf, or reimburse them for, that **Loss**, then the **Underwriters** will, subject to Section 15(b)(i) and (ii) above, pay that **Loss** on behalf of the **Insured Person** without applying such Retention in the Declarations as is otherwise applicable and the **Underwriters** shall be reimbursed for that Retention within 30 days of payment by the **Insured Organization**;
- (d) in the event an entity ceases to be an **Outside Entity** before or after the inception date of the **Policy Period**, coverage with respect to any **Insured Person** in an Outside Directorship with such **Outside Entity** shall continue until termination of the **Policy Period** but only with respect to **Claims** for **Wrongful Acts** committed prior to the date that such entity ceased to be an **Outside Entity**;
- (e) payment by the **Underwriters** or any other **Subsidiary**, affiliate or associate of the **Underwriters** under any other policy on account of a Claim also covered under this Policy shall reduce the Limits of Liability available under this Policy by the amount of such payment with respect to such Claim;
- (f) such cover is not extended to **Loss** arising out of an Outside Directorship on account of any Claim:
- (i) by or on behalf of any **Insured**, the **Outside Entity**, or one or more of the **Outside Entity's** directors, officers, trustees, governors, employees, volunteers or members of the staff, faculty or any duly constituted committee, or equivalent position in any jurisdiction, except:
 - (I) an **Employment Claim**;
 - (II) a derivative action brought on behalf of an **Outside Entity** by one or more persons who are neither **Insureds** nor directors, officers, or individuals in equivalent positions in any jurisdiction of such **Outside Entity**, and who are not acting at or with the instigation or solicitation of any such person; or
 - (III) a **Claim** for contribution or indemnity brought or maintained by an **Insured Person** or by one or more of the **Outside Entity's** directors, officers, trustees, governors, employees, volunteers or members of the staff, faculty or any duly constituted committee, or equivalent position in any jurisdiction, of the **Outside Entity**, if such **Claim** directly results from another **Claim** covered under this Policy;
 - (ii) which is for **Wrongful Acts** that occur after the date (a) an **Insured Person** ceases to be an **Insured Person** of the **Insured Organization** or (b) service by the **Insured Person** in the Outside Directorship ceases to be at the specific written request of an **Insured Organization** or not considered nor evidenced as part of the duties of such **Insured Person** in their **Insured Capacity**.

TERRITORY

16. Subject to all other terms of this Policy, cover shall extend to **Claims** brought or maintained in Canada.

VALUATION AND FOREIGN CURRENCY

17. All premiums, limits, retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of Canada unless otherwise stated. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is incurred in a currency other than Canadian dollars, or such other currency stated, payment under this Policy shall be made in Canadian dollars at the applicable closing daily rate of exchange published by the Bank of Canada as of the date the final judgment is reached, the amount of the settlement is agreed upon or any other element of **Loss** is due, respectively, or if not published on such date, the next date of publication by the Bank of Canada.

SUBROGATION

18. The **Underwriters** shall be subrogated to the extent of any payment under this Policy to each **Insured's** rights of recovery, and each **Insured** shall execute all papers reasonably required and shall do everything necessary to secure and preserve such rights and to enable the **Underwriters** to bring proceedings in the name of that **Insured**.

AUTHORIZATION CLAUSE

19. The **Policyholder** hereby agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claims** or termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this Policy (except for the **Insureds'** ability to elect an Extended Reporting Period or give written notice of a **Claim** or circumstance that is likely to give rise to a **Claim**), and the **Insureds** agree that the **Policyholder** shall so act on their behalf.

ALTERATION AND ASSIGNMENT

20. By acceptance of this Policy, the **Insureds** agree that this Policy embodies all agreements existing between them and the **Underwriters** or any of their agents relating to this Policy. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Underwriters** shall not effect an assignment of interest, a waiver or a change in any part of this Policy or estop the **Underwriters** from asserting any right under the terms of this Policy, nor shall there be any assignment of interest, waiver or change of terms under this Policy except when made by written endorsement rider issued by the **Underwriters** to form a part of this Policy.

ACTION AGAINST THE UNDERWRITERS

21. No action shall lie against the **Underwriters** unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the Claimant and the **Underwriters**. Nothing contained herein shall give any person or organization any right to join the **Underwriters** as a party to any **Claim** against the **Insureds** to determine their liability, nor shall the **Underwriters** be impleaded by the **Insureds** or their legal representative in any **Claim**.

TERMINATION

22. Cover under this Policy shall terminate at the earliest of the following times:
- (a) 15 days after the receipt by the **Policyholder** of a written notice of termination from the **Underwriters** for non-payment of premium;
 - (b) expiration of the **Policy Period** (but expiration of the **Policy Period** shall not terminate cover under an obtained Extended Reporting Period);
 - (c) receipt by the **Underwriters** of written notice of termination from the **Policyholder**; or
 - (d) such other time as may be agreed upon by the **Underwriters** and the **Policyholder** in writing.

If, at the time of termination of cover under this Policy, no **Insured** has given notice of a **Claim**, or of circumstances which are likely to give rise to a **Claim**, the **Underwriters** shall refund the unearned premium:

- (i) computed at customary short rates, if cover under this Policy is terminated by the **Policyholder** ; or
- (ii) computed pro-rata, if cover under this Policy is terminated other than by the **Policyholder**.

TERMINATION OF PRIOR POLICIES

23. Any Policies issued by the **Underwriters** of which this Policy is a renewal or replacement shall terminate, if not already terminated, as of the inception date of this Policy.

POLICY INTERPRETATION

24. This Policy shall be interpreted and construed in accordance with the laws of the Canadian province in which this Policy was issued and subject to the exclusive jurisdiction of the courts within the territorial jurisdiction of Canada.

BANKRUPTCY

25. Bankruptcy or insolvency of any **Insured** shall not relieve the **Underwriters** of their obligations nor deprive the **Underwriters** of their rights or defences under this Policy.

SERVICE OF SUIT

26. It is agreed that in the event of the failure of the **Underwriters** to pay any amount **Claimed** to be due hereunder, the **Underwriters**, at the request of any person or entity **Insured** hereunder, will submit to the jurisdiction of any court of competent jurisdiction within the territorial jurisdiction of Canada and will comply with all requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the **Underwriters'** rights to commence an action in any court of competent jurisdiction in the territorial jurisdiction of Canada, to remove an action commenced outside the territorial jurisdiction of Canada to a Canadian court, or to seek a transfer of an action commenced in one province or territory of Canada to a court in another province or territory as permitted by the laws of Canada or of any Canadian province. It is further agreed that in any suit instituted against the **Underwriters** they will abide by the final decision of such court or of any appellate court in the event of an appeal.